Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1997

Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations

Chapter VIII. Decisions of national tribunals

CONTENTS (*continued*)

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Philippines

PHILIPPINE SUPREME COURT

The Philippine Constitution and Philippine participation in worldwide trade liberalization and economic globalization—Question of possible nullification of the concurrence of the Philippine Senate in the ratification by the president of the Philippines of the Agreement Establishing the World Trade Organization—Analysis of the scope, goals and policies of the World Trade Organization —Limitation of sovereignty by international law and treaties

EN BANC
[G.R. No. 118295. 2 May 1997.]

Wigberto E. Tañada and Anna Dominique Coseteng, as members of the Philippine Senate and as taxpayers; Gregorio Andolana and Joker Arroyo as members of the House of Representatives and as taxpayers; Nicanor P. Perlas and Horacio R. Morales, both as taxpayers; Civil Liberties Union, National Economic Protectionism Association, Center for Alternative Development Initiatives, Likas-Kayang Kaunlaran Foundation, Inc., Philippine Rural Reconstruction Movement, Demokratikong Kilusang Magbubukid ng Pilipinas, Inc., and Philippine Peasant Institute, in representation of various taxpayers and as non-governmental organizations, *petitioners*, *vs.* Edgardo Angara, Alberto Romulo, Leticia Ramos-Shahani, Heherson Alvarez, Agapito Aquino, Rodolfo Biazon, Neptali Gonzales, Ernesto Herrera, Jose Lina, Gloria Macapagal-Arroyo, Orlando Mercado, Blas Ople, John Osmeña, Santanina Rasul, Ramon Revilla, Raul Roco, Francisco Tatad and Freddie Webb, in their respective capacities as members of the Philippine Senate who concurred in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization; Salvador Enriquez, in his capacity as Secretary of Budget and Management; Caridad Valdehuesa, in her capacity as National Treasurer; Rizalino Navarro, in his capacity as Secretary of Trade and Industry; Roberto Sebastian, in his capacity as Secretary of Agriculture; Roberto de Ocampo, in his capacity as Secretary of Finance; Roberto Romulo, in his capacity as Secretary of Foreign Affairs; and Teofisto T. Guingona, in his capacity as Executive Secretary, *respondents*.

DECISION

PANGANIBAN, *J.*:

The emergence on 1 January 1995 of the World Trade Organization (WTO), abetted by the membership thereto of the vast majority of countries, has revolutionized international business and economic relations among States. It has irreversibly propelled the world towards trade liberalization and economic globalization. Liberalization, globalization, deregulation and privatization, the third-millennium buzzwords, are ushering in a new borderless world of business by sweeping away as mere historical relics the heretofore traditional modes of promoting and protecting national economies like tariffs, export subsidies, import quotas, quantitative restrictions, tax exemptions and currency controls. Finding market niches and becoming the best in specific industries in a market-driven and export-oriented global scenario are replacing age-old "beggar-thy-neighbour" policies that unilaterally protect weak and inefficient domestic producers of goods and services. In the words of Peter Drucker, the well known management guru, "Increased participation in the world economy has become the key to domestic economic growth and prosperity."

Brief historical background

To hasten worldwide recovery from the devastation wrought by the Second World War, plans for the establishment of three multilateral institutions, inspired by that grand political body, the United Nations, were discussed at Dumbarton Oaks and Bretton Woods. The first was the World Bank, which was to address the rehabilitation and reconstruction of war-ravaged and, later, developing countries; the second, the International Monetary Fund (IMF), which was to deal with currency problems; and the third, the International Trade Organization (ITO), which was to foster order and predictability in world trade and to minimize unilateral protectionist policies that invited challenge, even retaliation, from other States. However, for a variety of reasons, including its non-ratification by the United States, ITO, unlike IMF and the World Bank, never took off. What remained was only the General Agreement on Tariffs and Trade (GATT). GATT was a collection of treaties governing access to the economies of treaty adherents with no institutionalized body administering the agreements or dependable system of dispute settlement.

After half a century and several dizzying rounds of negotiations, principally the Kennedy Round, the Tokyo Round and the Uruguay Round, the world finally gave birth to that administering body, the World Trade Organization, with the signing of the "Final Act" in Marrakesh, Morocco, and the ratification of the WTO Agreement by its members.[1]

Like many other developing countries, the Philippines joined WTO as a founding member with the goal, as articulated by President Fidel V. Ramos in two letters to the Senate (infra), of improving "Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products". The President also saw in WTO the opening of "new opportunities for the services sector . . . , [the reduction of] costs and uncertainty associated with exporting . . . , and [the attraction of] more investments into the country". Although the Chief Executive did not

expressly mention it in his letter, the Philippines—and this is of special interest to the legal profession—would benefit from the WTO system of dispute settlement by judicial adjudication through the independent WTO settlement bodies called (*a*) Dispute Settlement Panel and (*b*) Appellate Tribunal. Heretofore, trade disputes were settled mainly through negotiations where solutions were arrived at frequently on the basis of relative bargaining strengths and where, naturally, weak and underdeveloped countries were at a disadvantage.

The petition in brief

Arguing mainly (*a*) that WTO required the Philippines "to place nationals and products of member countries on the same footing as Filipinos and local products" and (*b*) that WTO "intrudes, limits and/or impairs" the constitutional powers of both Congress and the Supreme Court, the instant petition before this Court assails the WTO Agreement for violating the mandate of the 1987 Constitution to "develop a self-reliant and independent national economy effectively controlled by Filipinos . . . [to] give preference to qualified Filipinos [and to] promote the preferential use of Filipino labour, domestic materials and locally produced goods".

Simply stated, does the Philippine Constitution prohibit Philippine participation in worldwide trade liberalization and economic globalization? Does it proscribe Philippine integration into a global economy that is liberalized, deregulated and privatized? These are the main questions raised in this petition for certiorari, prohibition and mandamus under rule 65 of the Rules of Court praying (*a*) for the nullification, on constitutional grounds, of the concurrence of the Philippine Senate in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization (WTO Agreement, for brevity) and (*b*) for the prohibition of its implementation and enforcement through the release and utilization of public funds, the assignment of public officials and employees as well as the use of government properties and resources by respondent heads of various executive offices concerned therewith. This concurrence is embodied in Senate resolution 97, dated 14 December 1994.

The facts

On 15 April 1994, Respondent Rizalino Navarro, then Secretary of the Department of Trade and Industry (Secretary Navarro, for brevity), representing the Government of the Republic of the Philippines, signed in Marrakesh, Morocco, the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Final Act, for brevity).

By signing the Final Act,[2] Secretary Navarro, on behalf of the Republic of the Philippines, agreed:

> "(*a*) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities, with a view to seeking approval of the Agreement in accordance with their procedures; and
>
> (*b*) To adopt the Ministerial Declarations and Decisions."

On 12 August 1994, the members of the Philippine Senate received a letter dated 11 August 1994 from the President of the Philippines,[3] stating among other things that "the Uruguay Round Final Act is hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution".

On 13 August 1994, the members of the Philippine Senate received another letter from the President of the Philippines[4] likewise dated 11 August 1994, which stated among other things that "the Uruguay Round Final Act, the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services are hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution".

On 9 December 1994, the President of the Philippines certified the necessity of the immediate adoption of P.S. 1083, a resolution entitled "Concurring in the Ratification of the Agreement Establishing the World Trade Organization".[5]

On 14 December 1994, the Philippine Senate adopted resolution 97, which "resolved, as it is hereby resolved, that the Senate concur, as it hereby concurs, in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization".[6] The text of the WTO Agreement is written on pages 137 et seq. of volume I of the 36-volume *Uruguay Round of Multilateral Trade Negotiations* and includes various agreements and associated legal instruments (identified in the said Agreement as annexes 1, 2 and 3 thereto and collectively referred to as "Multilateral Trade Agreements", for brevity) as follows:

"**ANNEX 1**

Annex 1A: Multilateral Agreement on Trade in Goods
General Agreement on Tariffs and Trade 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-related Investment Measures
Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994
Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade 1994
Agreement on Pre-Shipment Inspection
Agreement on Rules of Origin
Agreement on Imports Licensing Procedures
Agreement on Subsidies and Coordinating Measures
Agreement on Safeguards
Annex 1B: General Agreement on Trade in Services and Annexes
Annex 1C: Agreement on Trade-related Aspects of Intellectual Property Rights

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism"

On 16 December 1994, the President of the Philippines signed[7] the Instrument of Ratification, declaring:

"Now therefore, be it known that I, Fidel V. Ramos, President of the Republic of the Philippines, after having seen and considered the aforementioned Agreement Establishing the World Trade Organization and the agree-

ments and associated legal instruments included in annexes one (1), two (2) and three (3) of that Agreement which are integral parts thereof, signed at Marrakesh, Morocco, on 15 April 1994, do hereby ratify and confirm, the same and every article and clause thereof."

To emphasize, the WTO Agreement ratified by the President of the Philippines is composed of the Agreement proper and "the associated legal instruments included in annexes one (1), two (2) and three (3) of that Agreement which are integral parts thereof".

On the other hand, the Final Act signed by Secretary Navarro embodies not only the WTO Agreement (and its integral annexes aforementioned) but also (*a*) the Ministerial Declarations and Decisions and (*b*) the Understanding on Commitments in Financial Services. In his Memorandum dated 13 May 1996,[8] the Solicitor General describes these two latter documents as follows:

"The Ministerial Decisions and Declarations are 25 declarations and decisions on a wide range of matters, such as measures in favour of least developed countries, notification procedures, relationship of WTO with the International Monetary Fund and agreements on technical barriers to trade and on dispute settlement.

"The Understanding on Commitments in Financial Services dwells on, among other things, standstill or limitations and qualifications of commitments to existing non-conforming measures, market access, national treatment and definitions of non-resident supplier of financial services, commercial presence and new financial service."

On 29 December 1994, the present petition was filed. After careful deliberation on respondents' comment and petitioners' reply thereto, the Court resolved, on 12 December 1995, to give due course to the petition, and the parties thereafter filed respective memoranda. The Court also requested the Honourable Lilia R. Bautista, the Philippine Ambassador to the United Nations stationed in Geneva, to submit a paper, hereafter referred to as "Bautista paper",[9] for brevity, (*a*) providing a historical background of and (*b*) summarizing the said agreements.

During the Oral Argument held on 27 August 1996, the Court directed:

"(*a*) The petitioners to submit (1) the Senate Committee report on the matter in controversy and (2) the transcript of proceedings/hearings in the Senate; and

"(*b*) The Solicitor General, as counsel for respondents, to file (1) a list of Philippine treaties signed prior to the Philippine adherence to the WTO Agreement, which derogate from Philippine sovereignty, and (2) copies of the multi-volume WTO Agreement and other documents mentioned in the Final Act, as soon as possible."

After receipt of the foregoing documents, the Court said it would consider the case submitted for resolution. In a Compliance dated 16 September 1996, the Solicitor General submitted a printed copy of the 36-volume *Uruguay Round of Multilateral Trade Negotiations*, and in another Compliance dated 24 October 1996, he listed the various "bilateral or multilateral treaties or international instruments involving derogation of Philippine sovereignty". Petitioners, on the other hand, submitted their Compliance dated 28 January 1997, on 30 January 1997.

The issues

In their memorandum dated 11 March 1996, petitioners summarized the issues as follows:

"A. Whether the petition presents a political question or is otherwise not justiciable.

B. Whether the petitioner members of the Senate who participated in the deliberations and voting leading to the concurrence are estopped from impugning the validity of the Agreement Establishing the World Trade Organization or of the validity or of the concurrence.

C. Whether the provisions of the Agreement Establishing the World Trade Organization contravene the provisions of section 19, article II, and sections 10 and 12, article XII, all of the 1987 Philippine Constitution.

D. Whether provisions of the Agreement Establishing the World Trade Organization unduly limit, restrict and impair Philippine sovereignty, specifically the legislative power which, under section 2, article VI, 1987 Philippine Constitution, is 'vested in the Congress of the Philippines'.

E. Whether provisions of the Agreement Establishing the World Trade Organization interfere with the exercise of judicial power.

F. Whether the respondent members of the Senate acted in grave abuse of discretion amounting to lack or excess of jurisdiction when they voted for concurrence in the ratification of the constitutionally infirm Agreement Establishing the World Trade Organization.

G. Whether the respondent members of the Senate acted in grave abuse of discretion amounting to lack or excess of jurisdiction when they concurred only in the ratification of the Agreement Establishing the World Trade Organization, and not with the presidential submission which included the Final Act, Ministerial Declaration and Decisions, and the Understanding on Commitments in Financial Services."

On the other hand, the Solicitor General as counsel for respondents "synthesized the several issues raised by petitioners into the following:"[10]

"1. Whether or not the provisions of the Agreement Establishing the World Trade Organization and the Agreements and Associated Legal Instruments included in annexes one (1), two (2) and three (3) of that Agreement cited by petitioners directly contravene or undermine the letter, spirit and intent of section 19, article II, and sections 10 and 12, article XII, of the1987 Constitution.

2. Whether or not certain provisions of the Agreement unduly limit, restrict or impair the exercise of legislative power by Congress.

3. Whether or not certain provisions of the Agreement impair the exercise of judicial power by this Honourable Court in promulgating the rules of evidence.

4. Whether or not the concurrence of the Senate in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization implied rejection of the treaty embodied in the Final Act."

By raising and arguing only four issues against the seven presented by petitioners, the Solicitor General has effectively ignored three, namely: (1) whether

the petition presents a political question or is otherwise not justiciable; (2) whether petitioner members of the Senate (Wigberto E. Tañada and Anna Dominique Coseteng) are estopped from joining this suit; and (3) whether the respondent members of the Senate acted in grave abuse of discretion when they voted for concurrence in the ratification of the WTO Agreement. The foregoing notwithstanding, this Court resolved to deal with these three issues thus:

(1) The "political question" issue, being very fundamental and vital, and being a matter that probes into the very jurisdiction of this Court to hear and decide this case, was deliberated upon by the Court and will thus be ruled upon as the first issue;

(2) The matter of estoppel will not be taken up because this defence is waivable and the respondents have effectively waived it by not pursuing it in any of their pleadings; in any event, this issue, even if ruled in respondents' favour, will not cause the petition's dismissal as there are petitioners other than the two senators, who are not vulnerable to the defence of estoppel; and

(3) The issue of alleged grave abuse of discretion on the part of the respondent senators will be taken up as an integral part of the disposition of the four issues raised by the Solicitor General.

During its deliberations on the case, the Court noted that the respondents did not question the locus standi of petitioners. Hence, they are also deemed to have waived the benefit of such issue. They probably realized that grave constitutional issues, expenditures of public funds and serious international commitments of the nation are involved here, and that transcendental public interest requires that the substantive issues be met head on and decided on the merits, rather than skirted or deflected by procedural matters.[11]

To recapitulate, the issues that will be ruled upon shortly are:

(1) Does the petition present a justiciable controversy? Otherwise stated, does the petition involve a political question over which this Court has no jurisdiction?

(2) Do the provisions of the WTO Agreement and its three annexes contravene section 19, article II, and sections 10 and 12, article XII, of the Philippine Constitution?

(3) Do the provisions of said Agreement and its annexes limit, restrict or impair the exercise of legislative power by Congress?

(4) Do said provisions unduly impair or interfere with the exercise of judicial power by this Court in promulgating rules on evidence?

(5) Was the concurrence of the Senate in the WTO Agreement and its annexes sufficient and/or valid, considering that it did not include the Final Act, Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services?

First issue: Does the Court have jurisdiction over the controversy?

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The

duty [to adjudicate] remains to assure that the supremacy of the Constitution is upheld."[12] Once a "controversy as to the application or interpretation of a constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide".[13]

The jurisdiction of this Court to adjudicate the matters[14] raised in the petition is clearly set out in the 1987 Constitution,[15] as follows:

> "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."

The foregoing text emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government, including Congress. It is an innovation in our political law.[16] As explained by former Chief Justice Roberto Concepcion,[17] "the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgement on matters of this nature."

As this Court has repeatedly and firmly emphasized in many cases,[18] it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the Government.

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under rule 65 of the Rules of Court. Indeed, certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.

We should stress that, in deciding to take jurisdiction over this petition, this Court will not review the *wisdom* of the decision of the President and the Senate in enlisting the country into WTO, or pass upon the *merits* of trade liberalization as a policy espoused by said international body. Neither will it rule on the *propriety* of the Government's economic policy of reducing/removing tariffs, taxes, subsidies, quantitative restrictions and other import/trade barriers. Rather, it will only exercise its constitutional duty "to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the Senate in ratifying the WTO Agreement and its three annexes.

Second issue: The WTO Agreement and economic nationalism

This is the *lis mota*, the main issue, raised by the petition.

Petitioners vigorously argue that the "letter, spirit and intent" of the Constitution mandating "economic nationalism" are violated by the so-called "parity provisions" and "national treatment" clauses scattered in various parts not only of the WTO Agreement and its annexes but also in the Ministerial Decisions and Declarations and in the Understanding on Commitments in Financial Services.

Specifically, the "flagship" constitutional provisions referred to are section 19, article II, and sections 10 and 12, article XII, of the Constitution, which are worded as follows:

"*Article II*

"DECLARATION OF PRINCIPLES AND STATE POLICIES

". . .

"Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

". . .

"*Article XII*

"NATIONAL ECONOMY AND PATRIMONY

". . .

"Section 10. . . . The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

"In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

". . .

"Section 12. The State shall promote the preferential use of Filipino labour, domestic materials and locally produced goods, and adopt measures that help make them competitive."

Petitioners aver that these sacred constitutional principles are desecrated by the following WTO provisions quoted in their memorandum:[19]

(*a*) In the area of investment measures related to trade in goods (TRIMS, for brevity):

"*Article 2*

"NATIONAL TREATMENT AND QUANTITATIVE RESTRICTIONS

"1. Without prejudice to other rights and obligations under GATT 1994, no member shall apply any TRIM that is inconsistent with the provisions of article III or article XI of GATT 1994.

"2. An illustrative list of TRIMS that are inconsistent with the obligations of general elimination of quantitative restrictions provided for in paragraph 1 of article XI of GATT 1994 is contained in the annex to this Agreement." (Agreement on Trade-related Investment Measures, vol. 27, *Uruguay Round, Legal Instruments*, p. 22121, emphasis supplied.)

The annex referred to reads as follows:

"ANNEX

"Illustrative list

"1. *TRIMS that are inconsistent with the obligation of national treatment provided for in paragraph 4 of article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require*:

(*a*) The purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of proportion of volume or value of its local production; or

(*b*) That an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

"2. TRIMS that are inconsistent with the obligations of general elimination of quantitative restrictions provided for in paragraph 1 of article XI of GATT 1994 include those which are mandatory or enforceable under domestic laws or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(*a*) The importation by an enterprise of products used in or related to the local production that it exports;

(*b*) The importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange inflows attributable to the enterprise; or

(*c*) The exportation or sale for export specified in terms of particular products, in terms of volume or value of products, or in terms of a preparation of volume or value of its local production."

(Annex to the Agreement on Trade-related Investment Measures, vol. 27, *Uruguay Round, Legal Instruments*, p. 22125, emphasis supplied.)

The paragraph 4 of article III of GATT 1994 referred to is quoted as follows:

"The products of the territory of any contracting party imported into the territory of any other contracting party *shall be accorded treatment no less favourable than that accorded to like products of national origin* in respect of laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product." (Article III, GATT 1947, as amended by the Protocol Modifying Part II, and article XXVI of GATT, 14 September 1948, 62 UNTS 82-84, in relation to paragraph 1 (*a*) of the General Agreement on Tariffs and Trade 1994, vol. 1, *Uruguay Round, Legal Instruments*, p. 177, emphasis supplied.)

(*b*) In the area of trade-related aspects of intellectual property rights (TRIPS, for brevity):

"*Each member shall accord to the nationals of other members treatment no less favourable than that it accords to its own nationals* with regard to the protection of intellectual property . . ." (Paragraph 1, article 3, Agreement on Trade-related Aspects of Intellectual Property Rights, vol. 31, *Uruguay Round, Legal Instruments*, p. 25432, emphasis supplied.)

(*c*) In the area of the General Agreement on Trade in Services:

"*National treatment*

"1. In the sectors inscribed in its schedule, and subject to any conditions and qualifications set out therein, each member shall accord to services and service suppliers of any other member, in respect of all measures affecting the supply of services, *treatment no less favourable than it accords to its own like services and service suppliers.*

"2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

"3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of completion in favour of services or service suppliers of the member compared to like services or service suppliers of any other member." (Article XVII, General Agreement on Trade in Services, vol. 28, *Uruguay Round, Legal Instruments*, p. 22610, emphasis supplied.)

It is petitioners' position that the foregoing "national treatment" and "parity provisions" of the WTO Agreement "place nationals and products of member countries on the same footing as Filipinos and local products", in contravention of the "Filipino first" policy of the Constitution. They allegedly render meaningless the phrase "effectively controlled by Filipinos". The constitutional conflict becomes more manifest when viewed in the context of the clear duty imposed on the Philippines as a WTO member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements.[20] Petitioners further argue that these provisions contravene constitutional limitations on the role exports play in national development and negate the preferential treatment accorded to Filipino labour, domestic materials and locally produced goods.

On the other hand, respondents through the Solicitor General counter (*1*) that such Charter provisions are not self-executing and merely set out general policies; (2) that these nationalistic portions of the Constitution invoked by petitioners should not be read in isolation but should be related to other relevant provisions of article XII, particularly sections 1 and 13 thereof; (3) that read properly, the WTO clauses cited do not conflict with the Constitution; and (4) that the WTO Agreement contains sufficient provisions to protect developing countries like the Philippines from the harshness of sudden trade liberalization.

We shall now discuss and rule on these arguments.

Declaration of principles not self-executing

By its very title, article II of the Constitution is a "declaration of principles and State policies". The counterpart of this article in the 1935 Constitution[21] is called the "basic political creed of the nation" by Dean Vicente Sinco.[22] These principles in article II are not intended to be self-executing principles ready for enforcement through the courts.[23] They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated vs. Morato*,[24] the principles and State policies enumerated in article II and some sec-

tions of article XII are not "self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

In the same light, we held in *Basco vs. Pagcor*[25] that broad constitutional principles need legislative enactments to implement them, thus:

> "On petitioners' allegation that P.D. 1869 violates sections 11 (Personal dignity), 12 (Family) and 13 (Role of youth) of article II; section 13 (Social justice) of article XIII; and section 2 (Educational values) of article XIV of the 1987 Constitution, suffice it to state also that these are merely statements of principles and policies. As such, they are basically not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles.
>
> > " 'In general, therefore, the 1935 provisions were not intended to be self-executing principles ready for enforcement through the courts. They were rather directives addressed to the executive and to the legislature. If the executive and the legislature failed to heed the directives of the article, the available remedy was not judicial but political. The electorate could express their displeasure with the failure of the executive and the legislature through the language of the ballot.' (Bernas, vol. II, p. 2.)"

The reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade "into the uncharted ocean of social and economic policy-making". Justice Florentino P. Feliciano, in his concurring opinion in *Oposa vs. Factoran, Jr.*,[26] explained these reasons as follows:

> "My suggestion is simply that petitioners must, before the trial court, show a more specific legal right—a right cast in language of a significantly lower order of generality than article II (15) of the Constitution—that is or may be violated by the actions, or failures to act, imputed to the public respondent by petitioners so that the trial court can validly render judgement granting all or part of the relief prayed for. To my mind, the court should be understood as simply saying that such a more specific legal right or rights may well exist in our corpus of law, considering the general policy principles found in the Constitution and the existence of the Philippine Environment Code, and that the trial court should have given petitioners an effective opportunity so to demonstrate, instead of aborting the proceedings on a motion to dismiss.
>
> "It seems to me important that the legal right which is an essential component of a cause of action [should] be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two reasons. One is that, unless the legal right claimed to have been violated or disregarded is given in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.
>
> "The second is a broader-gauge consideration: where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of section 1 of article VIII of the Constitution, which reads:
>
> > " 'Section 1 . . .

" '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.'

"When substantive standards as general as 'the right to a balanced and healthy ecology' and 'the right to health' are combined with remedial standards as broad-ranging as 'a grave abuse of discretion amounting to lack or excess of jurisdiction', the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy-making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy-making departments—the legislative and executive departments—must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene."

Economic nationalism should be read with other constitutional mandates to attain balanced development of economy

On the other hand, sections 10 and 12 of article XII, apart from merely laying down general principles relating to the national economy and patrimony, should be read and understood in relation to the other sections in the said article, especially sections 1 and 13 thereof, which read:

"Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

"The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

"In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop . . .

". . .

"Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity."

As pointed out by the Solicitor General, section 1 lays down the *basic goals* of national economic development, as follows:

1. A more equitable distribution of opportunities, income and wealth;

2. A sustained increase in the amount of goods and services provided by the nation for the benefit of the people; and

3. An expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

With these goals in context, the Constitution then ordains the ideals of economic nationalism (*a*) by expressing preference in favour of qualified Filipinos "in the grant of rights, privileges and concessions covering the national economy and patrimony"[27] and in the use of "Filipino labour, domestic materials and locally-produced goods"; (*b*) by mandating the State to "adopt measures that help make them competitive";[28] and (*c*) by requiring the State to "develop a self-reliant and independent national economy effectively controlled by Filipinos".[29] In similar language, the Constitution takes into account the realities of the outside world as it requires the pursuit of "a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity";[30] and speaks of industries "which are competitive in both domestic and *foreign* markets" as well as of the protection of "Filipino enterprises against *unfair* foreign competition and trade practices".

It is true that in the recent case of *Manila Prince Hotel vs. Government Service Insurance System, et al.*,[31] this Court held that "section 10, second paragraph, article XII, of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is per se judicially enforceable." However, as the constitutional provision itself states, it is enforceable only in regard to "the grants of rights, privileges and concessions covering national economy and patrimony" and not to every aspect of trade and commerce. It refers to exceptions rather than the rule. The issue here is not whether this paragraph of section 10 of article XII is self-executing or not. Rather, the issue is whether, as a rule, there are enough balancing provisions in the Constitution to allow the Senate to ratify the Philippine concurrence in the WTO Agreement. And we hold that there are.

All told, while the Constitution indeed mandates a bias in favour of Filipino goods, services, labour and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.[32] In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is *unfair*.

WTO recognizes need to protect weak economies

On the other hand, respondents maintain that WTO itself has some built-in advantages to protect weak and developing economies, which comprise the vast majority of its members. Unlike in the United Nations, where major States have permanent seats and veto powers in the Security Council, in WTO, decisions are made on the basis of sovereign equality, with each member's vote equal in weight to that of any other. There is no WTO equivalent of the United Nations Security Council.

> "WTO decides by consensus whenever possible; otherwise, decisions of the Ministerial Conference and the General Council shall be taken by the majority of the votes cast, except in cases of interpretation of the Agreement or waiver of the obligation of a member which would require a three-fourths

vote. Amendments would require a two-thirds vote in general. Amendments to most-favoured-nation provisions and the Amendments provision will require assent of all members. Any member may withdraw from the Agreement upon the expiration of six months from the date of notice of withdrawal."[33]

Hence, poor countries can protect their common interests more effectively through WTO than through one-on-one negotiations with developed countries. Within WTO, developing countries can form powerful blocs to push their economic agenda more decisively than outside the organization. This is not merely a matter of practical alliances but a negotiating strategy rooted in law. Thus, the basic principles underlying the WTO Agreement recognize the need of developing countries like the Philippines to "share in the growth international trade *commensurate with the needs of their economic development*". These basic principles are found in the preamble[34] to the WTO Agreement, as follows:

"The Parties to this Agreement,

"Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so *in a manner consistent with their respective needs and concerns at different levels of economic development*,

"Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a *share in the growth in international trade commensurate with the needs of their economic development*,

"Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the *elimination of discriminatory treatment in international trade relations*,

"Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

"Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system . . ." (emphasis supplied)

Specific WTO provisos protect developing countries

So too, the Solicitor General points out that, pursuant to and consistent with the foregoing basic principles, the WTO Agreement grants developing countries a more lenient treatment, giving their domestic industries some protection from the rush of foreign competition. Thus, with respect to tariffs in general, preferential treatment is given to developing countries in terms of the *amount of tariff reduction* and the *period within which the reduction is to be spread out*. Specifically, GATT requires an average tariff *reduction rate of 36 per cent for developed countries* to be effected within a *period of six years while developing*

countries, including the Philippines, are *required to effect an average tariff reduction of only 24 per cent within 10 years.*

In respect to *domestic* subsidy, GATT requires *developed countries* to reduce domestic support to agricultural products by *20 per cent over six years*, as compared to *only 13 per cent for developing countries to be effected within 10 years.*

In regard to export subsidy for agricultural products, GATT requires developed countries to reduce their budgetary outlays for export subsidy *by 36 per cent* and export volumes receiving export subsidy by *21 per cent within a period of six years.* For developing countries, however, the reduction rate is only *two thirds* of that prescribed for developed countries and a longer *period of 10 years* within which to effect such reduction.

Moreover, GATT itself has provided built-in protection from unfair foreign competition and trade practices, including anti-dumping measures, countervailing measures and safeguards against import surges. Where local businesses are jeopardized by unfair foreign competition, the Philippines can avail itself of these measures. There is hardly, therefore, any basis for the statement that under WTO, local industries and enterprises will all be wiped out and that Filipinos will be deprived of control of the economy. Quite the contrary, the weaker situations of developing nations like the Philippines have been taken into account; thus, there would be no basis to say that in joining WTO, the respondents have gravely abused their discretion. True, they have made a bold decision to steer the ship of State into the yet uncharted sea of economic liberalization. But such decision cannot be set aside on the ground of grave abuse of discretion, simply because we disagree with it or simply because we believe only in other economic policies. As stated above, the Court in taking jurisdiction of this case will not pass upon the advantages and disadvantages of trade liberalization as an economic policy. It will only perform its constitutional duty of determining whether the Senate committed grave abuse of discretion.

Constitution does not rule out foreign competition

Furthermore, the constitutional policy of a "self-reliant and independent national economy"[35] does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community". As explained by Constitutional Commissioner Bernardo Villegas, sponsor of this constitutional policy:

> "*Economic self-reliance is a primary objective of a developing country that is keenly aware of overdependence on external assistance for even its most basic needs. It does not mean autarky or economic seclusion*; rather, it means avoiding mendicancy in the international community. Independence refers to the freedom from undue foreign control of the national economy, especially in such strategic industries as in the development of natural resources and public utilities."[36]

The WTO reliance on "most favoured nation", "national treatment" and "trade without discrimination" cannot be struck down as unconstitutional as in fact they are rules of equality and reciprocity that apply to all WTO members. Aside from envisioning a trade policy based on "equality and reciprocity",[37] the fundamental law encourages industries that are "competitive in both domestic and foreign markets", thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favour of the gradual development of robust

industries that can compete with the best in the foreign markets. Indeed, Filipino managers and Filipino enterprises have shown the capability and tenacity to compete internationally. And given a free trade environment, Filipino entrepreneurs and managers in Hong Kong have demonstrated the Filipino capacity to grow and to prosper against the best offered under a policy of laissez-faire.

Constitution favours consumers, not industries or enterprises

The Constitution has not really shown any unbalanced bias in favour of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices. Consequently, the question boils down to whether WTO/GATT will favour the general welfare of the public at large.

Will adherence to the WTO treaty bring this ideal (of favouring the general welfare) to reality?

Will WTO/GATT succeed in promoting the Filipinos' general welfare because it will, as promised by its promoters, expand the country's exports and generate more employment?

Will it bring more prosperity, employment, purchasing power and quality products at the most reasonable rates to the Filipino public?

The responses to these questions involve "judgement calls" by our policy makers, for which they are answerable to our people during appropriate electoral exercises. Such questions and the answers thereto are not subject to judicial pronouncements based on grave abuse of discretion.

Constitution designed to meet future events and contingencies

No doubt, the WTO Agreement was not yet in existence when the Constitution was drafted and ratified in 1987. That does not mean, however, that the Charter is necessarily flawed in the sense that its framers might not have anticipated the advent of a borderless world of business. By the same token, the United Nations was not yet in existence when the 1935 Constitution became effective. Did that necessarily mean that the then Constitution might not have contemplated a diminution of the absoluteness of sovereignty when the Philippines signed the Charter of the United Nations, thereby effectively surrendering part of its control over its foreign relations to the decisions of various United Nations organs like the Security Council?

It is not difficult to answer this question. Constitutions are designed to meet not only the vagaries of contemporary events; they should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels but at the same time bend with the refreshing winds of change necessitated by unfolding events. As one eminent political law writer and respected jurist[38] explains:

> "The Constitution must be quintessential rather than superficial, the root and not the blossom, the base and framework only of the edifice that is yet to rise. It is but the core of the dream that must take shape, not in a twinkling by mandate our delegates, but slowly 'in the crucible of Filipino minds and hearts', where it will in time develop its sinews and gradually gather its strength and finally achieve its substance. In fine, the Constitution cannot,

like the goddess Athena, rise full-grown from the brow of the Constitutional Convention, nor can it conjure by mere fiat an instant Utopia. *It must grow with the society it seeks to restructure and march apace with the progress of the race, drawing from the vicissitudes of history the dynamism and vitality that will keep it, far from becoming a petrified rule, a pulsing, living law attuned to the heartbeat of the nation.*"

Third issue: The WTO Agreement and legislative power

The WTO Agreement provides that "[e]ach member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements".[39] Petitioners maintain that this undertaking "unduly limits, restricts and impairs Philippine sovereignty, specifically the legislative power which under section 2, article VI, of the 1987 Philippine Constitution is vested in the Congress of the Philippines. It is an assault on the sovereign powers of the Philippines because this means that Congress could not pass legislation that will be good for our national interest and general welfare if such legislation will not conform with the WTO Agreement, which not only relates to the trade in goods . . . but also to the flow of investments and money . . . as well as to a whole slew of agreements on sociocultural matters . . ."[40]

More specifically, petitioners claim that said WTO proviso derogates from the power to tax, which is lodged in the Congress.[41] And while the Constitution allows Congress to authorize the President to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, such authority is subject to "specified limits and . . . such limitations and restrictions" as Congress may provide,[42] as in fact it did under section 401 of the Tariff and Customs Code.

Sovereignty limited by international law and treaties

This Court notes and appreciates the ferocity and passion by which petitioners stressed their arguments on this issue. However, while sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations".[43] By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.[44] One of the oldest and most fundamental rules in international law is *pacta sunt servanda*: international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties . . . A State which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfilment of the obligations undertaken."[45]

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their State power in exchange for greater benefits granted by or derived from a convention or pact. After all, States, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit

the exercise of their otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, *the regulation of commercial relations*, the settling of claims, the laying down of rules governing conduct in peace and the establishment of international organizations.[46] The sovereignty of a State therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (*a*) limitations imposed by the very nature of membership in the family of nations and (*b*) limitations imposed by treaty stipulations. As aptly put by John F. Kennedy, "Today, no nation can build its destiny alone. The age of self-sufficient nationalism is over. The age of interdependence is here."[47]

Charter of the United Nations and other treaties limit sovereignty

Thus, when the Philippines joined the United Nations as one of its 51 Charter Members, it consented to restrict its sovereign rights under the "concept of sovereignty as auto-limitation".[47A] Under Article 2 of the Charter of the United Nations, "[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action". Such assistance includes payment of its corresponding share not merely in administrative expenses but also in expenditures for the peacekeeping operations of the Organization. In its advisory opinion of 20 July 1961, the International Court of Justice held that moneys used by the United Nations Emergency Force in the Middle East and in the Congo were "expenses of the United Nations" under Article 17, paragraph 2, of the Charter of the United Nations. Hence, all its Members must bear their corresponding share in such expenses. In this sense, the Philippine Congress is restricted in its power to appropriate. It is compelled to appropriate funds whether it agrees with such peacekeeping expenses or not. So too, under Article 105 of the said Charter, the United Nations and its representatives enjoy diplomatic privileges and immunities, thereby limiting again the exercise of sovereignty of Members within their own territory. Another example: although "sovereign equality" and "domestic jurisdiction" of all Members are set forth as underlying principles in the Charter of the United Nations, such provisos are, however, subject to enforcement measures decided by the Security Council for the maintenance of international peace and security under Chapter VII of the Charter. A final example: under Article 103, "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligation under the present Charter shall prevail", thus unquestionably denying the Philippines, as a Member, the sovereign power to make a choice as to which of conflicting obligations, if any, to honour.

Apart from the United Nations Treaty, the Philippines has entered into many other international pacts, both bilateral and multilateral, that involve limitations on Philippine sovereignty. These are enumerated by the Solicitor General in his Compliance dated 24 October 1996, as follows:

> "(*a*) Bilateral Convention with the United States regarding taxes on income, where the Philippines agreed, among others, to exempt from tax, income received in the Philippines by, among others, the Federal Reserve Bank of the United States, the Export/Import Bank of the United States, the

Overseas Private Investment Corporation of the United States. Likewise, in said Convention, wages, salaries and similar remunerations paid by the United States to its citizens for labour and personal services performed by them as employees or officials of the United States are exempt from income tax by the Philippines;

(*b*) Bilateral Agreement with Belgium, providing, among others, for the avoidance of double taxation with respect to taxes on income;

(*c*) Bilateral Convention with the Kingdom of Sweden for the avoidance of double taxation;

(*d*) Bilateral Convention with the French Republic for the avoidance of double taxation;

(*e*) Bilateral Air Transport Agreement with [the Republic of] Korea where the Philippines agreed to exempt from all customs duties, inspection fees and other duties or taxes aircraft of the Republic of Korea and the regular equipment, spare parts and supplies arriving with said aircraft;

(*f*) Bilateral Air Service Agreement with Japan, where the Philippines agreed to exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges for fuel, lubricating oils, spare parts, regular equipment, stores on board Japanese aircraft while on Philippine soil;

(*g*) Bilateral Air Service Agreement with Belgium, where the Philippines granted Belgian air carriers the same privileges as those granted to Japanese and [Republic of] Korean air carriers under separate Air Service Agreements;

(*h*) Bilateral Notes with Israel for the abolition of transit and visitor visas where the Philippines exempted Israeli nationals from the requirement of obtaining transit or visitor visas for a sojourn in the Philippines not exceeding 59 days;

(*i*) Bilateral Agreement with France exempting French nationals from the requirement of obtaining transit and visitor visas for a sojourn not exceeding 59 days;

(*j*) Multilateral Convention on Special Missions, where the Philippines agreed that premises of special missions in the Philippines are inviolable and its agents cannot enter said premises without consent of the Head of Mission concerned. Special missions are also exempted from customs duties, taxes and related charges;

(*k*) Multilateral Convention on the Law of Treaties. In this Convention, the Philippines agreed to be governed by the Vienna Convention on the Law of Treaties;

(*l*) Declaration of the President of the Philippines accepting compulsory jurisdiction of the International Court of Justice. The International Court of Justice has jurisdiction in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of international obligation."

In the foregoing treaties, the Philippines has effectively agreed to limit the exercise of its sovereign powers of taxation, eminent domain and police power. The underlying consideration in this partial surrender of sovereignty is the reciprocal commitment of the other contracting States in granting the same privileges

and immunities to the Philippines, its officials and its citizens. The same reciprocity characterizes the Philippine commitments under WTO-GATT.

> "International treaties, whether relating to nuclear disarmament, human rights, the environment, the law of the sea, or trade, constrain domestic political sovereignty through the assumption of external obligations. But unless anarchy in international relations is preferred as an alternative, in most cases we accept that the benefits of the reciprocal obligations involved outweigh the costs associated with any loss of political sovereignty. [T]rade treaties that structure relations by reference to durable, well-defined substantive norms and objective dispute resolution procedures reduce the risks of larger countries exploiting raw economic power to bully smaller countries, by subjecting power relations to some form of legal ordering. In addition, smaller countries typically stand to gain disproportionately from trade liberalization. This is due to the simple fact that liberalization will provide access to a larger set of potential new trading relationships than in the case of the larger country gaining enhanced success to the smaller country's market."[48]

The point is that, as shown by the foregoing treaties, a portion of sovereignty may be waived without violating the Constitution, based on the rationale that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of . . . cooperation and amity with all nations".

Fourth issue: The WTO Agreement and judicial power

Petitioners aver that article 34, paragraph 1, of the General Provisions and Basic Principles of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)[49] intrudes on the power of the Supreme Court to promulgate rules concerning pleading, practice and procedures.[50]

To understand the scope and meaning of article 34, TRIPS,[51] it will be fruitful to restate its full text as follows:

> "*Article 34*
>
> "PROCESS PATENTS: BURDEN OF PROOF
>
> "1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1 (*b*) of article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:
>
> (*a*) If the product obtained by the patented process is new;
>
> (*b*) If there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
>
> "2. Any member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition re-

ferred to in subparagraph (*a*) is fulfilled or only if the condition referred to in subparagraph (*b*) is fulfilled.

"3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account."

From the above, a WTO member is required to provide a rule of disputable (note the words "in the absence of proof to the contrary") presumption that a product shown to be identical to one produced with the use of a patented process shall be deemed to have been obtained by the (illegal) use of the said patented process, (*a*) where such product obtained by the patented product is new, or (*b*) where there is "substantial likelihood" that the identical product was made with the use of the said patented process but the owner of the patent could not determine the exact process used in obtaining such identical product. Hence, the "burden of proof" contemplated by article 34 should actually be understood as the duty of the alleged patent infringer to overthrow such presumption. Such burden, properly understood, actually refers to the "burden of evidence" (burden of going forward) placed on the producer of the identical (or fake) product to show that his product was produced without the use of the patented process.

The foregoing notwithstanding, the patent owner still has the "burden of proof" since, regardless of the presumption provided under paragraph 1 of article 34, such owner still has to introduce evidence of the existence of the alleged identical product, the fact that it is "identical" to the genuine one produced by the patented process and the fact of "newness" of the genuine product or the fact of "substantial likelihood" that the identical product was made by the patented process.

The foregoing should really present no problem in changing the rules of evidence as the present law on the subject, Republic Act No. 165, as amended, otherwise known as the Patent Law, provides a similar presumption in cases of infringement of patented design or utility model, thus:

"SEC. 60. *Infringement.*—Infringement of a design patent or of a patent for utility model shall consist in unauthorized copying of the patented design or utility model for the purpose of trade or industry in the article or product and in the making, using or selling of the article or product copying the patented design or utility model. *Identity or substantial identity with the patented design or utility model shall constitute evidence of copying.*" (emphasis supplied)

Moreover, it should be noted that the requirement of article 34 to provide a disputable presumption applies only if (*a*) the product obtained by the patented process is *new* or (*b*) there is a substantial likelihood that the identical product was made by the process and the process owner has not been able through reasonable effort to determine the process used. Where either of these two provisos does not obtain, members shall be free to determine the appropriate method of implementing the provisions of TRIPS within their own internal systems and processes.

By and large, the arguments adduced in connection with our disposition of the third issue—derogation of legislative power—will apply to this fourth issue also. Suffice it to say that the reciprocity clause more than justifies such intrusion, if any actually exists. Besides, article 34 does not contain an unreasonable burden, consistent as it is with due process and the concept of adversarial dispute settlement inherent in our judicial system.

So too, since the Philippines is a signatory to most international conventions on patents, trademarks and copyrights, the adjustment in legislation and rules of procedure will not be substantial.[52]

Fifth issue: Concurrence only in the WTO Agreement and not in other documents contained in the Final Act

Petitioners allege that the Senate concurrence in the WTO Agreement and its annexes—but not in the other documents referred to in the Final Act, namely the Ministerial Declaration and Decisions and the Understanding on Commitments in Financial Services—is defective and insufficient and thus constitutes abuse of discretion. They submit that such concurrence in the WTO Agreement *alone* is flawed because it is in effect a rejection of the Final Act, which in turn was the document signed by Secretary Navarro, in representation of the Republic upon authority of the President. They contend that the second letter of the President to the Senate,[53] which enumerated what constitutes the Final Act, should have been the subject of concurrence of the Senate.

> "A *final act*, sometimes called *protocol de clôture*, is an instrument which records the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the texts of treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference."[54]

It is not the treaty itself. It is rather a summary of the proceedings of a protracted conference which may have taken place over several years. The text of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations is contained in just one page[55] in volume I of the 36-volume *Uruguay Round of Multilateral Trade Negotiations.* By signing the said Final Act, Secretary Navarro as representative of the Republic of the Philippines undertook:

> "(*a*) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and
>
> (*b*) To adopt the Ministerial Declarations and Decisions."

The assailed Senate resolution 97 expressed concurrence in exactly what the Final Act required from its signatories, namely, concurrence of the Senate in the WTO Agreement.

The Ministerial Declarations and Decisions were deemed adopted without need for ratification. They were approved by the Ministers by virtue of article XXV, paragraph 1, of GATT, which provides that representatives of the members can meet "to give effect to those provisions of this Agreement which invoke joint action, and generally with a view to facilitating the operation and furthering the objectives of this Agreement".[56]

The Understanding on Commitments in Financial Services, also approved in Marrakesh, does not apply to the Philippines. It applies only to those 27 members which "have indicated in their respective schedules of commitments on standstill, elimination of monopoly, expansion of operation of existing financial service suppliers, temporary entry of personnel, free transfer and processing of information, and national treatment with respect to access to payment, clearing systems and refinancing available in the normal course of business".[57]

On the other hand, the WTO Agreement itself expresses what multilateral agreements are deemed included as its integral parts,[58] as follows:

"*Article II*

"SCOPE OF THE WTO

"1. The WTO shall provide the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the annexes to this Agreement.

"2. The agreements and associated legal instruments included in annexes 1, 2 and 3 (hereinafter referred to as 'Multilateral Trade Agreements') are integral parts of this Agreement, binding on all members.

"3. The agreements and associated legal instruments included in annex 4 (hereinafter referred to as 'Plurilateral Trade Agreements') are also part of this Agreement for those members that have accepted them, and are binding on those members. The Plurilateral Trade Agreements do not create either obligation or rights for members that have not accepted them.

"4. The General Agreement on Tariffs and Trade 1994 as specified in annex 1A (hereinafter referred to as 'GATT 1994') is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act adopted at the conclusion of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as 'GATT 1947')."

It should be added that the Senate was well aware of what it was concurring in, as shown by the members' deliberation on 25 August 1994. After reading the letter of President Ramos dated 11 August 1994,[59] the senators of the Republic minutely dissected what the Senate was concurring in, as follows:[60]

"The Chairman: Yes. Now, the question of the validity of the submission came up in the first day hearing of this Committee yesterday. Was the observation made by Senator Tañada that what was submitted to the Senate was not the agreement on establishing the World Trade Organization by the final act of the Uruguay Round which is not the same as the agreement establishing the World Trade Organization? And on that basis, Senator Tolentino raised a point of order which, however, he agreed to withdraw upon understanding that his suggestion for an alternative solution at that time was acceptable. That suggestion was to treat the proceedings of the Committee as being in the nature of briefings for senators until the question of the submission could be clarified.

"And so, Secretary Romulo, in effect, is the President submitting a new . . . is he making a new submission which improves on the clarity of the first submission?

"Mr. Romulo: Mr. Chairman, to make sure that it is clear-cut and there should be no misunderstanding, it was his intention to clarify all matters by giving this letter.

"The Chairman: Thank you.

"Can this Committee hear from Senator Tañada and, later on, Senator Tolentino since they were the ones that raised this question yesterday?

"Senator Tañada, please.

"*Senator Tañada: Thank you, Mr. Chairman.*

"*Based on what Secretary Romulo has read, it would now clearly appear that what is being submitted to the Senate for ratification is not the Final Act of the Uruguay Round, but rather the Agreement on the World Trade Organization as well as the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services.*

"*I am now satisfied with the wording of the new submission of President Ramos.*

"Senator Tañada: . . . of President Ramos, Mr. Chairman.

"The Chairman: Thank you, Senator Tañada. Can we hear from Senator Tolentino? And after him Senator Neptali Gonzales and Senator Lina.

"*Senator Tolentino: Mr. Chairman, I have not seen the new submission actually transmitted to us but I saw the draft of his earlier, and I think it now complies with the provisions of the Constitution, and with the Final Act itself. The Constitution does not require us to ratify the Final Act. It requires us to ratify the Agreement which is now being submitted. The Final Act itself specifies what is going to be submitted to the Governments of the participants.*

"*In paragraph 2 of the Final Act, we read and I quote:*

> " '*By signing the present Final Act, the representatives agree:* (a) *to submit as appropriate the WTO Agreement for the consideration of the respective component authorities with a view to seeking approval of the Agreement in accordance with their procedures.*'

"*In other words, it is not the Final Act that was agreed to be submitted to the Governments for ratification or acceptance whatever their constitutional procedures may provide, but it is the World Trade Organization Agreement. And if that is the one that is being submitted now, I think it satisfies both the Constitution and the Final Act itself.*

"Thank you, Mr. Chairman.

"The Chairman: Thank you, Senator Tolentino. May I call on Senator Gonzales.

"*Senator Gonzales: Mr. Chairman, my views on this matter are already a matter of record. And they had been adequately reflected in the journal of yesterday's session and I don't see any need for repeating the same.*

"*Now, I would consider the new submission as an act* ex abudante cautela.

"The Chairman: Thank you, Senator Gonzales. Senator Lina, do you want to make any comment on this?

"*Senator Lina: Mr. President, I agree with the observation just made by Senator Gonzales out of the abundance of questionable. Then the new submission is, I believe, stating the obvious and therefore I have no further comment to make.*"

In praying for the nullification of the Philippine ratification of the WTO Agreement, petitioners are invoking this Court's constitutionally imposed duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the Senate in giving its concurrence therein via Senate resolution 97. Procedurally, a writ of certiorari grounded on grave abuse of discretion may be issued by the Court under rule 65 of the Rules of Court when it is amply shown that petitioners have no other plain, speedy and adequate remedy in the ordinary course of law.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgement as is equivalent to lack of jurisdiction.[61] Mere abuse of discretion is not enough. It must be *grave* abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[62] Failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition.[63]

In rendering this decision, this Court never forgets that the Senate, whose act is under review, is one of two sovereign houses of Congress and is thus entitled to great respect in its actions. It is itself a constitutional body independent and coordinate, and thus its actions are presumed regular and done in good faith. Unless convincing proof and persuasive arguments are presented to overthrow such presumptions, this Court will resolve every doubt in its favour. Using the foregoing well-accepted definition of grave abuse of discretion and the presumption of regularity in the Senate's processes, this Court cannot find any cogent reason to impute grave abuse of discretion to the Senate's exercise of its power of concurrence in the WTO Agreement granted it by section 21 of article VII of the Constitution.[64]

It is true, as alleged by petitioners, that broad constitutional principles require the State to develop an independent national economy effectively controlled by Filipinos; and to protect and/or prefer Filipino labour, products, domestic materials and locally produced goods. But it is equally true that such principles, while serving as judicial and legislative guides, are not in themselves sources of causes of action. Moreover, there are other equally fundamental constitutional principles relied upon by the Senate which mandate the pursuit of a "trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity" and the promotion of industries "which are competitive in both domestic and foreign markets", thereby justifying its acceptance of said treaty. So too, the alleged impairment of sovereignty in the exercise of legislative and judicial powers is balanced by the adoption of the generally accepted principles of international law as part of the law of the land and the adherence of the Constitution to the policy of cooperation and amity with all nations.

That the Senate, after deliberation and voting, voluntarily and overwhelmingly gave its consent to the WTO Agreement thereby making it "a part of the law of the land" is a legitimate exercise of its sovereign duty and power. We find no "patent and gross" arbitrariness or despotism "by reason of passion or personal hostility" in such exercise. It is not impossible to surmise that this Court, or at least some of its members, may even agree with petitioners that it is more advantageous to the national interest to strike down Senate resolution 97. But that is not a legal reason to attribute grave abuse of discretion to the Senate and to nullify its

decision. To do so would constitute grave abuse in the exercise of our own judicial power and duty. Ineludably, what the Senate did was a valid exercise of its authority. As to whether such exercise was wise, beneficial or viable is outside the realm of judicial inquiry and review. That is a matter between the elected policy makers and the people. As to whether the nation should join the worldwide march towards trade liberalization and economic globalization is a matter that our people should determine in electing their policy makers. After all, the WTO Agreement allows withdrawal of membership, should this be the political desire of a member.

The eminent futurist John Naisbitt, author of the best-seller *Megatrends*, predicts an Asian renaissance[65] where "the East will become the dominant region of the world economically, politically and culturally in the next century". He refers to the "free market" espoused by WTO as the "catalyst" in this coming Asian ascendancy. There are at present about 31 countries, including China, Russia and Saudi Arabia, negotiating for membership in WTO. Notwithstanding objections against possible limitations on national sovereignty, WTO remains as the only viable structure for multilateral trading and the veritable forum for the development of international trade law. The alternative to WTO is isolation, stagnation, if not economic self-destruction. Duly enriched with original membership, keenly aware of the advantages and disadvantages of globalization with its online experience, and endowed with a vision of the future, the Philippines now straddles the crossroads of an international strategy for economic prosperity and stability in the new millennium. Let the people, through their duly authorized elected officers, make their free choice.

Wherefore, the petition is *dismissed* for lack of merit.

So Ordered.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and *Torres, Jr., JJ.,* concur.

Padilla and *Vitug, JJ.,* concur in the result.

NOTES

[1]In annex A of her memorandum, dated 8 August 1996, received by this Court on 12 August 1996, Philippine Ambassador to the United Nations, the World Trade Organization and other international organizations Lilia R. Bautista (hereafter referred to as the "Bautista paper") submitted a "46-year chronology" of GATT, as follows:

"1947 *The birth of GATT.* On 30 October 1947, the General Agreement on Tariffs and Trade (GATT) was signed by 23 nations at the Palais des Nations in Geneva. The Agreement contained tariff concessions agreed to in the first multilateral trade negotiations and a set of rules designed to prevent those concessions from being frustrated by restrictive trade measures.The 23 founding Contracting Parties were members of the Preparatory Committee established by the United Nations Economic and Social Council in 1946 to draft the charter of the International Trade Organization (ITO). ITO was envisaged as the final leg of a triad of post-war economic agencies (the other two were the International Monetary Fund and the International Bank for Reconstruction—later the World Bank).

"In parallel with this task, the Committee members decided to negotiate tariff concessions among themselves. From April to October 1947, the participants completed some 123 negotiations and established 20 schedules containing the tariff reductions and bindings which became an integral part of GATT. Those schedules resulting from the first round covered some 45,000 tariff concessions and about $10 billion in trade.

"GATT was conceived as an interim measure that put into effect the commercial-policy provisions of ITO. In November, delegations from 56 countries met in Havana to consider the ITO draft as a whole. After long and difficult negotiations, some 53 countries signed the Final Act authenticating the text of the Havana Charter in March 1948. There was no commitment, however, from Governments to ratification and, in the end, ITO was stillborn, leaving GATT as the only international instrument governing the conduct of world trade.

"1948 *Entry into force.* On 1 January 1948, GATT entered into force. The 23 founding members were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and United States. The first session of the Contracting Parties was held from February to March in Havana. The secretariat of the Interim Commission for ITO, which served as the ad hoc secretariat of GATT, moved from Lake Placid, New York, to Geneva. The Contracting Parties held their second session in Geneva from August to September.

"1949 *Second Round at Annecy.* During the second Round of trade negotiations, held from April to August at Annecy, France, the Contracting Parties exchanged some 5,000 tariff concessions. At their third session, they also dealt with the accession of 10 more countries.

"1950 *Third Round at Torquay.* From September 1950 to April 1951, the Contracting Parties exchanged some 8,700 tariff concessions in the English town, yielding tariff reductions of about 25 per cent in relation to the 1948 level. Four more countries acceded to GATT. During the fifth session of the Contracting Parties, the United States indicated that the ITO Charter would not be resubmitted to the United States Congress; this, in effect, meant that ITO would not come into operation.

"1956 *Fourth Round at Geneva.* The fourth Round was completed in May and produced some $2.5 billion worth of tariff reductions. At the beginning of the year, the GATT commercial policy course for officials of developing countries was inaugurated.

"1958 *The Haberler report.* GATT published *Trends in International Trade* in October. Known as the 'Haberler report' in honour of Professor Gottfried Haberler, the chairman of the panel of eminent economists, it provided initial guidelines for the work of GATT. The Contracting Parties at their 13th session, attended by Ministers, subsequently established three committees in GATT: Committee I to convene a further tariff negotiating conference; Committee II to review the agricultural policies of member Governments; and Committee III to tackle the problems facing developing countries in their trade. The establishment of the European Economic Community (EEC) during the previous year also demanded large-scale tariff negotiations under article XXIV, paragraph 6, of the General Agreement.

"1960 *The Dillon Round.* The fifth Round opened in September and was divided into two phases: the first was concerned with negotiations with EEC member States for the creation of a single schedule of concessions for the Community based on its Common External Tariff; and the second was a further general round of tariff negotiations. Named in honour of United States Under-Secretary of State Douglas Dillon, who proposed the negotiations, the Round was concluded in July 1962 and resulted in about 4,400 tariff concessions covering $4.9 billion of trade.

"1961 *The Short-term Arrangement* covering cotton textiles was agreed as an exception to the GATT rules. The arrangement permitted the negotiation of quota restrictions affecting the exports of cotton-producing countries. In 1962 the "Short-term" Arrangement became the "Long-term" Arrangement lasting until 1974 when the Multi-fibre Arrangement entered into force.

"1964 *The Kennedy Round.* Meeting at the ministerial level, a Trade Negotiations Committee formally opened the Kennedy Round in May. In June 1967, the Final Act of the Round was signed by some 50 participating countries which together accounted for 75 per cent of world trade. For the first time, negotiations departed from the product-by-product approach used in the previous Rounds to an across-the-board or linear method of cutting tariffs for industrial goods. The working hypothesis of a 50 per cent target cut in tariff levels was achieved in many areas. Concessions covered an estimated total value of trade of about $40 billion. Separate agreements were reached on grains, chemical products and a Code on Anti-Dumping.

"1965 *A new chapter.* The early 1960s marked the accession to the General Agreement of many newly independent developing countries. In February, the Contracting Parties, meeting in a special session, adopted the text of Part IV on Trade and Development. The additional chapter to GATT required developed countries to accord high priority to the reduction of trade barriers to products of developing countries. A Committee on Trade and Development was established to oversee the functioning of the new GATT provisions. In the preceding year, GATT had established the International Trade Centre to help developing countries in trade promotion and identification of potential markets. Since 1968, the Centre had been jointly operated by GATT and the United Nations Conference on Trade and Development (UNCTAD).

"1973 *The Tokyo Round.* The seventh Round was launched by Ministers in September at the Japanese capital. Some 99 countries participated in negotiating a comprehensive body of agreements covering both tariff and non-tariff matters. At the end of the Round in November 1979, participants exchanged tariff reductions and bindings which covered more than $300 billion of trade. As a result of those cuts, the weighted average tariff on manufactured goods in the world's nine major industrial markets declined from 7.0 to 4.7 per cent. Agreements were reached in the following areas: subsidies and countervailing measures, technical barriers to trade, import licensing procedures, government procurement, customs valuation, a revised anti-dumping code, trade in bovine meat, trade in dairy products, and trade in civil aircraft. The first concrete result of the Round was the reduction of import duties and other trade barriers by industrial countries on tropical products exported by developing countries.

"1974 On 1 January 1974, the Arrangement regarding International Trade in Textiles, otherwise known as the Multi-fibre Arrangement (MFA), entered into force. It superseded the arrangements that had been governing trade in cotton textiles since 1961. The MFA seeks to promote the expansion and progressive liberalization of trade in textile products while at the same time avoiding disruptive effects in individual markets and lines of production. The MFA was extended in 1978, 1982, 1986, 1991 and 1992. MFA members account for most of the world exports of textiles and clothing, which in 1986 amounted to $128 billion.

"1982 *Ministerial meeting.* Meeting for the first time in nearly 10 years, the GATT Ministers in November at Geneva reaffirmed the validity of GATT rules for the conduct of international trade and committed themselves to combating protectionist pressures. They also established a wide-ranging work programme for GATT, which was to lay down the groundwork for a new round.

"1986 *The Uruguay Round.* The GATT Trade Minister at Punta del Este, Uruguay, launched the eighth Round of trade negotiations on 20 September. The Punta del Este Declaration, while representing a single political undertaking, was divided into two sections. The first covered negotiations on trade in goods and the second initiated negotiation on trade in services. In the area of trade in goods, the Ministers committed themselves to a 'standstill' on new trade measures inconsistent with their GATT obligations and to a 'rollback' programme aimed at phasing out existing inconsistent measures. Envisaged to last four years, negotiations started in early February 1987 in the following areas: tariffs, non-tariff measures, tropical products, natural resource–based products, textiles and clothing, agriculture, subsidies, safeguards, trade-related aspects of intellectual property rights including trade in counterfeit goods, and trade-related investment measures. The work of other groups included a review of GATT articles, the GATT dispute-settlement procedure, the Tokyo Round agreements, as well as the functioning of the GATT system as a whole.

"1994 *GATT 1994* is the updated version of GATT 1947 and takes into account the substantive and institutional changes negotiated in the Uruguay Round. GATT 1994 is an integral part of the World Trade Organization established on 1 January 1995. It is agreed that there will be a one-year transition period during which certain GATT 1947 bodies and commitments would coexist with those of the World Trade Organization."

[2]The Final Act was signed by representatives of 125 entities, namely Algeria, Angola, Antigua and Barbuda, Argentine Republic, Australia, Republic of Austria, State of Bahrain, People's Republic of Bangladesh, Barbados, Kingdom of Belgium, Belize, Republic of Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, People's Republic of China, Colombia, Congo, Costa Rica, Republic of Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Kingdom of

Denmark, Commonwealth of Dominican Republic, Arab Republic of Egypt, El Salvador, European Communities, Republic of Fiji, Finland, French Republic, Gabonese Republic, Gambia, Federal Republic of Germany, Ghana, Hellenic Republic, Grenada, Guatemala, Republic of Guinea-Bissau, Republic of Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, State of Israel, Italian Republic, Jamaica, Japan, Kenya, [Republic of] Korea, State of Kuwait, Kingdom of Lesotho, Principality of Liechtenstein, Grand Duchy of Luxembourg, Macau, Republic of Madagascar, Republic of Malawi, Malaysia, Republic of Maldives, Republic of Mali, Republic of Malta, Islamic Republic of Mauritania, Republic of Mauritius, United Mexican States, Kingdom of Morocco, Republic of Mozambique, Union of Myanmar, Republic of Namibia, Kingdom of the Netherlands, New Zealand, Nicaragua, Republic of Niger, Federal Republic of Nigeria, Kingdom of Norway, Islamic Republic of Pakistan, Paraguay, Peru, Philippines, Poland, Portuguese Republic, State of Qatar, Romania, Rwandese Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, South Africa, Kingdom of Spain, Democratic Socialist Republic of Sri Lanka, Republic of Suriname, Kingdom of Swaziland, Kingdom of Sweden, Swiss Confederation, United Republic of Tanzania, Kingdom of Thailand, Togolese Republic, Republic of Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Eastern Republic of Uruguay, Venezuela, Republic of Zaire, Republic of Zambia, Republic of Zimbabwe.

3 11 August 1994

The Honourable Members
Senate
Through Senate President Edgardo Angara
Manila

Ladies and Gentlemen:

I have the honour to forward herewith an authenticated copy of the Uruguay Round Final Act signed by Department of Trade and Industry Secretary Rizalino S. Navarro for the Philippines on 15 April 1994 in Marrakesh, Morocco.

The Uruguay Round Final Act aims to liberalize and expand world trade and strengthen the interrelationship between trade and economic policies affecting growth and development.

The Final Act will improve Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products. These concessions may be availed of by the Philippines only if it is a member of the World Trade Organization. By GATT estimates, the Philippines can acquire additional export revenues from $2.2 to $2.7 billion annually under Uruguay Round. This will be on top of the normal increase in exports that the Philippines may experience.

The Final Act will also open up new opportunities for the services sector in such areas as the movement of personnel (e.g., professional services and construction services), cross-border supply (e.g., computer-related services), consumption abroad (e.g., tourism, convention services, etc.) and commercial presence.

The clarified and improved rules and disciplines on anti-dumping and countervailing measures will also benefit Philippine exporters by reducing the costs and uncertainty associated with exporting while at the same time providing a means for domestic industries to safeguard themselves against unfair imports.

Likewise, the provision of adequate protection for intellectual property rights is expected to attract more investments into the country and to make it less vulnerable to unilateral actions by its trading partners (e.g., sect. 301 of the United States Omnibus Trade Law).

In view of the foregoing the Uruguay Round Final Act is hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution.

A draft of a proposed resolution giving its concurrence to the aforesaid Agreement is enclosed.

Very truly yours,
(*Signed*)
Fidel V. RAMOS

4

11 August 1994

The Honourable Members
Senate
Through Senate President Edgardo Angara
Manila

Ladies and Gentlemen:

I have the honour to forward herewith an authenticated copy of the Uruguay Round Final Act signed by Department of Trade and Industry Secretary Rizalino S. Navarro for the Philippines on 13 April 1994 in Marrakech [sic], Morocco. Members of the trade negotiations committee, which included the Philippines, agreed the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services embody the results of their negotiations and form an integral part of the Uruguay Round Final Act.

By signing the Uruguay Round Final Act, the Philippines, through Secretary Navarro, agreed:

(*a*) To submit the Agreement Establishing the World Trade Organization to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution; and

(*b*) To adopt the Ministerial Declarations and Decisions.

The Uruguay Round Final Act aims to liberalize and expand world trade and strengthen the interrelationship between trade and economic policies affecting growth and development.

The Final Act will improve Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products. These concessions may be availed of by the Philippines only if it is a member of the World Trade Organization. By GATT estimates, the Philippines can acquire additional export revenues from $2.2 to $2.7 billion annually under Uruguay Round. This will be on top of the normal increase in the exports that the Philippines may experience.

The Final Act will also open up new opportunities for the services sector in such areas as the movement of personnel (e.g., professional services and construction services), cross-border supply (e.g., computer-related services), consumption abroad (e.g., tourism, convention services, etc.) and commercial presence.

The clarified and improved rules and disciplines on anti-dumping and countervailing measures will also benefit Philippine exporters by reducing the costs and uncertainty associated with exporting while at the same time providing a means for domestic industries to safeguard themselves against unfair imports.

Likewise, the provision of adequate protection for intellectual property rights is expected to attract more investments into the country and to make it less vulnerable to unilateral actions by its trading partners (e.g., sect. 301 of the United States Omnibus Trade Law).

In view of the foregoing, the Uruguay Round Final Act, the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as embodied in the Uruguay Round Final Act and forming an integral part thereof, are hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution.

A draft of a proposed resolution giving its concurrence to the concurrence to the aforesaid Agreement is enclosed.

Very truly yours,
(*Signed*)
Fidel V. RAMOS

[5] 9 December 1994

Hon. Edgardo J. Angara
Senate President
Senate, Manila

Dear Senate President Angara:

Pursuant to the provisions of section 26 (2), article VI, of the Constitution, I hereby certify to the necessity of the immediate adoption of P.S. 1083, entitled:

"Concurring in the Ratification of the Agreement Establishing the World Trade Organization"

to meet a public emergency consisting of the need for immediate membership in the WTO in order to assure the benefits of the Philippine economy arising from such membership.

Very truly yours,
(Signed)
Fidel V. RAMOS

[6]Attached as annex A, Petition; rollo, p. 52, P.S. 1083, is the forerunner of assailed Senate resolution 97. It was prepared by the Committee of the Whole on the General Agreement on Tariffs and Trade chaired by Sen. Blas F. Ople and co-chaired by Sen. Gloria Macapagal-Arroyo; see annex C, Compliance of petitioners dated 28 January 1997.

[7]The Philippines is thus considered an original or founding member of WTO, which, as of 26 July 1996, had 123 members, as follows: Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, European Community, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, [Republic of] Korea, Kuwait, Lesotho, Liechtenstein, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands—for the Kingdom in Europe and for the Netherlands Antilles, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, [United Republic of] Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Zambia and Zimbabwe.

[8]Page 6; rollo, p. 261.

[9]In compliance, Ambassador Bautista submitted to the Court, on 12 August 1996, a memorandum (the "Bautista paper") consisting of 56 pages excluding annexes. This is the same document mentioned in note 1.

[10]Memorandum for respondents, p. 13; rollo, p. 268.

[11]Cf. *Kilosbayan, Incorporated vs. Morato*, 246 SCRA 540, 17 July 1995, for a discussion on locus standi. See also the Concurring Opinion of Mr. Justice Vicente V. Mendoza in *Tatad vs. Garcia, Jr.*, 243 SCRA 473, 6 April 1995, as well as *Kilusang Mayo Uno Labor Center vs. Garcia, Jr.*, 239 SCRA 386, 414, 23 December 1994.

[12]*Aquino, Jr. vs. Ponce Enrile*, 59 SCRA 183, 196, 17 September 1974, cited in *Bondoc vs. Pineda*, 201 SCRA 792, 795, 26 September 1991.

[13]*Guingona, Jr. vs. Gonzales*, 219 SCRA 326, 337, 1 March 1993.

[14]See *Tañada and Macapagal vs. Cuenco et al.*, 103 Phil. 1051, for a discussion on the scope of "political question".

[15]Section 1, article VIII (para. 2).

[16]In a privilege speech on 17 May 1993, entitled "Supreme Court—Potential Tyrant?", Senator Arturo Tolentino concedes that this new provision gives the Supreme Court a duty "to intrude into the jurisdiction of the Congress or the President".

[17]I *Record of the Constitutional Commission* 436.

[18]Cf. *Daza vs. Singson*, 180 SCRA 496, 21 December 1989.

[19]Memorandum for Petitioners, pp. 14-16; rollo, pp. 204-206.

[20]Para. 4, art. XVI, WTO Agreement, *Uruguay Round of Multilateral Trade Negotiations*, vol. 1, p. 146.

[21]Also entitled "Declaration of Principles". The nomenclature in the 1973 Charter is identical with that in the 1987 one.

[22]*Philippine Political Law*, 1962 ed., p. 116.

[23]Bernas, *The Constitution of the Philippines: A Commentary*, vol. II, 1988 ed., p. 2. In the very recent case of *Manila Prince Hotel vs. GSIS*, G.R. No. 122156, 3 February 1997, p. 8, it was held that "[a] provision which lays down a general principle, such as those found in article II of the 1987 Constitution, is usually not self-executing".

[24]246 SCRA 540, 564, 17 July 1995. See also *Tolentino vs. Secretary of Finance*, G.R. No. 115455, and consolidated cases, 25 August 1995.

[25]197 SCRA 52, 68, 14 May 1991.

[26]224 SCRA 792, 817, 30 July 1993.

[27]Sect. 10, art. XII.

[28]Sect. 12, art. XII.

[29]Sect. 19, art. II.

[30]Sect. 13, art. XII.

[31]G.R. No. 122156, 3 February 1997, pp. 13-14.

[32]Sect. 1, art. XII.

[33]Bautista paper, p. 19.

[34]Preamble, WTO Agreement, p. 137, vol. 1, *Uruguay Round of Multilateral Trade Negotiations*. Emphasis supplied.

[35]Sect. 19, art. II, Constitution.

[36]III *Records of the Constitutional Commission* 252.

[37]Sect. 13, art. XII, Constitution.

[38]Justice Isagani A. Cruz, *Philippine Political Law*, 1995 ed., p. 13, quoting his own article, entitled "A Quintessential Constitution", earlier published in the *San Beda Law Journal*, April 1972; emphasis supplied.

[39]Para. 4, art. XVI (Miscellaneous provisions), WTO Agreement, p. 146, vol. 1, *Uruguay Round of Multilateral Trade Negotiations*.

[40]Memorandum for the Petitioners, p. 29; rollo, p. 219.

[41]Sect. 24, art. VI, Constitution.

[42]Subsection (2), sect. 28, art. VI, Constitution.

[43]Sect. 2, art. II, Constitution.

[44]Cruz, *Philippine Political Law*, 1995 ed., p. 55.

[45]Salonga and Yap, op. cit., p. 305.

[46]Idem, p. 287.

[47]Quoted in Paras and Paras, Jr., *International Law and World Politics*, 1994 ed., p. 178.

[47A]*Reagan vs. Commissioner of Internal Revenue*, 30 SCRA 968, 973, 27 December 1969.

[48]Trebilcock and Howse, *The Regulation of International Trade* (London, 1995), p. 14, cited in Bautista paper, pp. 55-56.

[49]*Uruguay Round of Multilateral Trade Negotiations*, vol. 31, p. 25445.

[50]Item 5, sect. 5, art. VIII, Constitution.

[51]*Uruguay Round of Multilateral Trade Negotiations*, vol. 31, p. 25445.

[52]Bautista paper, p. 13.

[53]See note 3 above.

[54]Salonga and Yap, op. cit., pp. 289-290.

[55]The full text, without the signatures, of the Final Act is as follows:

"Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations

"1. Having met in order to conclude the Uruguay Round of Multilateral Trade Negotiations, representatives of the Governments and of the European Communities, members of the Trade Negotiations committee, agree that the Agreement Establishing the World Trade Organization (referred to in this Final Act as the 'WTO Agreement'), the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as annexed hereto, embody the results of their negotiations and form an integral part of this Final Act.

"2. By signing to the present Final Act, the representatives agree:

(*a*) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and

(*b*) To adopt the Ministerial Declarations and Decisions.

"3. The representatives agree on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as 'participants') with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declarations, to decide on the international implementation of the results, including the timing of their entry into force.

"4. The representatives agree that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants pursuant to article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in annex 4 to the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.

"5. Before accepting the WTO Agreement, participants which are not contracting parties to the General Agreement on Tariffs and Trade must first have concluded negotiations for their accession to the General Agreement and become contracting parties thereto. For participants which are not contracting parties to the General Agreement as of the date of the Final Act, the Schedules are not definitive and shall be subsequently completed for the purpose of their accession to the General Agreement and acceptance of the WTO Agreement.

"6. This Final Act and the texts annexed hereto shall be deposited with the Director-General to the Contracting Parties to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant a certified copy thereof.

"DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic."

[56]Bautista paper, p. 16.

[57]Idem.

[58]*Uruguay Round of Multilateral Trade Negotiations*, vol. I, pp. 137-138.

[59]See note 3 above for complete text.

[60]Taken from Respondent memorandum, pp. 63-85.

[61]*Zarate vs. Olegario*, G.R. No. 90655, 7 October 1996.

[62]*San Sebastian College vs. Court of Appeals*, 197 SCRA 138, 144, 15 May 1991; *Commissioner of Internal Revenue vs. Court of Tax Appeals*, 195 SCRA 444, 458, 20 March 1991; *Simon vs. Civil Service Commission*, 215 SCRA 410, 5 November 1992; *Bustamante vs. Commissioner on Audit*, 216 SCRA 134, 136, 27 November 1992.

[63]*Paredes vs. Civil Service Commission*, 192 SCRA 84, 94, 4 December 1990.

[64]"Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

[65]*Reader's Digest*, December 1996 issue, p. 28.