478 Phil. 85

SECOND DIVISION

[G.R. No. 158540, July 08, 2004]

SOUTHERN CROSS CEMENT CORPORATION, PETITIONER, VS. THE PHILIPPINE CEMENT MANUFACTURERS CORP., THE SECRETARY OF THE DEPARTMENT OF TRADE & INDUSTRY, THE SECRETARY OF THE DEPARTMENT OF FINANCE, AND THE COMMISSIONER OF THE BUREAU OF CUSTOMS, RESPONDENTS.

D E C I S I O N

TINGA, J,:

"Good fences make good neighbors," so observed Robert Frost, the archetype of traditional New England detachment. The *Frost* ethos has been heeded by nations adjusting to the effects of the liberalized global market.[1] The Philippines, for one, enacted Republic Act (Rep. Act) No. 8751 (on the imposition of countervailing duties), Rep. Act No. 8752 (on the imposition of anti-dumping duties) and, finally, Rep. Act No. 8800, also known as the Safeguard Measures Act ("SMA")[2] soon after it joined the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO) Agreement.[3]

The SMA provides the structure and mechanics for the imposition of emergency measures, including tariffs, to protect domestic industries and producers from increased imports which inflict or could inflict serious injury on them.[4] The wisdom of the policies behind the SMA, however, is not put into question by the petition at bar. The questions submitted to the Court relate to the means and the procedures ordained in the law to ensure that the determination of the imposition or non-imposition of a safeguard measure is proper.

Antecedent Facts

Petitioner Southern Cross Cement Corporation ("Southern Cross") is a domestic corporation engaged in the business of cement manufacturing, production, importation and exportation. Its principal stockholders are Taiheiyo Cement Corporation and Tokuyama Corporation, purportedly the largest cement manufacturers in Japan.[5]

Private respondent Philippine Cement Manufacturers Corporation[6] ("Philcemcor") is an association of domestic cement manufacturers. It has eighteen (18) members,[7] per *Record*. While Philcemcor heralds itself to be an association of domestic cement manufacturers, it appears that considerable equity holdings, if not controlling interests in at least twelve (12) of its member-corporations, were acquired by the three largest cement manufacturers in the world, namely Financiere Lafarge S.A. of France, Cemex S.A. de C.V. of Mexico, and Holcim Ltd. of Switzerland (formerly Holderbank Financiere Glaris, Ltd., then Holderfin B.V.).[8]

On 22 May 2001, respondent Department of Trade and Industry ("DTI") accepted an application from Philcemcor, alleging that the importation of gray Portland cement[9] in increased quantities has caused declines in domestic production, capacity utilization, market share, sales and employment; as well as caused depressed local prices. Accordingly, Philcemcor sought the imposition at first of provisional, then later, definitive safeguard measures on the import of cement pursuant to the SMA. Philcemcor filed the application in behalf of twelve (12) of its member-companies.[10]

After preliminary investigation, the Bureau of Import Services of the DTI, determined that critical circumstances existed justifying the imposition of provisional measures.[11] On 7 November 2001, the DTI issued an *Order*, imposing a provisional measure equivalent to Twenty Pesos and Sixty Centavos (P20.60) per forty (40) kilogram bag on all importations of gray Portland cement for a period not exceeding two hundred (200) days from the date of issuance by the Bureau of Customs (BOC) of the implementing *Customs Memorandum Order*.[12] The corresponding *Customs Memorandum Order* was issued on 10 December 2001, to take effect that same day and to remain in force for two hundred (200) days.[13]

In the meantime, the Tariff Commission, on 19 November 2001, received a request from the DTI for a formal investigation to determine whether or not to impose a definitive safeguard measure on imports of gray Portland cement, pursuant to Section 9 of the SMA and its Implementing Rules and Regulations. A notice of commencement of formal investigation was published in the newspapers on 21 November 2001. Individual notices were likewise sent to concerned parties, such as Philcemcor, various importers and exporters, the Embassies of Indonesia, Japan and Taiwan, contractors/builders associations, industry associations, cement workers' groups, consumer groups, non-government organizations and concerned government agencies.[14] A preliminary conference was held on 27 November 2001, attended by several concerned parties, including Southern Cross.[15] Subsequently, the Tariff Commission received several position papers both in support and against Philcemcor's application.[16] The Tariff Commission also visited the corporate offices and manufacturing facilities of each of the applicant companies, as well as that of Southern Cross and two other cement importers.[17]

On 13 March 2002, the Tariff Commission issued its Formal Investigation Report ("Report"). Among the factors studied by the Tariff Commission in its Report were the market share of the domestic industry,[18] production and sales,[19] capacity utilization,[20] financial performance and profitability,[21] and return on sales.[22] The Tariff Commission arrived at the following conclusions:

1. The circumstances provided in Article XIX of GATT 1994 need not be demonstrated since the product under consideration (gray Portland cement) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.

2. The collective output of the twelve (12) applicant companies constitutes a major proportion of the total domestic production of gray Portland cement and blended Portland cement.

3. Locally produced gray Portland cement and blended Portland cement (Pozzolan) are "like" to imported gray Portland cement.

4. Gray Portland cement is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, starting in 2000. The increase in volume of imports is recent, sudden, sharp and significant.

5. The industry has not suffered and is not suffering significant overall impairment in its condition, *i.e.*, serious injury.

6. There is no threat of serious injury that is imminent from imports of gray Portland cement.

7. Causation has become moot and academic in view of the negative determination of the elements of serious injury and imminent threat of serious injury.[23]

Accordingly, the Tariff Commission made the following recommendation, to wit:

> The elements of serious injury and imminent threat of serious injury not having been established, it is hereby recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.[24]

The DTI received the Report on 14 March 2002. After reviewing the report, then DTI Secretary Manuel Roxas II ("DTI Secretary") disagreed with the conclusion of the Tariff Commission that there was no serious injury to the local cement industry caused by the surge of imports.[25] In view of this disagreement, the DTI requested an opinion from the Department of Justice ("DOJ") on the DTI Secretary's scope of options in acting on the Commission's recommendations. Subsequently, then DOJ Secretary Hernando Perez rendered an opinion stating that Section 13 of the SMA precluded a review by the DTI Secretary of the Tariff Commission's negative finding, or finding that a definitive safeguard measure should not be imposed.[26]

On 5 April 2002, the DTI Secretary promulgated a *Decision*. After quoting the conclusions of the Tariff Commission, the DTI Secretary noted the DTI's disagreement with the conclusions. However, he also cited the DOJ Opinion advising the DTI that it was bound by the negative finding of the Tariff Commission. Thus, he ruled as follows:

> The DTI has no alternative but to abide by the [Tariff] Commission's recommendations.
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> **IN VIEW OF THE FOREGOING**, and in accordance with Section 13 of RA 8800 which states:
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> ***"In the event of a negative final determination; or if the cash***

bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made; Provided, that the government shall not be liable for any interest on the amount to be returned. The Secretary shall not accept for consideration another petition from the same industry, with respect to the same imports of the product under consideration within one (1) year after the date of rendering such a decision."

The DTI hereby issues the following:

> The application for safeguard measures against the importation of gray Portland cement filed by PHILCEMCOR (Case No. 02-2001) is hereby denied.[27] (Emphasis in the original)

Philcemcor received a copy of the DTI *Decision* on 12 April 2002. Ten days later, it filed with the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus*[28] seeking to set aside the DTI *Decision*, as well as the Tariff Commission's Report. Philcemcor likewise applied for a *Temporary Restraining Order/Injunction* to enjoin the DTI and the BOC from implementing the questioned *Decision* and Report. It prayed that the Court of Appeals direct the DTI Secretary to disregard the Report and to render judgment independently of the Report. Philcemcor argued that the DTI Secretary, vested as he is under the law with the power of review, is not bound to adopt the recommendations of the Tariff Commission; and, that the Report is void, as it is predicated on a flawed framework, inconsistent inferences and erroneous methodology.[29]

On 10 June 2002, Southern Cross filed its *Comment*.[30] It argued that the Court of Appeals had no jurisdiction over Philcemcor's *Petition*, for it is on the Court of Tax Appeals ("CTA") that the SMA conferred jurisdiction to review rulings of the Secretary in connection with the imposition of a safeguard measure. It likewise argued that Philcemcor's resort to the special civil action of certiorari is improper, considering that what Philcemcor sought to rectify is an error of judgment and not an error of jurisdiction or grave abuse of discretion, and that a petition for review with the CTA was available as a plain, speedy and adequate remedy. Finally, Southern Cross echoed the DOJ Opinion that Section 13 of the SMA precludes a review by the DTI Secretary of a negative finding of the Tariff Commission.

After conducting a hearing on 19 June 2002 on Philcemcor's application for preliminary injunction, the Court of Appeals' Twelfth Division[31] granted the writ sought in its *Resolution* dated 21 June 2002.[32] Seven days later, on 28 June 2002, the two-hundred (200)-day period for the imposition of the provisional measure expired. Despite the lapse of the period, the BOC continued to impose the provisional measure on all importations of Portland cement made by Southern Cross. The uninterrupted assessment of the tariff, according to Southern Cross, worked to its detriment to the point that the continued imposition would eventually lead to its closure.[33]

Southern Cross timely filed a *Motion for Reconsideration* of the *Resolution* on 9 September 2002. Alleging that Philcemcor was not entitled to provisional relief, Southern Cross likewise sought a clarificatory order as to whether the grant of the writ of preliminary injunction could extend the earlier imposition of the provisional measure beyond the two hundred (200)-day limit imposed by law. The appeals' court failed to take immediate action on Southern Cross's motion despite the four (4) motions for early resolution the latter filed between September of 2002 and February of 2003. After six (6) months, on 19 February 2003, the Court of Appeals directed Philcemcor to comment on Southern Cross's *Motion for Reconsideration*.[34] After Philcemcor filed its *Opposition*[35] on 13 March 2003, Southern Cross filed another set of four (4) motions for early resolution.

Despite the efforts of Southern Cross, the Court of Appeals failed to directly resolve the *Motion for Reconsideration*. Instead, on 5 June 2003, it rendered a *Decision*,[36] granting in part Philcemcor's petition. The appellate court ruled that it had jurisdiction over the petition for certiorari since it alleged grave abuse of discretion. It refused to annul the findings of the Tariff Commission, citing the rule that factual findings of administrative agencies are binding upon the courts and its corollary, that courts should not interfere in matters addressed to the sound discretion and coming under the special technical knowledge and training of such agencies.[37] Nevertheless, it held that the DTI Secretary is not bound by the factual findings of the Tariff Commission since such findings are merely recommendatory and they fall within the ambit of the Secretary's discretionary review. It determined that the legislative intent is to grant the DTI Secretary the power to make a final decision on the Tariff Commission's recommendation.[38] The dispositive portion of the *Decision* reads:

> **WHEREFORE**, based on the foregoing premises, petitioner's prayer to set aside the findings of the Tariff Commission in its assailed Report dated March 13, 2002 is **DENIED**. On the other hand, the assailed April 5, 2002 Decision of the Secretary of the Department of Trade and Industry is hereby **SET ASIDE**. Consequently, the case is **REMANDED** to the public respondent Secretary of Department of Trade and Industry for a final decision in accordance with RA 8800 and its Implementing Rules and Regulations.
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> **SO ORDERED**.[39]

On 23 June 2003, Southern Cross filed the present petition, assailing the appellate court's *Decision* for departing from the accepted and usual course of judicial proceedings, and not deciding the substantial questions in accordance with law and jurisprudence. The petition argues in the main that the Court of Appeals has no jurisdiction over Philcemcor's petition, the proper remedy being a petition for review with the CTA conformably with the SMA, and; that the factual findings of the Tariff Commission on the existence or non-existence conditions warranting the imposition of general safeguard measures are binding upon the DTI Secretary.

The timely filing of Southern Cross's petition before this Court necessarily prevented the Court of Appeals *Decision* from becoming final.[40] Yet on 25 June 2003, the DTI Secretary issued a new *Decision*, ruling this time that that in light of the appellate