

**SOUTHERN CROSS CEMENT CORPORATION v. CEMENT  
MANUFACTURERS, THE HONORABLE SECRETARY OF TRADE, et al.  
G.R. No. 158540, 3 August 2005, En Banc (Tinga, J.)**

*Nowhere in the SMA does it state that the DTI Secretary may impose general safeguard measures without a positive final determination by the Tariff Commission, or that the DTI Secretary may reverse or even review the factual determination made by the Tariff Commission. Congress has the putative authority to abolish the Tariff Commission or the DTI. It is similarly empowered to alter or expand its functions through modalities which do not align with established norms in the bureaucratic structure. The Court is bound to recognize the legislative prerogative to prescribe such modalities, no matter how atypical they may be, in affirmation of the legislative power to restructure the executive branch of government.*

The case centers on the interpretation of the provisions of Republic Act No. 8800, the Safeguard Measures Act (“SMA”), which was one of the laws enacted by Congress soon after the Philippines ratified the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO) Agreement. The SMA provides for 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.

Philcemcor filed with the Department of Trade and Industry (DTI) a petition seeking for the imposition of safeguard measures on Gray Portland cement, in accordance with the SMA. After the DTI issued a provisional safeguard measure, the application was referred to the Tariff Commission for a formal investigation pursuant to Section 9 of the SMA and its Implementing Rules and Regulations, in order to determine whether or not to impose a definitive safeguard measure on imports of gray Portland cement. After public hearings and conducting its own investigation, the Tariff Commission came out with a negative finding. Notwithstanding such finding, the DTI sought the opinion of the Secretary of Justice whether it could still impose a definitive safeguard measure. The Secretary of Justice opined that the DTI could not do so under the SMA, and so the DTI Secretary then promulgated a *Decision* wherein he expressed the DTI’s disagreement with the conclusions of the Tariff Commission, but at the same time, ultimately denying Philcemcor’s application for safeguard measures on the ground that he was bound to do so in light of the Tariff Commission’s negative findings.

Philcemcor filed with the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus* seeking to set aside the DTI *Decision*, as well as the Tariff Commission’s 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. The CA held that the DTI Secretary was 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.

Southern Cross filed the present petition, arguing that the factual findings of the Tariff Commission on the existence or non-existence of conditions warranting the imposition of general safeguard measures are binding upon the DTI Secretary.

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**ISSUE:** Whether or not the factual findings of the Tariff Commission on the existence or non-existence of conditions warranting the imposition of safeguard measures are binding upon the DTI Secretary

**HELD:** Petition is granted.

**The DTI Secretary is barred from imposing a general safeguard measure absent a positive final determination rendered by the Tariff Commission.** The required positive final determination of the Tariff Commission exists as a properly enacted constitutional limitation imposed on the delegation of the legislative power to impose tariffs and imposts to the President under Section 28(2), Article VI of the Constitution. The provision states: “**The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose,** tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.”

These impositions under Section 28(2), Article VI fall within the realm of the power of taxation, a power which is within the sole province of the legislature. But this provision is also an exceptional grant of legislative power to the President which is why the qualifiers mandated by the Constitution on this presidential authority attains primordial consideration. *First*, there must be a law, such as the SMA. *Second*, there must be specified limits, a detail which would be filled in by the law. *And Third*, Congress is further empowered to impose limitations and restrictions on this presidential authority.

The authority delegated to the President may be exercised by his/her *alter egos*, such as department secretaries. For purposes of the President’s exercise of power to impose tariffs under the above provision, it is generally the Secretary of Finance who acts as the *alter ego* of the President. **The SMA provides an exceptional instance wherein it is the DTI or Agriculture Secretary who is tasked by Congress, in their capacities as *alter egos* of the President, to impose such measures.**

Both the Tariff Commission and the DTI Secretary may be regarded as agents of Congress in the implementation of the said law. Indeed, even the President may be considered as an agent of Congress for the purpose of imposing safeguard measures since it is Congress, not the President, which possesses inherent powers to impose tariffs and imposts.

The entire SMA provides for a limited framework under which the President, through the DTI and Agriculture Secretaries, may impose safeguard measures in the form of tariffs and similar imposts. The limitation most relevant to this case is contained in Section 5 of the SMA, captioned “*Conditions for the Application of General Safeguard Measures*,” and stating: “The Secretary shall apply a general safeguard measure upon a positive final determination of the [Tariff] Commission that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest.

**Section 5 of the SMA operates as a limitation validly imposed by Congress on the presidential authority under the SMA to impose tariffs and imposts.** The positive final

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determination by the Tariff Commission is plainly required by the law and so it must be strictly complied with.

Philcemcor raised a question as to whether such requirement run counter to our legal order since under the said provision, a body of relative junior competence as a Tariff Commission can bind an administrative superior and cabinet officer such as the DTI Secretary. **No provision in the SMA expressly authorizes the DTI Secretary to impose a general safeguard measure despite the absence of a positive final recommendation of the Tariff Commission.** On the other hand, Section 5 expressly states that the DTI Secretary “shall apply a general safeguard measure upon a positive final determination of the Tariff Commission.”

Under the SMA, it is the Tariff Commission that conducts an investigation as to whether the conditions exist to warrant the imposition of the safeguard measures. These conditions are enumerated in Section 5, namely; that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry. After the investigation of the Tariff Commission, it submits a report to the DTI Secretary, which states whether the above-stated conditions for the imposition of the general safeguard measures exist. Upon a positive final determination that these conditions are present, the Tariff Commission then is mandated to recommend what appropriate safeguard measures should be undertaken by the DTI Secretary. Section 13 of the SMA gives five specific options on the type of safeguard measures the Tariff Commission recommends to the DTI Secretary.

At the same time, **nothing in the SMA obliges the DTI Secretary to adopt the recommendations made by the Tariff Commission.** In fact, the SMA requires that the DTI Secretary establish that the application of such safeguard measures is in the **public interest**, notwithstanding the Tariff Commission’s recommendation on the appropriate safeguard measure upon its positive final determination. Thus, even if the Tariff Commission makes a positive final determination, the DTI Secretary may opt not to impose a general safeguard measure, or choose a different type of safeguard measure other than that recommended by the Tariff Commission.

**It is evident from the text of Section 5 that there must be a positive final determination by the Tariff Commission that a product is being imported into the country in increased quantities (whether absolute or relative to domestic production), as to be a substantial cause of serious injury or threat to the domestic industry.** Any disputation to the contrary is, at best, the product of wishful thinking.

The Tariff Commission’s finding is **not merely recommendatory.** Section 5 bluntly does require a positive final determination by the Tariff Commission before the DTI Secretary may impose a general safeguard measure. This is a duty imposed on a public officer by the law itself which must be given a controlling effect. In fact, the Department of Justice (DOJ) Secretary himself rendered an Opinion with the same conclusion.

Another issue was raised as to whether the DTI Secretary, acting either as *alter ego* of the President or in his capacity as head of an executive department, may review, modify or otherwise alter the final determination of the Tariff Commission under the SMA. The Court answered in the negative. **Congress in enacting the SMA and prescribing the roles to be played therein by the Tariff Commission and the DTI Secretary did not envision that the President, or his/her *alter ego*, could exercise supervisory powers over the Tariff Commission.** If

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Congress intended to allow the traditional “alter ego” principle to be established by the SMA, it would have assigned the role now played by the DTI Secretary under the law instead to the National Economic and Development Authority (NEDA). The Tariff Commission is an attached agency of the NEDA, which in turn is the independent planning agency of the government.

**The Tariff Commission does not fall under the administrative supervision of the DTI.** On the other hand, the administrative relationship between the NEDA and the Tariff Commission is established not only by the Administrative Code, but similarly affirmed by the Tariff and Customs Code.

At the same time, under the Tariff and Customs Code, no similar role or influence is allocated to the DTI in the matter of imposing tariff duties. In fact, the long-standing tradition has been for the Tariff Commission and the DTI to proceed independently in the exercise of their respective functions. Only very recently have our statutes directed any significant interplay between the Tariff Commission and the DTI, with the enactment in 1999 of Republic Act No. 8751 on the imposition of countervailing duties and Republic Act No. 8752 on the imposition of anti-dumping duties, and of course the promulgation a year later of the SMA. In all these three laws, the Tariff Commission is tasked, upon referral of the matter by the DTI, to determine whether the factual conditions exist to warrant the imposition by the DTI of a countervailing duty, an anti-dumping duty, or a general safeguard measure, respectively. In all three laws, the determination by the Tariff Commission that these required factual conditions exist is necessary before the DTI Secretary may impose the corresponding duty or safeguard measure. And in all three laws, **there is no express provision authorizing the DTI Secretary to reverse the factual determination of the Tariff Commission.**

The SMA indubitably establishes that the Tariff Commission is no mere flunky of the DTI Secretary when it mandates that the positive final recommendation of the former be indispensable to the latter’s imposition of a general safeguard measure. **What the law indicates instead is a relationship of interdependence between two bodies** independent of each other under the Administrative Code and the SMA alike. Indeed, even the ability of the DTI Secretary to disregard the Tariff Commission’s recommendations as to the particular safeguard measures to be imposed evinces the independence from each other of these two bodies. **This is properly so for two reasons – the DTI and the Tariff Commission are independent of each other under the Administrative Code; and impropriety is avoided in cases wherein the DTI itself is the one seeking the imposition of the general safeguard measures, pursuant to Section 6 of the SMA.**

Considering that the power to impose tariffs in the first place is not inherent in the President but arises only from congressional grant, **we should affirm the congressional prerogative to impose limitations and restrictions on such powers which do not normally belong to the executive in the first place.** Nowhere in the SMA does it state that the DTI Secretary may impose general safeguard measures without a positive final determination by the Tariff Commission, or that the DTI Secretary may reverse or even review the factual determination made by the Tariff Commission.

Congress can enact additional tasks or responsibilities on either the Tariff Commission or the DTI Secretary, such as their respective roles on the imposition of general safeguard measures under the SMA. **In doing so, the same Congress, which has the putative authority to abolish the Tariff Commission or the DTI, is similarly empowered to alter or**

**expand its functions through modalities which do not align with established norms in the bureaucratic structure.** The Court is bound to recognize the legislative prerogative to prescribe such modalities, no matter how atypical they may be, in affirmation of the legislative power to restructure the executive branch of government.

Assuming administrative review were available, it is the NEDA that may conduct such review following the principles of administrative law, and the NEDA's decision in turn is reviewable by the Office of the President. The decision of the Office of the President then effectively substitutes as the determination of the Tariff Commission, which now forms the basis of the DTI Secretary's decision, which now would be ripe for judicial review by the CTA under Section 29 of the SMA. This is the only way that administrative review of the Tariff Commission's determination may be sustained without violating the SMA and its constitutional restrictions and limitations, as well as administrative law.

In any event, even if we concede the possibility of administrative review of the Tariff Commission's final determination by the NEDA, such would not deny merit to the present petition. It does not change the fact that the Court of Appeals erred in ruling that the DTI Secretary was not bound by the negative final determination of the Tariff Commission, or that the DTI Secretary acted without jurisdiction when he imposed general safeguard measures despite the absence of the statutory positive final determination of the Commission.