Republic of the Philippines
Supreme Court
Manila

EN BANC

INITIATIVES FOR DIALOGUE AND EMPOWERMENT THROUGH ALTERNATIVE LEGAL SERVICES, INC. (IDEALS, INC.), represented by its executive director, Mr. Edgardo Ligon, ALLIANCE OF PROGRESSIVE LABOR (APL), represented by its chairperson, Daniel L. Edralin, ECOLOGICAL WASTE COALITION OF THE PHILIPPINES, INC., represented by its president/executive director, Riedo Panaligan; MOTHER EARTH FOUNDATION, represented by its president, Marietta Marciano; CONCERNED CITIZENS AGAINST POLLUTION, represented by its president, Renato D. Pineda, Jr.; NGOS FOR FISHERIES REFORM, represented by its executive director, Dennis F. Calvan; KILUSAN PARA SA PAGPAPAUNLAD NG INDUSTRIYA NG PANGISDAAN, represented by its executive committee member, Pablo R. Rosales, Jr.; ANA THERESIA HONTIVEROS-BARAQUEL, as the duly elected representative of the Akbayan Citizens' Action Party; and PHILIPPINE WORKERS ALLIANCE, represented by its president Francisco P. Mero,	**G.R. No. 184635**

-versus-

THE SENATE OF THE PHILIPPINES, represented by senators who cast a vote of concurrence for the JPEPA, namely: MANUEL VILLAR, HON. MIRIAM DEFENSER-SANTIAGO, MAR ROXAS, EDFARDO ANGARA, RODOLFO BIAZON, ALAN PETER CAYETANO, JOSE 'JINGGOY' ESTRADA, JUAN PONCE ENRILE, RICHARD GORDON, GREGORIO B. HONASAN II, PANFILO LACSON, MANUEL LAPID, LOREN LEGARDA, FRANCIS PANGILINAN, RAMON REVILLA, JR., JUAN MIGUEL ZUBIRI; THE SECRETARY OF TRADE AND INDUSTRY; THE SECRETARY OF FOREIGN AFFAIRS; THE EXECUTIVE SECRETARY; THE SECRETARY OF FINANCE; and THE COMMISSIONER OF BUREAU OF CUSTOMS,

Respondents.

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FAIR TRADE ALLIANCE, AUTOMATIVE INDUSTRY WORKERS ALLIANCE, CONGRESSMAN LORENZO TAÑADA III, CONGRESSMAN DEL R. DE GUZMAN, CONGRESSMAN CARLOS M. PADILLA, CONGRESSMAN ALFONSO V. UMALI, JOVITO R. SALONGA and TEOFISTO GUINGONA, JR.,

Petitioners,

-versus-

x----------x

G.R. No. 185366

Present:

GESMUNDO, *CJ,**
LEONEN, *Acting CJ****
CAGUIOA,
HERNANDO, *
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,**
DIMAAMPAO,

* On official leave.
** On leave.
*** Acting CJ per Special Order No. 2989 dated June 24, 2023.

MARQUEZ, KHO, JR., and SINGH, *JJ.*

THE SENATE OF THE PHILIPPINES, represented by senators who voted in favor of JPEPA, namely: HON. EDGARDO ANGARA, HON. RODOLFO BIAZON, HON. ALAN PETER CAYETANO, HON. JINGGOY EJERCITO ESTRADA, HON. RICHARD GORDON, HON. GREGORIO HONASAN II, HON. PANFILO LACSON, HON. LITO LAPID, HON. LOREN LEGARDA, HON. FRANCIS PANGILINAN, HON. RAMON REVILLA, HON. MAR ROXAS, HON. MIRIAN DEFENSOR-SANTIAGO, HON. MANUEL VILLAR, HON. MIGUEL ZUBIRI; HON. EDUARDO R. ERMITA, in his official capacity as Executive Secretary; HON. ALBERTO G. ROMULO, in his official capacity as Secretary of Foreign Affairs; HON. PETER B. FAVILA, in his official capacity as Secretary of Trade and Industry; HON. ROLANDO G. ANDAYA, in his official capacity as Secretary of Budget and Management; HON. THOMAS G. AQUINO, in his official capacity as undersecretary of trade and industry and chair of the Philippine Coordinating Committee for the JPEPA,

Respondents.

Promulgated:

June 13, 2023

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DECISION

LEONEN, *J.*:

As demand for international goods and services rises, governments have deemed it wise to enter into bilateral trade agreements to ensure a level playing field for trade and investment opportunities for all stakeholders. In 2006, the Philippines and Japan signed the Japan-Philippines Economic

Partnership Agreement (JPEPA), the first bilateral free trade agreement entered into by the Philippines in over half a century.[1]

Yet, the president's ratification of the JPEPA, along with the Senate's concurrence, has raised a plethora of issues on the constitutionality and legality of the Agreement. Most, if not all, concern the possible ramifications of the implementation of the JPEPA's provisions in the Philippines' economic, political, and social spheres.

As mandated by the Constitution, this Court will not shy away from fulfilling its duty to settle actual controversies involving real parties, arising from a breach that will cause direct, material, and substantial injury.

Before this Court are two consolidated Petitions for *Certiorari* and Prohibition,[2] assailing the constitutionality of the JPEPA. Petitioners, comprising nongovernmental organizations, taxpayers, and legislators, among others, essentially argue that the then president's act of ratifying the JPEPA and the Senate's concurrence violated the Constitution and multiple laws. These acts, according to petitioners, amount to grave abuse of discretion.[3]

In January 2002, former Japanese Prime Minister Junichiro Koizumi (Prime Minister Koizumi) visited the Philippines, during which he proposed the "Initiative for Japan-ASEAN Comprehensive Economic Partnership."[4] The proposal was again discussed during a forum attended by representatives from Japan and the Association of Southeast Asian Nations (ASEAN) in April that year, where Japan and the ASEAN[5] agreed to consider possible economic partnerships through a bilateral framework.[6]

A month later, when then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) visited Japan, she recommended to Prime Minister Koizumi that a working group composed of representatives from both countries' government agencies be created. The working group was later formed in October 2002, tasked with examining the viability of an economic

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1 *See Japan-Philippines Economic Partnership Agreement (JPEPA): An Assessment*, SENATE ECONOMIC PLANNING OFFICE, 1, September 2007, *available at* http://legacy.senate.gov.ph/publications/PB%202007-01%20-%20Japan-Philippines%20Economic%20Partnership%20Agreement%20(JPEPA),%20An%20assesment.pdf (last accessed on March 11, 2022).

2 *Rollo* (G.R. No. 184635), pp. 3–58; *rollo* (G.R. No. 185366), pp. 3–62.

3 *Rollo* (G.R. No. 185366), pp. 6–7.

4 *See Japan-Philippine Economic Partnership Agreement, Joint Coordinating Team Report*, 1, 3 (2003), *available at* https://www.mofa.go.jp/region/asia-paci/philippine/joint0312.pdf (last accessed on March 11, 2022).

5 The ASEAN member-states are Brunei-Darussalam, Cambodia, Indonesia, Myanmar, Lao PDR, Malaysia, Singapore, Thailand, Viet Nam, and the Philippines.

6 *See Japan-Philippine Economic Partnership Agreement, Joint Coordinating Team Report*, 1, 3 (2003), *available at* https://www.mofa.go.jp/region/asia-paci/philippine/joint0312.pdf (last accessed on March 11, 2022).

partnership agreement between the two countries and to study its possible contents, substance, and coverage.[7]

After several meetings and consultations, the working group suggested that each country independently study the impact of the proposed agreement.[8] President Macapagal-Arroyo then issued Executive Order No. 213,[9] series of 2003, creating the Philippine Coordinating Committee,[10] which was tasked with studying the JPEPA's feasibility[11] and drafting "a proposed framework for the JPEPA and its Implementing Agreements[.]"[12]

In February 2004, formal negotiations for the JPEPA started. Later that year, the two countries' leaders agreed on removing tariff on certain products, one of the major aspects of the agreement.[13]

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7 *Id.*

8 *Id.*

9 Executive Order No. 213 (2003), Creation of a Philippine Coordinating Committee to Study the Feasibility of the Japan-Philippines Economic Partnership Agreement.

10 *Rollo* (G.R. No. 185366), pp. 1411–1412.

11 Executive Order No. 213 (2003), sec. 1 states:
Section 1. A Philippine Coordinating Committee (PCC) to study the feasibility of the Japan-Philippines Economic Partnership Agreement (JPEPA) is hereby created.
The PCC shall be composed of representatives from the following government agencies:
1) Department of Foreign Affairs (DFA);
2) Department of Trade and Industry (DTI);
3) Department of Agriculture (DA);
4) Department of Budget and Management (DBM);
5) Department of Education, Culture, and Sports (DECS);
6) Department of Energy (DOE);
7) Department of Environment and Natural Resources (DENR);
8) Department of Finance (DOF);
9) Department of Health (DOH);
10) Department of Justice (DOJ);
11) Department of Labor and Employment (DOLE);
12) Department of Public Works and Highways (DPWH);
13) Department of Science and Technology (DOST);
14) Department of Tourism (DOT);
15) Department of Transportation and Communications (DOTC);
16) National Economic and Development Authority (NEDA);
17) Bangko Sentral ng Pilipinas (BSP); and
18) Securities and Exchange Commission (SEC)
The agencies enumerated above shall have at least one (1) permanent representative each with a rank not lower than Director. Other concerned agencies may be invited to join the PCC as may be necessary and appropriate.
The DFA Undersecretary for International Economic Relations and the DTI Undersecretary for International Trade shall act as co-chairs of the PCC. The DTI Undersecretary shall convene and conduct the meetings of the PCC. In his/her absence, the DFA Undersecretary may also convene and conduct the meetings of the PCC.
The PCC shall be convened immediately after this Executive Order takes effect.

12 Executive Order No. 213 (2003), sec. 2 states:
Section 2. The functions of the PCC shall be as follows:
a. To participate in meetings, consultations, and/or negotiations with the Japanese counterpart on the proposed JPEPA;
b. To formulate recommended Philippine positions for the meetings, consultations and/or negotiations with the Japanese counterpart;
c. To conduct consultations with concerned government and private sector representatives, as necessary, regarding the various issues and sectors covered in the JPEPA;
d. To draft a proposed framework for the JPEPA and its Implementing Agreements (IAs); and
e. To perform other functions as may be necessary.

13 *Rollo* (G.R. No. 185366), p. 1412.

On September 9, 2006, President Macapagal-Arroyo and Prime Minister Koizumi signed the JPEPA in Helsinki, Finland.[14]

In a November 16, 2006 letter, President Macapagal-Arroyo transmitted the JPEPA to the Senate for its concurrence. The Senate referred the matter to the Committee on Foreign Relations.[15] However, with the then Thirteenth Congress about to adjourn, the Senate announced on January 24, 2007 that it would be postponing further discussions on the JPEPA.[16]

In the interim, former Japanese Minister of Foreign Affairs Taro Aso confirmed to Foreign Affairs Secretary Alberto Romulo (Foreign Affairs Secretary Romulo) in the May 22 and 23, 2007 Exchange of Notes (Romulo-Aso Exchange of Notes) that Japan would not export toxic wastes to the Philippines in accordance with the Basel Convention.[17]

When the Fourteenth Congress opened, President Macapagal-Arroyo resubmitted the JPEPA to the Senate for its concurrence. It was again referred for public hearings to the Senate Committee on Foreign Relations and the Senate Committee on Trade and Commerce.[18]

Meanwhile, the Philippines and Japan formally expressed their shared understanding of the JPEPA's interpretation in the August 22 and 28, 2008 Exchange of Notes between Foreign Affairs Secretary Romulo and former Japanese Prime Minister of Foreign Affairs Masahiko Koumura (Romulo-Koumura Exchange of Notes).[19]

On October 28, 2008, the Senate concurred with the JPEPA's ratification. Sixteen senators voted in favor, while four objected.[20]

Two Petitions have since been filed before this Court, assailing the JPEPA.

The first Petition[21] was filed by the group of Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (IDEALS), represented by its executive director, Edgardo Ligon; Alliance of Progressive Labor, represented by its chairperson, Daniel L. Edralin; Ecological Waste

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14 *Id.*
15 *Id.*
16 *Id.* at 1413.
17 *Id.*
18 *Id.* at 1413–1415.
19 *Id.* at 1415.
20 *Id.* at 1416.
21 *Rollo* (G.R. No. 184635), pp. 3–58. This Petition was filed on October 13, 2008 and docketed as G.R. No. 184635.

Coalition of the Philippines, Inc, represented by its president/executive director, Riedo Panaligan; Mother Earth Foundation, represented by its president, Marietta Marciano; Concerned Citizens Against Pollution, represented by its president, Renato D. Pineda, Jr.; NGOs for Fisheries Reform, represented by its executive director, Dennis F. Calvan; Kilusan Para sa Pagpapaunlad ng Industriya ng Pangisdaan, represented by its executive committee member, Pablo R. Rosales, Jr.; Ana Theresia Hontiveros-Baraquel, as the duly elected party-list representative of the Akbayan Citizens' Action Party; and the Philippine Metal Workers Alliance, represented by its president, Francisco P. Mero (petitioners IDEALS et al.).

They maintain that their Petition presents a justiciable controversy ripe for adjudication.[22] They also seek exemption from the principle of hierarchy of courts' strict application since they only raise pure questions of law.[23]

Petitioners IDEALS et al., which are composed of taxpayers, concerned citizens, and nongovernment organizations, also assert their standing, claiming that they may file an action asserting a public right. They insist that, one, the JPEPA violates multiple constitutional provisions affecting people's rights, and two, the JPEPA requires creating different committees that entail the use of public funds. For petitioner Ana Theresia Hontiveros-Baraquel, she says that her standing emanates from her being the Akbayan Party-List's representative.[24]

As to the merits, petitioners IDEALS et al. argue that the JPEPA is unconstitutional by submitting the following assertions:

First, they claim that the JPEPA violates Article VI, Section 28(2) of the Constitution. They argue that Sections 401 and 402 of the Tariff and Customs Code, on which President Macapagal-Arroyo had relied to reduce the tariffs on goods imported from Japan, are unconstitutional for being invalid delegations of legislative power.[25]

Second, they contend that the JPEPA violates the people's right to health and to a balanced and healthful ecology under Article II, Sections 15 and 16 of the Constitution, along with other laws and international commitments, by allowing the indiscriminate importation of toxic and hazardous wastes into the Philippines.[26]

Third, they assert that the Philippine schedule of reservations for existing measures is incomplete and inaccurate,[27] inasmuch as it does not

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22 *Id.* at 605.
23 *Id.* at 609–610.
24 *Id.* at 607–608.
25 *Id.* at 612–617.
26 *Id.* at 623–631.
27 *Id.* at 639.

include the nationality exclusions and exemptions provided by the Constitution.[28] They stress that the reservation regarding ownership of land covers only investment in the manufacturing sector. As a result, partnerships and corporations with 100% foreign equity may invest in economic sectors that do not refer to manufacturing.[29]

Fourth, they contend that the reservation regarding the fisheries sector under Annex 7, 2B of the JPEPA violates Article XII, Section 2(2) of the Constitution. They argue that despite the express constitutional mandate limiting the use and enjoyment of the nation's marine wealth to Filipino citizens, the JPEPA allows corporations, associations, and partnerships with 40% maximum foreign equity to engage in deep-sea fishing in Philippine waters.[30]

Fifth, they assert that by allowing entry into the Philippines of used four-wheeled motor vehicles, the JPEPA violates Executive Order No. 156.[31]

Sixth, they maintain that there being no adequate reservation as to future measures, the JPEPA restricts Congress's lawmaking power[32] by prohibiting it from enacting future measures inconsistent with the JPEPA's provisions.[33]

Lastly, they contend that, contrary to what had been assured by then Senate Committee Chair on Foreign Relations Miriam Defensor-Santiago (Senator Defensor-Santiago) during her sponsorship speech, the Romulo-Koumura Exchange of Notes did not cure the JPEPA's constitutional infirmities.[34]

The second Petition[35] was brought before this Court by Fair Trade Alliance (FairTrade), Automotive Industry Workers Association (Automotive Industry Workers), Jovito R. Salonga (Salonga), Teofisto Guingona, Jr. (Guingona, Jr.), and House Representatives Lorenzo R. Tañada III, Del R. De Guzman, Carlos M. Padilla, and Alfonzo Umali. Collectively referred here as petitioners FairTrade et al., they maintain that the matters they raise are justiciable and ripe for adjudication, there being acts by two branches of government—the president's ratification of the JPEPA and the Senate's concurrence.[36]

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28 *Id.* at 631.
29 *Id.* at 641.
30 *Id.* at 648–650.
31 *Id.* at 654.
32 *Id.* at 656.
33 *Id.* at 662.
34 *Id.* at 663–665.
35 *Rollo* (G.R. No. 185366), pp. 3–62. This was filed on December 4, 2008 and docketed as G.R. No. 185366.
36 *Id.* at 1420–1421.

Petitioners FairTrade et al. contend that the parties have legal standing to sue.[37] For petitioners FairTrade and Automotive Industry Workers, they insist that the JPEPA's implementation will deny them and their members the rights and privileges under the Constitution and laws.[38] As for petitioners who are members of Congress, they maintain that the JPEPA infringes on the constitutional powers vested in their office.[39] Petitioners Salonga and Guingona, Jr., as taxpayers and concerned citizens, claim that by failing to provide a mutually beneficial bilateral trade and economic framework, the JPEPA proves detrimental to the interest of the Philippines and its citizens, and its implementation will result in a significant revenue loss due to reduced taxes and duties.[40]

In any case, petitioners FairTrade et al. plead a liberal stance on the *locus standi* requirement, claiming that they raise an issue of transcendental importance.[41]

On the substantive issues, they argue that the JPEPA is unconstitutional by advancing the following arguments:

First, they contend that the JPEPA infringes on Congress's powers to set and modify tariff rates under Article VI, Section 28(2) of the Constitution,[42] and to enact future nonconforming measures.[43]

Second, they maintain that the JPEPA violates the constitutional provisions reserving certain sectors of economic activities to Filipino citizens and specific juridical entities.[44] They insist that the Philippines' commitments under the JPEPA, specifically to give Japanese investors national treatment under Article 89, most favored treatment under Article 90, and prohibition of performance requirements under Article 93, contravene Article XII, Sections 2, 7, 10, 11, and 14; Article XIV, Section 4(2); and Article XVI, Section 11 of the Constitution.[45]

They aver that while the JPEPA allows the parties to list reservations to their commitments, the Philippines' list of reservations is incomplete, it being made only as to investments in the manufacturing and service sectors.[46]

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37 *Id.* at 1421, *citing Pimentel, Jr. v. Office of the Executive Secretary*, 501 Phil. 303 (2005) [Per J. Puno, *En Banc*].
38 *Id.* at 1422.
39 *Id.* at 1423.
40 *Id.*
41 *Id.*
42 *Id.* at 1424–1425.
43 *Id.* at 1426–1427.
44 *Id.* at 1428–1431.
45 *Id.* at 1433.
46 *Id.* at 1433–1434.

Third, they stress that the JPEPA violates numerous Philippine laws imposing nationality requirements such as Republic Act No. 5181, Republic Act No. 8762, Republic Act No. 5487, Presidential Decree No. 449, Act No. 3846, the Labor Code, Commonwealth Act No. 541, Republic Act No. 6957 as amended by Republic Act No. 7718, Presidential Decree No. 612 as amended by Presidential Decree No. 1814, Republic Act No. 5980 as amended by Republic Act No. 8556, Presidential Decree No. 129 as amended by Republic Act No. 8366, and Republic Act No. 7042.[47]

Fourth, they assert a gross imbalance in the parties' agreement on tariff concessions, in violation of Article XII, Section 13 of the Constitution. They note that while the Philippines committed to reduce tariff duties on 98% of its more than 5,900 tariff lines, Japan contracted to eliminate tariff duties only on 90% of its over 9,300 tariff lines. They aver that the JPEPA is an inequitable agreement that grossly disadvantages the Philippines while greatly favoring Japan.[48]

Fifth, similar to petitioners IDEALS et al., they claim that the Romulo-Koumura Exchange of Notes did not cure the JPEPA's legal and constitutional infirmities. They cite the observation of then Justice Florentino Feliciano in a letter he sent Senator Defensor-Santiago, stating that the Exchange of Notes has "no useful function" as it merely reiterates the JPEPA's unconstitutional provisions.[49]

Sixth, they also argue that the JPEPA violates Executive Order No. 156 by allowing entry of used four-wheeled vehicles into the Philippines.[50]

Finally, they aver that the public consultations conducted by the government were insufficient based on constitutional standards. They claim that in concluding the JPEPA, the Philippine negotiating panel failed to consider the stakeholders' point of view.[51]

On the other hand, respondents counter the following contentions:

First, the Petitions contain no justiciable controversy. Insisting that the JPEPA is constitutional, they view petitioners' assertions as "conjectural . . . and largely dependent on policy decisions made by the [e]xecutive [d]epartment."[52]

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47 *Id.* at 1438–1446.
48 *Id.* at 1448–1454.
49 *Id.* at 1454–1458.
50 *Id.* at 1458–1460.
51 *Id.* at 1466–1467.
52 *Rollo* (G.R. No. 184635), pp. 470–471.

Second, they assert that petitioners lack legal standing.[53]

Third, they argue that the JPEPA does not violate Article VI, Section 28(2) of the Constitution. They maintain that the power to fix tariff rates was delegated to the president through Section 104 in relation to Section 401 of the Tariff and Customs Code, which provisions remain valid and cannot be collaterally questioned through these cases.[54]

Fourth, they aver that the constitutional exclusions, exemptions, and reservations have been properly reserved under the JPEPA.[55]

According to respondents, the JPEPA uses both the positive list (or GATS-type) and the negative list approaches in delineating the parties' liberalization commitments. For the JPEPA's Investment Chapter, the negative list approach was adopted, where all substantive treaty obligations will apply in full unless reservations have been made. On the other hand, the Trade in Services Chapter uses the positive list approach, in which only listed sectors shall be subject to the liberalization commitments.[56]

They claim that proper reservations have been made on the limitations under Article XII, Sections 2(1) and 7 of the Constitution.[57] They likewise insist that the preference given to qualified Filipinos under Article XII, Section 10 of the Constitution and Republic Act No. 7042 have been included in the Philippines' list of reservations.[58]

Further, they assert that the constitutional limitations on the practice of professions, ownership, control, and management of educational institutions[59] and corporations engaged in the advertising industry have been properly preserved under the JPEPA.[60]

Fifth, they contend that no commitment had been made as to the operation of public utilities[61] and ownership and management of mass media in the Philippines. Accordingly, the limitations under Article XII, Section 11 and Article XVI, Section 11(1) of the Constitution have not been violated.[62]

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53 *Id.* at 471–472.
54 *Id.* at 476–484.
55 *Id.* at 491.
56 *Id.* at 493–494.
57 *Id.* at 494–497.
58 *Id.* at 499–501.
59 *Id.* at 502–503.
60 *Id.* at 505.
61 *Id.* at 501–502.
62 *Id.* at 503–504.

Sixth, they argue that Article XII, Section 12 of the Constitution promotes the use of Filipino goods and services but does not prohibit the entry of foreign investments into the Philippines.[63]

Seventh, they claim that the JPEPA has complied with the exclusions, exemptions, and reservations provided under Philippine laws, particularly as to the practice of professions, private security agencies, private recruitment of labor, retail trade, and adjusters of insurance claims, among others.[64]

On this, they argue that under Article XII, Section 14(2) of the Constitution, foreigners may not practice any profession in the Philippines, unless authorized by law. An international agreement such as the JPEPA has equal standing with Philippine statutes; thus, Japanese citizens may be employed in the Philippines upon compliance with the JPEPA's conditions.[65]

Similarly, they claim that private security agencies, private recruitment of labor, and investments in all forms of gambling and saunas, massage clinics, and other like activities are lines of business not limited by the Constitution to only Filipinos citizens. As a result, they say, amendments may be introduced through a treaty, such as the JPEPA.[66]

They further contend that the retail trade business has not been included in the Schedule of Commitments, and thus, not subject to the liberalization commitments of the JPEPA. Likewise, they aver that the rule on adjusters of insurance claims has been preserved under the JPEPA.[67]

Moreover, they say that reservations have been made on the following: (1) licenses for private radio communications networks; (2) contracts for the construction of defense-related structures; (3) contracts for the construction and repair of locally funded public works; (4) facility operator of an infrastructure or development project requiring a public utility franchise; (5) ownership, operation, and management of cockpits; and (6) financing companies and investment houses.[68]

Eighth, they argue that while Article XII, Section 2(2) of the Constitution limits the use and enjoyment of the State's marine wealth, it allows foreign investment in the exploration and development of the State's natural resources.[69]

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63 *Id.* at 505–506, *citing Tañada v. Angara*, 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].
64 *Id.* at 506.
65 *Id.* at 511–512.
66 *Id.* at 513.
67 *Id.* at 512.
68 *Id.* at 513–515.
69 *Id.* at 515–519.

Ninth, they say that the JPEPA's provisions do not contravene Article XII, Section 13 of the Constitution, citing this Court's ruling in *Tañada v. Angara*[70] to assert that the Constitution does not prohibit foreign investments' entry into the Philippine economy.[71]

They further quote the speech of former Ambassador Manuel A.J. Teehankee, where he stressed that investments in service sectors are not governed by Chapter 8 but by Chapter 7 of the JPEPA. That investments in service sectors are governed by Chapter 7 is further reinforced by Article 87(3) and (4) of the JPEPA.[72]

Tenth, they maintain that the Romulo-Koumura Exchange of Notes is binding and an integral part of the JPEPA, as it is a relevant subsequent agreement vital in interpreting the parties' real intent.[73]

Eleventh, as to whether the JPEPA violates Executive Order No. 156, they argue that the JPEPA, as a treaty, is superior to executive issuances.[74] In any case, they argue that the JPEPA merely provides a channel where both parties can raise and discuss matters on the importation of used four-wheeled motor vehicles, and not to permit their entry into the Philippines.[75]

Twelfth, they argue that the JPEPA is not only in accordance with Article II, Section 16 of the Constitution, but also other relevant environmental laws and treaties. They contend that the JPEPA recognizes the right of the Philippine government to enact measures necessary to protect its people and the environment.[76]

Furthermore, they maintain that, as parties to the Basel Convention, both countries are prohibited from exporting hazardous wastes to other state parties. That Japan would not export toxic wastes to the Philippines is, they say, further reinforced by the Romulo-Aso Exchange of Notes.[77]

Finally, they claim that consultative processes were made with various government agencies and private sectors, in compliance with Article XIII, Section 16 of the Constitution.[78]

For this Court's resolution are the following procedural and substantive issues:

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70 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].
71 *Rollo* (G.R. No. 184635), pp. 519–521.
72 *Id.* at 521–525.
73 *Id.* at 526–533.
74 *Id.* at 533–534.
75 *Id.* at 534.
76 *Id.* at 535–538.
77 *Id.* at 538–539.
78 *Id.* at 539.

first, whether this Court can exercise its power of judicial review over the matters raised in the Petitions;

second, whether the Petitions comply with the legal requisites for judicial review;

third, whether the Senate gravely abused its discretion in concurring with the JPEPA's ratification;

fourth, whether the JPEPA encroaches on the power of the Legislature, in that:

a. it was signed by the president and concurred in by the Senate in violation of Article VI, Section 28(2) of the Constitution; and

b. it does not properly reserve the effects of any measure that Congress may pass after the JPEPA had taken effect;

fifth, whether the JPEPA violates exclusions, exemptions, or reservations required by the following provisions of the Constitution:

a. Article XII, Section 2, paragraph 1, on the exploration, development, and utilization of land and natural resources;

b. Article XII, Section 7, on private land ownership in cases of hereditary succession;

c. Article XII, Section 10, on the preference given to qualified Filipinos in the grant of rights, privileges, and concessions covering the national economy and patrimony;

d. Article XII, Section 11, on the operation of public utilities;

e. Article XII, Section 14, on the practice of professions;

f. Article XIV, Section 4(2), on the ownership, control, and administration of educational institutions;

g. Article XVI, Section 11(1), on the ownership and management of mass media; and

h. Article XVI, Section 11(2), second sentence, on the ownership of corporations and associations engaged in the advertising industry;

sixth, whether the JPEPA violates exclusions, exemptions, or reservations required by the following laws:

a. Republic Act No. 5181, Section 1, on the practice of professions;

b. Republic Act No. 8762, Section 5, on retail trade business;

c. Republic Act No. 5487, Section 4, on private security agencies;

d. Presidential Decree No. 449, Section 5(a), on the ownership, operation, and management of cockpits;

e. Act No. 3846, Section 4, on private radio communication networks;

f. Labor Code, Article 27, on private recruitment of labor, whether for local or overseas employment;

g. Commonwealth Act No. 541, Section 1, on contracts for the construction of defense-related structures and on contracts for the construction of locally funded public works except those covered under Republic Act No. 7718;

h. Republic Act No. 6957, as amended by Republic Act No. 7718, Section 2(a), on the facility operator of an infrastructure or development project that requires a public utility franchise;

i. Presidential Decree No. 612 or the Insurance Code, as amended by Presidential Decree No. 1814, Section 323, on adjusters;

j. Republic Act No. 5980 as amended by Republic Act No. 8556, Section 6, on financing companies;

k. Presidential Decree No. 129 as amended by Republic Act No. 8366, Section 5, on investment business; and

l. Republic Act No. 7042, Section 8(b)(2), on investments in all forms of gambling and saunas, massage clinics, and other like activities;

seventh, whether the JPEPA violates Article XII, Section 2, paragraph 2 of the Constitution, on the State policy to protect the nation's marine wealth and to reserve its use and enjoyment exclusively to Filipino citizens;

eighth, whether the JPEPA violates Article XII, Section 13 of the Constitution, on the trade policy of equality and reciprocity;

ninth, whether the Romulo-Koumura Exchange of Notes has any bearing on either the text or interpretation of the JPEPA insofar as these cases are concerned;

tenth, whether the JPEPA authorizes the entry of used four-wheeled motor vehicles into the Philippines, violating Executive Order No. 156;

eleventh, whether the JPEPA violates Article II, Sections 15 and 16 of the Constitution, relevant Philippine environmental laws, and treaties;

twelfth, whether the disclosure and consultations undertaken by the government were insufficient based on constitutional standards, amounting to grave abuse of discretion; and

finally, whether this Court can provide the final reliefs prayed for in the Petitions.

I

Article VIII, Section 1 of the Constitution provides for this Court's power of judicial review. It states:

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

The second paragraph refers to this Court's expanded power of judicial review. It is why this Court's power of review is no longer limited to "settling actual controversies involving rights that were legally demandable and enforceable[.]"[79] The paragraph narrowed the scope of the political question doctrine and enlarged that of judicial inquiry[80] to include the courts' power "to determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion."[81] As such, courts now have "greater prerogative to determine what it can do to prevent grave abuse of discretion[.]"[82]

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79 *Araullo v. Aquino III*, 737 Phil. 457, 525 (2014) [Per J. Bersamin, *En Banc*].
80 *Marcos v. Manglapus*, 258 Phil. 479, 506 (1989) [Per J. Cortes, *En Banc*].
81 *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1181–1182 (2019) [Per J. Leonen, *En Banc*].
82 *Estrada v. Desierto*, 406 Phil. 1, 43 (2001) [Per J. Puno, *En Banc*].

The Rules of Court provides two remedies to correct grave abuse of discretion: first, a special civil action for *certiorari*; and second, for prohibition. Rule 65, Sections 1 and 2 state:

> SECTION 1. Petition for *certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
>
> SECTION 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Araullo v. Aquino[83] explains the two remedies:

> Although similar to prohibition in that it will lie for want or excess of jurisdiction, certiorari is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:
>
> > A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-

[83] 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

> legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.[84] (Citations omitted)

While *certiorari* and prohibition, as contemplated within the Rules of Court, were traditionally used to question only judicial and quasi-judicial functions,[85] this Court has decided on such petitions despite them involving legislative and executive acts.[86]

In *Tañada v. Angara*,[87] this Court acted on Rule 65 petitions assailing the Senate's concurrence in the president's ratification of the Agreement Establishing the World Trade Organization:

> As this Court has repeatedly and firmly emphasized in many cases, 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

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84 *Id.* at 530–531.

85 *Id.* at 531.

86 J. Brion, Separate Opinion in *Villanueva v. Judicial and Bar Council*, 757 Phil. 534, 564 (2015) [Per J. Reyes, *En Banc*].

87 338 Phil. 546 (1997) [Per J. Panganiban, *En Banc*].

> 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.[88] (Citation omitted)

Bayan v. Zamora[89] permitted a challenge to the Visiting Forces Agreement's constitutionality via a petition for *certiorari* and prohibition.

In *Araullo*, which involved petitions questioning the constitutionality of the Disbursement Acceleration Program, this Court held that litigants can use *certiorari* and prohibition to raise constitutional issues and assail legislative and executive acts, in line with the expanded power of judicial review.[90]

Kilusang Mayo Uno v. Aquino III[91] reiterated this, where we held that while Sections 1 and 2 of Rule 65 "pertain to a tribunal's, board's, or an officer's exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power."[92]

Similarly, in *Kilusang Magbubukid ng Pilipinas v. Aurora Economic Zone and Freeport Authority*,[93] this Court said that a Rule 65 petition may likewise be employed against legislative and executive acts when committed with grave abuse of discretion.[94]

Still, the applicability of using Rule 65 petitions to invoke constitutional issues was not without contention. In his separate opinion in *Imbong v. Ochoa, Jr.*,[95] Justice Arturo Brion (Justice Brion) noted that while this Court's expanded power "may inferentially be covered by the current provisions of the Rules of Court, specifically by the rules on *certiorari*, prohibition[,] and *mandamus*[,]"[96] there is a need to promulgate rules specific for invoking the expanded power, since Rule 65 does not pertain to "judicial or quasi-judicial exercise of adjudicative power that [this] Court has traditionally exercised over lower tribunals[.]"[97]

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC*

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88 *Id.* at 575.
89 396 Phil. 623 (2000) [Per J. Buena, *En Banc*].
90 737 Phil. 457, 531 (2014) [Per J. Bersamin, *En Banc*].
91 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*]. *See also Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, 841 Phil. 724 (2018) [Per J. Caguioa, *En Banc*].
92 *Id.* at 1184.
93 G.R. Nos. 198688 & 208282, November 24, 2020 [Per J. Leonen, *En Banc*].
94 *Id.* See also *Imbong v. Ochoa, Jr.*, 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].
95 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].
96 J. Brion, Separate Opinion in *Imbong v. Ochoa, Jr.*, 732 Phil. 1, 287 (2014) [Per J. Mendoza, *En Banc*].
97 *Id.* at 288.

Approved Medical Centers Association, Inc.,[98] which Justice Brion also penned, this Court noted how unfit a Rule 65 petition was in invoking the expanded jurisdiction. We explained that Rule 65's terms "are not fully aligned with what [this] Court's expanded jurisdiction signifies and requires":[99]

> Meanwhile that no specific procedural rule has been promulgated to enforce this "expanded" constitutional definition of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts' expanded jurisdiction, the Supreme Court—*based on its power to relax its rules*—allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules. This is however an ad hoc approach that does not fully consider the accompanying implications, among them, that Rule 65 is an essentially distinct remedy that cannot simply be bodily lifted for application under the judicial power's expanded mode. The terms of Rule 65, too, are not fully aligned with what the Court's expanded jurisdiction signifies and requires.
>
> On the basis of almost thirty years' experience with the courts' expanded jurisdiction, the Court should now fully recognize the attendant distinctions and should be aware that the continued use of Rule 65 on an ad hoc basis as the operational remedy in implementing its expanded jurisdiction may, in the longer term, result in problems of uneven, misguided, or even incorrect application of the courts' expanded mandate.[100] (Citations omitted)

Falcis III v. Civil Registrar General[101] echoes this pronouncement:

> Rule 65 petitions are not per se remedies to address constitutional issues. Petitions for certiorari are filed to address the jurisdictional excesses of officers or bodies exercising judicial or quasi-judicial functions. Petitions for prohibition are filed to address the jurisdictional excesses of officers or bodies exercising judicial, quasi-judicial, or ministerial functions.[102]

The use of Rule 65 petitions to invoke this Court's expanded power may have been caused by the similarity of the grounds for review. After all, the phrase "grave abuse of discretion" is written in both Rule 65 and in Article VIII, Section 1 of the Constitution. These two procedures, however, are parallel only to that extent.

The expanded judicial power's overarching scope and jurisdiction are yet to be delineated. How they should be enforced, neither the Rules of Court nor any other procedural rule relating to pleadings and practices has yet to

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98 802 Phil. 116 (2016) [Per J. Brion, *En Banc*].
99 *Id.* at 139.
100 *Id.* at 138–140.
101 *Falcis III v. Civil Registrar General*, 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].
102 *Id.* at 540–541.

squarely address. While jurisprudence has provided a basic understanding on the use of the expanded judicial power, the procedural rule through which it can be invoked must be promulgated. For now, however, the available remedies of *certiorari* and prohibition, coursed through Rule 65, remain the proper avenues.

II

To successfully invoke this Court's power of judicial review, whether it be the traditional or expanded type, the presence of the following requisites should be established: "(a) there must be an actual case or controversy; (b) petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case."[103]

II (A)

"An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion."[104] As this Court explained in *Guingona, Jr. v. Court of Appeals*:[105]

> An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing law and jurisprudence. A justiciable controversy is distinguished from a hypothetical or abstract difference or dispute, in that the former involves a definite and concrete dispute touching on the legal relations of parties having adverse legal interests. A justiciable controversy admits of specific relief through a decree that is conclusive in character, whereas an opinion only advises what the law would be upon a hypothetical state of facts.[106] (Citation omitted)

Integral to the requirement of actual case or controversy is the ripeness of the issues involved. *Philippine Constitution Association v. Philippine Government*[107] teaches:

> Closely linked to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must

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103 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010) [Per J. Carpio Morales, *En Banc*]. (Citation omitted)

104 *Id.* at 479. (Citation omitted)

105 354 Phil. 415 (1998) [Per J. Panganiban, First Division].

106 *Id.* at 426.

107 801 Phil. 472 (2006) [Per J. Carpio, *En Banc*].

> allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[108] (Citations omitted)

"It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned."[109] There must be claims of abuse or violation of rights anchored on real acts, not merely hypothetical scenarios.[110] *Lozano v. Nograles*[111] provides the guidelines in determining the existence of this requirement:

> An aspect of the "case-or-controversy" requirement is the requisite of "ripeness". In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[112] (Citations omitted)

There are two reasons for this requirement: first, to respect the principle of separation of powers; and second, to avoid rendering advisory opinions on legislative or executive acts.[113]

In a separate opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*,[114] this Court explained:

> The requirement of an actual case or controversy is rooted on the respect for the separation of powers of the three branches of the government. Courts cannot supplant the discretionary acts of the legislative or the executive branch on the premise that they know of a wiser, more just, or expedient policy or course of action. They may only act in case the other branches acted outside the bounds of their powers or with grave abuse of discretion amounting to lack or excess of jurisdiction.
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> The other reason for requiring an actual case or controversy is to maintain the significance of this Court's role in making "final and binding construction[s] of law." Courts do not render mere advisory opinions.

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108 *Id.* at 486.

109 *Falcis III v. Civil Registrar General*, 861 Phil. 388, 440 (2019) [Per J. Leonen, *En Banc*].

110 J. Leonen, Separate Opinion in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, 841 Phil. 724, 861 (2018) [Per J. Caguioa, *En Banc*].

111 607 Phil. 334 (2009) [Per C.J. Puno, *En Banc*].

112 *Id.* at 341.

113 J. Leonen, Separate Opinion in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, 841 Phil. 724, 862–864 (2018) [Per J. Caguioa, *En Banc*].

114 842 Phil. 747 (2018) [Per J. Tijam, *En Banc*].

Judicial decisions are part of the legal system, and thus, have binding effects on actual persons, places, and things. Ruling on hypothetical situations with no bearing on any matter will weaken the import of this Court's issuances. In *Belgica, et al. v. Ochoa*:

> Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.
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> The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice." Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests." Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.
>
> The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.
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> . . . .

Thus, in cases where the constitutionality of a law is being questioned, it is not enough that the law or the regulation has been passed or is in effect. To rule on the constitutionality of provisions in the law without an actual case is to decide only the basis of the mere enactment of the statute. This amounts to a ruling on the wisdom of the policy imposed

by the Congress on the subject matter of the law.[115] (Citations omitted)

This Court has repeatedly emphasized the importance of an actual case or controversy.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[116] this Court dismissed the consolidated petitions assailing the constitutionality of the Human Security Act.[117] It found insufficient petitioners' "allegations of sporadic 'surveillance' and supposedly being tagged as 'communist fronts'"[118] to establish an actual case. It reminded that the alleged possibility of abuse in the law's implementation must be anchored on real events to warrant the exercise of judicial review.

A similar case, *Republic v. Roque*,[119] clarified that a controversy cannot be considered ripe for adjudication when the allegations are "highly-speculative [sic] and merely theorized."[120]

In *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[121] we found that the petitioners' allegations were based on speculations. As such, there were no actual facts from which we can deduce the alleged unconstitutionality of the assailed administrative issuances.

In *Private Hospitals Association of the Philippines, Inc.*,[122] this Court dismissed the petition challenging the constitutionality of several provisions of Republic Act No. 10932. We noted that the petition contained no assertion that the petitioner or its members suffered actual or direct injury from the challenged act. This Court stressed that "[i]n the absence of an actual and direct injury, any pronouncement by the Court would be purely advisory or sheer legal opinion[.]"[123]

The importance of an actual case or controversy was likewise stressed in *Velarde v. Social Justice Society*,[124] *Roy III v. Herbosa*,[125] *Philippine Constitution Association*, and *Falcis III*.

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115 J. Leonen, Separate Opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 793–795 (2018) [Per J. Tijam, *En Banc*].
116 646 Phil. 452 (2010) [Per J. Carpio Morales, *En Banc*].
117 Republic Act No. 9372 (2007).
118 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 482 (2010) [Per J. Carpio Morales, *En Banc*].
119 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, *En Banc*].
120 *Id.* at 308.
121 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].
122 842 Phil. 747 (2018) [Per J. Tijam, *En Banc*].
123 *Id.* at 783.
124 472 Phil. 285 (2004) [Per J. Panganiban, *En Banc*].
125 800 Phil. 459 (2016) [Per J. Caguioa, *En Banc*].

II (B)

Calleja v. Executive Secretary[126] explained that the actual case requirement is also satisfied when the parties establish a contrariety of legal rights:

> An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.[127]

This pronouncement was reiterated in the recent case of *Universal Robina Corporation v. Department of Trade and Industry*,[128] where this Court clarified that the actual-case requirement is met when there is a clear and convincing showing of contrariety of the parties' legal rights. To establish an actual case, the allegations of the parties must clearly demonstrate that there is contrariety of rights. [129]

Executive Secretary v. Pilipinas Shell[130] laid down the guidelines in determining the existence of clear and convincing contrariety of rights:

> Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a factual breach of rights. No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality. In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.[131]

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126 G.R. No. 252578, December 7, 2021 [Per J. Carandang, *En Banc*].
127 *Id.*
128 G.R. No. 203352, February 14, 2023 [Per J. Leonen, *En Banc*].
129 *Id.*
130 G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].
131 *Id.*

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,[132] this Court took cognizance of the petition challenging the curfew ordinances for minors. This Court decreed that the allegations of petitioners "conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction":

> "Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy." "[A]n actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.' In other words, 'there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.'" According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act."
>
> "Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."
>
> Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila Ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have – as will be gleaned from the substantive discussions below – conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the Court issued the TRO enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.[133] (Citations omitted)

Here, petitioners' allegations clearly and convincingly demonstrate a contrariety of legal rights such that there can be no other interpretation of the assailed agreement other than it is unconstitutional.

Petitioners argue that the Philippine government failed to make proper reservations in the JPEPA. They assert that the Philippines' schedule of reservations fails to completely list the constitutional exemptions and

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[132] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].
[133] *Id.* at 1090–1091.

exclusions on investments in certain economic sectors. They claim that Japanese citizens and corporations may now "own land, utilize, exploit[,] and enjoy natural and marine resources, operate public utilities, practice all professions, [and] own and manage mass media and advertising industries in the Philippines."[134] They likewise insist that the JPEPA's implementation "would inevitably harm [them] because of the contravention of constitutional principles that protect Filipino citizens, including the [reservation] of land ownership [to] Filipino citizens and the constitutional limitations on the power of the president to enter into international agreements, among others."[135]

Accordingly, we find that petitioners established an actual case or controversy.

II (C)

As discussed, for a party to establish an actual case, the party challenging the governmental act must show: (a) actual facts showing direct injury; or (b) a clear and convincing contrariety of legal rights. Either case is an as-applied challenge, where courts determine the existence of an actual case or controversy by reviewing the facts and allegations of unconstitutionality as applied to the petitioner. A court's ruling on a constitutionality issue is strictly predicated on the facts established or alleged by a party in relation to the assailed act.[136]

Exceptionally, however, an actual case may be established without need of alleging a factual breach or contrariety of legal rights. It is likewise satisfied when the conditions for a facial challenge have been met.

A facial review has been characterized as "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[137]

By asserting a facial challenge, a litigant must show that "a statute is invalid on its face as written and authoritatively construed,"[138] measured against the Constitution, without need to look at the facts of a case. "The inquiry uses the lens of relevant constitutional text and principle and focuses on what is within the four corners of the statute, that is, on how its provisions are worded. The constitutional violation is visible on the face of the

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134 *Rollo* (G.R. No. 185366), p. 1434.

135 *Rollo* (G.R. No. 184635), p. 605.

136 *Calleja v. Executive Secretary*, G.R. No. 252578, December 7, 2021 [Per J. Carandang, *En Banc*].

137 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, *En Banc*]. (Citation omitted)

138 J. Leonardo-De Castro, Separate Opinion in *Imbong v. Ochoa, Jr.*, 732 Phil. 1, 221 (2014) [Per J. Mendoza, *En Banc*].

statute."[139]

Disini v. Secretary of Justice[140] differentiates between an as-applied and a facial challenge:

> In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground — absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if [they assert] a violation of [their] own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.
>
> But this rule admits of exceptions. A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if [they claim] no violation of [their] own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether [their] speech constitutes a crime under an overbroad or vague law may simply restrain [themselves] from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills [them] into silence.[141] (Citations omitted)

Previously, a facial challenge was permitted only if the assailed acts "curtail the freedom of speech and its cognate rights[.]"[142] It was not "recognized as applicable to other provisions of the Constitution or the separation of powers."[143] This limitation was based on the primordial consideration given to the right to free speech and expression:

> The right to freedom of expression is a primordial right because it is not only an affirmation but a positive execution of the basic nature of the state defined in Article II, Section 1 of the 1987 Constitution:
>
> > The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.
>
> The power of the State is derived from the authority and mandate given to it by the people, through their representatives elected in the legislative and executive branches of government. The sovereignty of the Filipino people is dependent on their ability to freely express themselves without fear of undue reprisal by the government. Government, too, is shaped by comments and criticisms of the various publics that it serves.[144]

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139 *Id.*

140 727 Phil. 28 (2014) [Per J. Abad, *En Banc*].

141 *Id.* at 121–122.

142 *Calleja v. Executive Secretary*, G.R. No. 252578, December 7, 2021 [Per J. Carandang, *En Banc*].

143 *Id.*

144 J. Leonen, Separate Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 354–355 (2014) [Per J. Abad, *En Banc*].

Thus, when a statute or governmental act "is so broad that there is a clear and imminent threat that actually operates or it can be used as a prior restraint of speech"[145] a facial review may be allowed notwithstanding the absence of facts showing actual breach.

However, the recent cases of *Universal Robina* and *Pilipinas Shell* expanded the scope of a facial challenge. In addition to statutes involving free speech and expression, this Court extended the application of a facial review to governmental acts that infringe on fundamental rights and those that violate constitutional provisions pertaining to emergency measures.

The second circumstance pertains to egregious or imminent violation of a fundamental right, entailing the exercise of judicial power, even without actual facts or contrariety of legal rights. *Parcon-Song v. Parcon*[146] teaches:

> The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.[147]

The power to take cognizance of a facial challenge of a governmental act involving an egregious or imminent violation of a fundamental constitutional right is rooted in this Court's mandate under Article VIII, Section 5 of the Constitution.

The basic wisdom for this lies in the nature of the threat involved. In cases involving imminent or egregious violation of fundamental rights, this Court is justified in ruling on questions of constitutionality without the need of an actual breach. Our duty to safeguard the constitutional rights of the people would be rendered ineffective if in these cases, this Court would demand from them actual breach of their fundamental rights before they may be protected.

Yet, for this to apply, it is not enough that a party alleges a violation of a fundamental right; they must establish that the violation is "so widespread that virtually any citizen could raise the issue."[148]

This Court has long recognized how a violation of a fundamental right

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145 *Id.*
146 874 Phil. 364 (2020) [Per J. Leonen, *En Banc*].
147 *Id.* at 20.
148 *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203352, February 14, 2023 [Per J. Leonen, *En Banc*].

is a means to question the validity of an act.

In *Ebralinag v. Division of Superintendent of Schools of Cebu*,[149] this Court set aside the expulsion orders against the petitioners after recognizing their constitutional right "to refuse to salute the Philippine flag on account of their religious beliefs[.]"[150]

Likewise, *Islamic Da'wah Council of the Philippines v. Office of the Executive Secretary*,[151] declared void Executive Order 46, series of 2001, which conferred on the Office of Muslim Affairs the sole authority of issuing halal certifications. This Court decreed:

> Without doubt, classifying a food product as halal is a religious function because the standards used are drawn from the Qur'an and Islamic beliefs. By giving OMA the exclusive power to classify food products as halal, EO 46 encroached on the religious freedom of Muslim organizations like herein petitioner to interpret for Filipino Muslims what food products are fit for Muslim consumption. Also, by arrogating to itself the task of issuing halal certifications, the State has in effect forced Muslims to accept its own interpretation of the Qur'an and Sunnah on halal food.[152]

Nonetheless, not all alleged constitutional violations are contemplated under the second situation. For instance, whether the allocated constitutional boundaries are followed, whether the exercise of an allocated power was done within the constitutional limits on national economy and patrimony, and whether the basic requirements for a constitutional amendment or revision were complied with are issues where this Court can exercise judicial restraint. In this instance, it is imperative that the litigant establish an actual breach or contrariety of legal rights before this Court may act on it.

The third instance refers to conditions of emergency evading review. As held in *Universal Robina*, even without actual facts or a contrariety of legal rights, this Court can still take on a case if:

> . . . it involves a constitutional provision invoking emergency or urgent measures, and such review can potentially be rendered moot by the transitoriness of the emergency. Thus, the questioned action would be capable of repetition, yet because of the transitoriness of the emergency involved, would evade judicial review and not allow any relief. Under such circumstances, this Court may provide controlling doctrine over the provision.[153]

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149 G.R. Nos. 95770 & 95887, March 1, 1993 [Per J. Griño-Aquino, *En Banc*].

150 *Id.*

151 453 Phil. 440 (2003) [Per J. Corona, *En Banc*].

152 *Id.* at 449.

153 *Universal Rubina Corporation v. Department of Trade and Industry*, G.R. No. 203352, February 14, 2023 [Per J. Leonen, *En Banc*].

In *Pilipinas Shell*:

> The third scenario is when a constitutional provision invokes emergency or urgent measures. These measures, by their nature, are temporary, allowing them to avoid judicial review even if the issue is capable of repetition. Waiting for an actual dispute or injury to occur may only result in irreversible damage or harm to an individual; yet, with the risk that the measure would be repealed or rendered obsolete, filing a lawsuit or seeking judicial recourse would be futile. As such, this Court may, despite no actual facts, proceed to determine the applicable doctrine on the assailed provision. This includes challenges on the suspension of the privilege of the writ of *habeas corpus*, the declaration of martial law, and the exercise of emergency powers.[154]

A facial challenge, used "only as a last resort"[155] to avert the chilling effect on protected speech,[156] infringement of fundamental rights, and violation of constitutional provisions on emergency measures, can only be invoked when the requisites for its applicability are sufficiently established. Otherwise, litigants raising issues with constitutional import must establish the existence of actual facts or contrariety of rights.[157] In *Falcis III*:

> Ultimately, petitions before this Court that challenge an executive or legislative enactment must be based on actual facts, sufficiently for a proper joinder of issues to be resolved. If litigants wish to assail a statute or regulation on its face, the burden is on them to prove that the narrowly-drawn [sic] exception for an extraordinary judicial review of such statute or regulation applies.
>
> When faced with speculations—situations that have not yet fully ripened into clear breaches of legally demandable rights or obligations—this Court shall refrain from passing upon the case. Any inquiries that may be made may be roving, unlimited, and unchecked. In contrast to political branches of government, courts must deal with specificities:
>
> > It is not for this court to rehearse and re-enact political debates on what the text of the law should be. In political forums, particularly the legislature, the creation of the text of the law is based on a general discussion of factual circumstances, broadly construed in order to allow for general application by the executive branch. Thus, the creation of the law is not limited by particular and specific facts that affect the rights of certain individuals, per se.
> >
> > Courts, on the other hand, rule on adversarial positions based on existing facts established on a specific case-to-case basis, where parties affected by the legal provision seek the courts' understanding of the law.

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154 *Executive Secretary v. Pilipinas Shell Corporation*, G.R. No. 209216, February 21, 2023 [Per J. Leonen, *En Banc*].

155 *Falcis III v. Civil Registrar General*, 861 Phil. 388, 446 (2019) [Per J. Leonen, *En Banc*].

156 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, *En Banc*].

157 *Falcis III v. Civil Registrar General*, 861 Phil. 388, 449–450 (2019) [Per J. Leonen, *En Banc*].

> The complementary nature of the political and judicial branches of government is essential in order to ensure that the rights of the general public are upheld at all times. In order to preserve this balance, branches of government must afford due respect and deference for the duties and functions constitutionally delegated to the other. Courts cannot rush to invalidate a law or rule. Prudence dictates that we are careful not to veto political acts unless we can craft doctrine narrowly tailored to the circumstances of the case.[158] (Citations omitted)

II (D)

Locus standi refers to a party's "right of appearance in a court of justice on a given question."[159] This requirement demands that the litigants have "personal and substantial interest"[160] such that they have "sustained or will sustain direct injury as a result of the governmental act that is being challenged."[161] In *Galicto v. Aquino III*:[162]

> "*Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." This requirement of standing relates to the constitutional mandate that this Court settle only actual cases or controversies.
>
> Thus, as a general rule, a party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.
>
> Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."[163] (Citations omitted)

To possess legal standing, the party must prove "not only that the law or any governmental act is invalid, but also that [they] sustained or [are] in

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158 *Id.* at 449-450.

159 *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 677 (2010) [Per J. Bersamin, *En Banc*]. (Citation omitted)

160 *Anak Mindanao Party-List Group v. Executive Secretary*, 558 Phil. 338, 350 (2007) [Per J. Carpio Morales, *En Banc*].

161 *Id.*

162 683 Phil. 141 (2012) [Per J. Brion, *En Banc*].

163 *Id.* at 170–171.

immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that [they] suffer[] thereby in some indefinite way."[164] A litigant must demonstrate that, due to the assailed act, they were or will be "denied some right or privilege to which [they are] lawfully entitled or that [they are] about to be subjected to some burdens or penalties[.]"[165]

Provincial Bus Operators discusses the reasons for this rule:

> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
>
> > A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[166] (Citations omitted)

Yet, there are instances when this Court has adopted a liberal stance on the requirement of legal standing. We have taken cognizance of petitions involving matters of "critical significance" even if filed by parties who failed to establish their personal or substantial interest in the challenged acts:

> Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance." This Court summarized the requirements for granting legal standing to "non-traditional suitors" in *Funa v. Villar*, thus:
>
> > 1.) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
> >
> > 2.) For voters, there must be a showing of obvious interest in the validity of the election law in question;
> >
> > 2.) For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

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[164] *Anak Mindanao Party-List Group v. Executive Secretary*, 558 Phil. 338, 351 (2007) [Per J. Carpio Morales, *En Banc*].

[165] *Id.* (Citation omitted)

[166] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 249–250 (2018) [Per J. Leonen, *En Banc*].

> 4.) For legislators, there must be a claim that the official action complained of infringes their prerogatives as [legislators].
>
> Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving [them] a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect [their] own interests."[167] (Citations omitted)

Associations may likewise institute actions on behalf of their members when the conditions laid down in *Provincial Bus Operators* have been met:

> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
>
> In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.
>
> Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.
>
> In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves — i.e., the amount they would pay for the lease of the motels — will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.
>
> In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.
>
> Only constitutional rights shared by many and requiring a grounded

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[167] *Id.* at 250–251.

> level of urgency can be transcendent. For instance, in *The Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the association was allowed to file on behalf of its members considering the importance of the issue involved, i.e., the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.
>
> This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.[168] (Citations omitted)

These exceptions are founded on the issues being of transcendental importance. In *Funa v. Villar*:[169]

> To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, the Court has time and again acted liberally on the locus standi requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a [g]overnment act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a catena of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.[170] (Citations omitted)

This Court has many times recognized the transcendental importance of issues and relaxed the rule on standing. In *Bayan v. Zamora*:[171]

> In the same vein, petitioner Integrated Bar of the Philippines (IBP) is stripped of standing in these cases. As aptly observed by the Solicitor General, the IBP lacks the legal capacity to bring this suit in the absence of a board resolution from its Board of Governors authorizing its National President to commence the present action.
>
> Notwithstanding, in view of the paramount importance and the constitutional significance of the issues raised in the petitions, this Court, in the exercise of its sound discretion, brushes aside the procedural barrier and takes cognizance of the petitions, as we have done in the early *Emergency Powers Cases*, where we had occasion to rule:

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168 *Id.* at 255–257.
169 686 Phil. 571 (2012) [Per J. Velasco, Jr., *En Banc*].
170 *Id.* at 585.
171 396 Phil. 623 (2000) [Per J. Buena, *En Banc*].

> ". . . ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were involving only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that *'transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.'* We have since then applied the exception in many other cases. . . ."

This principle was reiterated in the subsequent cases of *Gonzales vs. COMELEC*, *Daza vs. Singson*, and *Basco vs. Phil. Amusement and Gaming Corporation*, where we emphatically held:

> "Considering however the importance to the public of the case at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of the government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of this petition. . . ."

Again, in the more recent case of *Kilosbayan vs. Guingona, Jr.*, this Court ruled that in cases of transcendental importance, *the Court may relax the standing requirements and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review.*[172] (Emphasis in the original, citations omitted)

Likewise, in *Chavez v. Gonzales*,[173] this Court took cognizance of a challenge against government officials' acts, brought by a litigant who "failed to allege 'such a personal stake in the outcome of the controversy[.]"[174] Adopting a liberal approach on the rule on *locus standi*, this Court decreed that "when a case involves an issue of overarching significance to our society, we . . . brush aside technicalities of procedure and take cognizance of this petition, seeing as it involves a challenge to the most exalted of all the civil rights, the freedom of expression."[175]

In *Kilusang Mayo Uno*, we relaxed the rule on standing on account of the transcendental importance of the "validity of increase in [Social Security System] contributions[.]"[176]

Notwithstanding the liberal approach this Court has adopted, a mere invocation of transcendental importance would not suffice to clothe one with legal standing. In determining whether a case involves a matter of transcendental importance, the following guidelines should be considered:

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172 *Id.* at 648–649.
173 569 Phil. 155 (2008) [Per C.J. Puno, *En Banc*].
174 *Id.* at 193. (Citation omitted)
175 *Id.* at 193–194. (Citations omitted)
176 850 Phil. 1168, 1204 (2019) [Per J. Leonen, *En Banc*].

> (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[177]

Unlike in the mentioned cases, petitioners cannot be accorded standing based on transcendental importance. They failed to comply with the three determining factors. First, this case does not involve public funds or assets. Second, petitioners, based on their allegations, failed to establish that respondents committed "a clear case of disregard of a constitutional or statutory prohibition[.]"[178] Finally, their allegations are insufficient to convince this Court that there is no "other party with a more direct and specific interest in the questions being raised."[179]

Further, we stressed in *Falcis III* that even in cases filed by "non-traditional suitors," petitioners must still prove they have sustained or will sustain "some kind of injury-in-fact":

> Even for exceptional suits filed by taxpayers, legislators, or concerned citizens, this Court has noted that the party must claim some kind of injury-in-fact. For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of. For taxpayers, they must show "sufficient interest in preventing the illegal expenditure of money raised by taxation[.]" Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office. Third-party suits must likewise be brought by litigants who have "sufficiently concrete interest" in the outcome of the dispute.[180] (Citations omitted)

Here, petitioners IDEALS et al. sue as taxpayers, concerned citizens, nongovernmental organizations, and members of Congress. However, the general grievances they invoke are insufficient to clothe them with *locus standi*. They failed to adequately show that they have sustained or are in immediate danger of sustaining direct injury by reason of the challenged acts.

Petitioners FairTrade and AIWA claim that the JPEPA's implementation would directly injure their members as they would be deprived of rights and privileges to which they are entitled under the Constitution. But as discussed, associations must first establish the existence of "special reasons why the truly injured parties may not be able to sue" before they may be allowed to sue on

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177 *Chamber of Real Estate and Builders Association, Inc. v. Energy Regulatory Commission*, 638 Phil. 542, 556–557 (2010) [Per J. Brion, *En Banc*].

178 *Id.*

179 *Id.*

180 *Falcis III v. Civil Registrar General*, 861 Phil. 388, 532–533 (2019) [Per J. Leonen, *En Banc*].

behalf of their members.[181] Here, they failed to show why none of their members could institute the action to protect their interests.

Neither are petitioners Salonga and Guingona clothed with legal standing to institute the action. They failed to demonstrate that they have sustained or are in danger of sustaining direct injury because of the JPEPA's implementation. They offered no proof of the injury-in-fact they have suffered or will suffer. As aptly argued by respondents, "[g]eneral grievances or theoretical disagreements with government policy are not . . . sufficient to clothe citizens to sue."[182]

However, the same is not the case with petitioners-legislators.

Settled is the rule that "legislators have a legal standing to see to it that the prerogative, powers[,] and privileges vested by the Constitution in their office remain inviolate."[183] *Philippine Constitution Association v. Enriquez*[184] discusses the basis for this:

> To the extent the powers of Congress are impaired, so is the power of each member thereof, since [their] office confers a right to participate in the exercise of the powers of that institution.
>
> An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.[185] (Citations omitted)

In *Pimentel, Jr. v. Office of the Executive Secretary*,[186] this Court upheld petitioner Senator Aquilino Pimentel, Jr.'s legal standing to sue since the petition involved "the power of the Senate to grant or withhold its concurrence to a treaty entered into by the executive branch."[187]

Likewise, the authority of petitioner-legislators to institute the action in *Biraogo v. Philippine Truth Commission of 2010*[188] was sustained after it had been found that "their petition primarily invokes usurpation of the power of the Congress as a body to which they belong as members."[189]

In these cases, petitioners-legislators are clothed with standing to

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181 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 256 (2018) [Per J. Leonen, *En Banc*].
182 *Rollo* (G.R. No. 184635), p. 472.
183 *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374, 439 (2010) [Per J. Mendoza, *En Banc*].
184 305 Phil. 546 (1994) [Per J. Quiason, *En Banc*].
185 *Id.* at 563.
186 501 Phil. 303 (2005) [Per J. Puno, *En Banc*].
187 *Id.* at 313.
188 651 Phil. 374 (2010) [Per. J. Mendoza, *En Banc*].
189 *Id.* at 438–439.

institute the action. They claim that adequate reservations have not been made, limiting the power of Congress to enact future laws inconsistent with the provisions of the JPEPA.

III

A treaty is defined under the Vienna Convention on the Law of Treaties (Vienna Convention) as "an international agreement governed by international law and concluded between States in written form . . . whether embodied in a single instrument or in two or more related instruments and whatever its particular designation[.]"[190]

The authority to negotiate and enter into treaties is solely bestowed on the president, who represents the country in all external relations. "As the chief architect of foreign policy, . . . the [p]resident is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations."[191]

Nonetheless, this authority is not absolute. The Constitution limits this power by requiring the Senate's concurrence for a treaty or international agreement to be valid and effective.[192] Article VII, Section 21 states:

> 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.

In addition, the president must ensure that "paramount importance [is given] to the sovereignty of the nation, the integrity of its territory, its interest, and the right of the sovereign Filipino people to self-determination."[193] In the conduct of foreign relations, the president must guarantee that all treaties entered into are in line with the Constitution and statutes. In *Pangilinan v. Cayetano*,[194] this Court discussed:

> The Constitution is the fundamental law of the land. It mandates the president to "ensure that the laws be faithfully executed." Both in negotiating and enforcing treaties, the president must ensure that all actions are in keeping with the Constitution and statutes. Accordingly, during negotiations, the president can insist on terms that are consistent with the Constitution and statutes, or refuse to pursue negotiations if those negotiations' direction is such that the treaty will turn out to be repugnant to

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190 Vienna Convention on the Law of Treaties, May 23, 1969 (1972), art. 2(1)(A).
191 *Pimentel, Jr. v. Office of the Executive Secretary*, 501 Phil. 303, 313 (2005) [Per J. Puno, *En Banc*].
192 *Id.*
193 *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 331 (2016) [Per C.J. Sereno, *En Banc*].
194 G.R. Nos. 238875, 239483, & 240954, March 16, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374> [Per J. Leonen, *En Banc*].

the Constitution and our statutes. [195] (Citation omitted)

On that score, the Constitution vests this Court with the authority to declare a treaty unconstitutional. Article VIII, Section 5(2)(a) states:

> SECTION 5. The Supreme Court shall have the following powers:
>
> . . . .
>
> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

In determining the validity of the JPEPA, this Court is not asserting our supremacy over the two coequal branches. We do not nullify or invalidate the acts of the Legislature and the Executive. We merely assert our obligation and ensure that the other branches are acting within constitutional boundaries.[196]

IV

Petitioners allege that the JPEPA impairs the legislative power. They insist that in agreeing to reduce or eliminate tariff rates, then President Macapagal-Arroyo relied on her delegated powers under Sections 401 and 402 of the Tariff and Customs Code. Yet, they say that these tariff provisions supposedly violate Article VI, Section 28(2) of the Constitution, as they contain no restrictions within which the president may reduce import duties.[197]

These contentions have no merit.

"Our governmental structure rests on the principle of separation of powers."[198] This principle provides that "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."[199] The power of taxation, in particular, is a legislative power, as observed in *Abakada Guro Party List v. Ermita*:[200]

> The principle of separation of powers ordains that each of the three

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[195] *Id.*

[196] *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936) [Per J. Laurel, *En Banc*].

[197] *Rollo* (G.R. No. 184635), pp. 612–617.

[198] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 232 (2018) [Per J. Leonen, *En Banc*].

[199] *Angara v. Electoral Commission*, 63 Phil. 139, 156 [Per J. Laurel, *En Banc*].

[200] 506 Phil. 1 (2005) [Per J. Austria-Martinez, *En Banc*].

> great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim: *potestas delegata non delegari potest* which means "what has been delegated, cannot be delegated." This doctrine is based on the ethical principle that such as delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.
>
> With respect to the Legislature, Section 1 of Article VI of the Constitution provides that "the Legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives." The powers which Congress is prohibited from delegating are those which are strictly, or inherently and exclusively, legislative. Purely legislative power, which can never be delegated, has been described as the authority to make a complete law — complete as to the time when it shall take effect and as to whom it shall be applicable — and to determine the expediency of its enactment. Thus, the rule is that in order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature — that is, one appertaining exclusively to the legislative department. It is the nature of the power, and not the liability of its use or the manner of its exercise, which determines the validity of its delegation.[201] (Citations omitted)

Likewise, in *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*:[202]

> The power of taxation, being an essential and inherent attribute of sovereignty, belongs, as a matter of right, to every independent government, and needs no express conferment by the people before it can be exercised. It is purely legislative and, thus, cannot be delegated to the executive and judicial branches of government without running afoul to the theory of separation of powers.[203]

Yet, this rule is not absolute. In *Abakada Guro*, this Court listed several exceptions, including the delegation of tariff powers to the president:

> Nonetheless, the general rule barring delegation of legislative powers is subject to the following recognized limitations or exceptions:
>
> (1) *Delegation of tariff powers to the President under Section 28 (2) of Article VI of the Constitution*;
>
> (2) Delegation of emergency powers to the President under Section 23 (2) of Article VI of the Constitution.
>
> (3) Delegation to the people at large;

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201 *Id.* at 107–108.
202 760 Phil. 519 (2015) [Per J. Velasco, Jr., *En Banc*].
203 *Id.* at 537.

(4) Delegation to local governments; and

(5) Delegation to administrative bodies.[204] (Emphasis supplied)

Article VI, Section 28(2) of the Constitution, in turn, states:

> (2) 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.

Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines[205] discusses the basic postulates ingrained in this constitutional provision: first, the president's authority to fix and impose tariff rates must emanate from Congress; second, "[t]he authorization granted to the [p]resident must be embodied in a law"; and third, the president's authority must be exercised in line with the limitations imposed by Congress.[206]

The Tariff and Customs Code[207] was enacted to implement this constitutional provision. Its pertinent provisions provide:

> SECTION 104. All Tariff Sections, Chapters, headings and subheadings and the rates of import duty under Section 104 of Presidential Decree No. 34 and all subsequent amendment issues under Executives Orders and Presidential Decrees are hereby adopted and form part of this Code.
>
> There shall be levied, collected, and paid upon all imported articles the rates of duty indicated in the Section under this Section except as otherwise specifically provided for in this Code: Provided, that the maximum rate shall not exceed one hundred per cent ad valorem.
>
> The rates of duty herein provided or subsequently fixed pursuant to Section four hundred one of this Code shall be subject to periodic investigation by the Tariff Commission and may be revised by the President upon recommendation of the National Economic and Development Authority.
>
> The rates of duty herein provided shall apply to all products whether imported directly or indirectly of all foreign countries, which do not discriminate against Philippine export products. An additional 100% across-the-board duty shall be levied on the products of any foreign country which discriminates against Philippine export products.

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[204] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 108 (2005) [Per J. Austria-Martinez, *En Banc*].
[205] 503 Phil. 485 (2005) [Per J. Tinga, *En Banc*].
[206] *Id.* at 527.
[207] Presidential Decree No. 1464 (1994), as amended by Executive Order Nos. 1, 2, 5, 8, 61, 94, 115, 116, 148 (1994).

SECTION 401. Flexible Clause. —

a. In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic and Development Authority (hereinafter referred to as NEDA), is hereby empowered: (1) to increase, reduce or remove existing protective rates of import duty (including any necessary change in classification). The existing rates may be increased or decreased to any level, in one or several stages but in no case shall the increased rate of import duty be higher than a maximum of one hundred (100) per cent ad valorem; (2) to establish import quota or to ban imports of any commodity, as may be necessary; and (3) to impose an additional duty on all imports not exceeding ten (10%) per cent ad valorem whenever necessary; Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One Hundred and Four of this Code, including those subsequently granted pursuant to this section.

b. Before any recommendation is submitted to the President by the NEDA pursuant to the provisions of this section, except in the imposition of an additional duty not exceeding ten (10) per cent ad valorem, the Commission shall conduct an investigation in the course of which they shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard. The Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. The Commission shall submit their findings and recommendations to the NEDA within thirty (30) days after the termination of the public hearings.

c. The power of the President to increase or decrease rates of import duty within the limits fixed in subsection "a" shall include the authority to modify the form of duty. In modifying the form of duty, the corresponding ad valorem or specific equivalents of the duty with respect to imports from the principal competing foreign country for the most recent representative period shall be used as bases.

d. The Commissioner of Customs shall regularly furnish the Commission a copy of all customs import entries as filed in the Bureau of Customs. The Commission or its duly authorized representatives shall have access to, and the right to copy all liquidated customs import entries and other documents appended thereto as finally filed in the Commission on Audit.

e. The NEDA shall promulgate rules and regulations necessary to carry out the provisions of this section.

f. Any Order issued by the President pursuant to the provisions of this section shall take effect thirty (30) days after promulgation, except in the imposition of additional duty not exceeding ten (10) per cent ad valorem which shall take effect at the discretion of the President.

SECTION 402. Promotion of Foreign Trade. —

a. For the purpose of expanding foreign markets for Philippine products as a means of assistance in the economic development of the country, in overcoming domestic unemployment, in increasing the purchasing power of the Philippine peso, and in establishing and maintaining better relations between the Philippines and other countries, the President, is authorized from time to time:

(1) To enter into trade agreements with foreign governments or instrumentalities thereof; and

(2) To modify import duties (including any necessary change in classification) and other import restrictions, as are required or appropriate to carry out and promote foreign trade with other countries: Provided, however, That in modifying import duties or fixing import quota the requirements prescribed in subsection "a" of Section 401 shall be observed: Provided, further, That any modification of import duties and any fixing of import quotas made pursuant to this agreement on ASEAN Preferential Trading Arrangements ratified on August 1, 1977 shall not be subject to the limitations of aforesaid section "a" of Section 401.

b. The duties and other import restrictions as modified in subsection "a" above, shall apply to articles which are the growth, produce or manufacture of the specific country, whether imported directly or indirectly, with which the Philippines has entered into a trade agreement: Provided, That the President may suspend the application of any concession to articles which are the growth, produce or manufacture of such country because of acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes set in this section; and the duties and other import restrictions as negotiated shall be in force and effect from and after such time as specified in the Order.

c. Nothing in this section shall be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the Philippines or any claim of the Philippines against any foreign country.

d. Before any trade agreement is concluded with any foreign government or instrumentality thereof, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order than any interested person may have an opportunity to present his views to the Commission which shall seek information and advice from the Department of Agriculture, Department of Natural Resources, Department of Trade and Industry, Department of Tourism, the Central Bank of the Philippines, the Department of Foreign Affairs, the Board of Investments and from such other sources as it may deem appropriate.

e. (1) In advising the President, as a result of the trade agreement

> entered into, the Commission shall determine whether the domestic industry has suffered or is being threatened with injury and whether the wholesale prices at which the domestic products are sold are reasonable, taking into account the cost of raw materials, labor, overhead, a fair return on investment, and the overall efficiency of the industry.
>
> (2) The NEDA shall evaluate the report of the Commission and submit recommendations to the President.
>
> (3) Upon receipt of the report of the findings and recommendations of the NEDA, the President may prescribe such adjustments in the rates of import duties, withdraw, modify or suspend, in whole or in part, or institute such other import restrictions as the NEDA recommends to be necessary in order to fully protect domestic industry and the consumers, subject to the condition that the wholesale prices of the domestic products concerned shall be reduced to, or maintained at, the level recommended by the NEDA unless for good cause shown, an increase thereof, as recommended by NEDA, is authorized by the President. Should increases be made without such authority, the NEDA shall immediately notify the President, who shall allow the importation of competing products in such quantities as to protect the public from the unauthorized increase in wholesale prices.
>
> f. This section shall not prevent the effectivity of any executive agreement or any future preferential trade agreement with any foreign country.
>
> g. The NEDA and the Commission are authorized to promulgate such reasonable procedure, rules and regulations as they may deem necessary to execute their respective functions under this section.

In *Southern Cross Cement Corporation*, this Court expounded on the third condition—that the president's authority must be exercised in line with the limitations imposed by Congress—as follows:

> (3) The authorization to the President can be exercised only within the specified limits set in the law and is further subject to limitations and restrictions which Congress may impose. Consequently, if Congress specifies that the tariff rates should not exceed a given amount, the President cannot impose a tariff rate that exceeds such amount. If Congress stipulates that no duties may be imposed on the importation of corn, the President cannot impose duties on corn, no matter how actively the local corn producers lobby the President. Even the most picayune of limits or restrictions imposed by Congress must be observed by the President.
>
> There is one fundamental principle that animates these constitutional postulates. 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 the legislature under the Constitution.
>
> Without Section 28(2), Article VI, the executive branch has no

> authority to impose tariffs and other similar tax levies involving the importation of foreign goods. Assuming that Section 28(2) Article VI did not exist, the enactment of the SMA by Congress would be voided on the ground that it would constitute an undue delegation of the legislative power to tax. The constitutional provision shields such delegation from constitutional infirmity, and should be recognized as an exceptional grant of legislative power to the President, rather than the affirmation of an inherent executive power.
>
> This being the case, the qualifiers mandated by the Constitution on this presidential authority attain 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 further, Congress is further empowered to impose limitations and restrictions on this presidential authority. *On this last power, the provision does not provide for specified conditions, such as that the limitations and restrictions must conform to prior statutes, internationally accepted practices, accepted jurisprudence, or the considered opinion of members of the executive branch.*
>
> . . . .
>
> There is only one viable ground for challenging the legality of the limitations and restrictions imposed by Congress under Section 28(2) Article VI, and that is such limitations and restrictions are themselves violative of the Constitution. Thus, no matter how distasteful or noxious these limitations and restrictions may seem, the Court has no choice but to uphold their validity unless their constitutional infirmity can be demonstrated.[208] (Emphasis supplied)

To repeat, Congress imposes the limitations on the president's delegated power. These need not conform or be similar to previous laws. As long as the limitations do not transgress the Constitution, we will uphold their presumed constitutionality.

On this note, petitioners FairTrade et al. maintain that the Constitution limits the president's delegated power in that it must be exercised "within the framework of the National Development Program of the [g]overnment."[209] However, this phrase, as correctly argued by respondents, limits "the Legislature's authority to impose limits on what it delegates," not the exercise of the president's delegated power.[210]

In any case, petitioners cannot collaterally question the constitutionality of Sections 401 and 402 of the Tariff and Customs Code. "Collateral attacks on a presumably valid law are not allowed. Unless a law, rule, or act is annulled in a direct proceeding, it is presumed valid."[211] "A collateral attack

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[208] *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485, 527–530 (2005) [Per J. Tinga, *En Banc*].

[209] *Rollo* (G.R. No. 185366), p. 1425.

[210] *Rollo* (G.R. No. 184635), p. 477, *citing* JOAQUIN G. BERNAS, S.J, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 718 (1996).

[211] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1205 (2019) [Per J. Leonen, *En Banc*]. (Citation omitted)

is an attack, made as an incident in another action, whose purpose is to obtain a different relief."[212]

The rule was discussed in *Palencia v. People*:[213]

> Additionally, the issue of a statute's constitutionality can only be assailed through a direct attack, with the purported unconstitutionality pleaded directly before the court. *San Miguel Brewery, Inc. v. Magno* emphasized that a collateral attack—"an attack, made as an incident in another action, whose purpose is to obtain a different relief"—on a presumably valid law is forbidden by public policy[.] *Tan v. Bausch & Lomb, Inc.* explains:
>
> > Furthermore, the order of the trial court was a patent nullity. In resolving the pending incidents of the motion to transfer and motion to quash, the trial court should not have allowed petitioners to collaterally attack the validity of A.O. Nos. 113-95 and 104-96. We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.
>
> This was reiterated in *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, where this Court stated:
>
> > Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[214] (Citations omitted)

Considering that the Petitions here were instituted to challenge the JPEPA's constitutionality, petitioners cannot collaterally question the constitutionality of Sections 401 and 402 of the Tariff and Customs Code.

V

Petitioners insist that the Philippine list is insufficient for only covering the manufacturing and services sectors. The JPEPA's nondiscriminatory principles and the exclusions, exemptions, and reservations provided under

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212 *Go v. Echavez*, 765 Phil. 410, 424 (2015) [Per J. Brion, Second Division].

213 G.R. No. 219560, July 1, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66582> [Per J. Leonen, Third Division].

214 *Id.*

the Constitution have allegedly been disregarded, allowing foreigners to participate in sectors that are only for Filipino citizens.[215]

Respondents counter that the JPEPA includes the constitutional exceptions, exclusions, and reservations. They cite Article 94 of the JPEPA, which defines the limitations of the parties' obligations. They also refer to Annex 7, which provides the Philippine schedule of reservations. They stress that Article 87 states that Articles 89, 90, and 93 do not apply to investments in the service sectors. They likewise claim that Article 70 of the Trade in Services Chapter lists the industries, sectors, and activities not covered by the JPEPA.[216]

The issues on the JPEPA's alleged violation of the constitutionally and statutorily required exclusions, exemptions, or reservations being essentially interrelated, this Court shall discuss them simultaneously.

The Philippines' first bilateral free trade agreement in half a century,[217] the JPEPA is a comprehensive agreement aimed at increasing trade and investment opportunities between Japan and the Philippines.[218] It seeks to strengthen economic relations between the two countries by encouraging a freer transborder flow of goods, persons, services, and capital.[219]

The JPEPA consists of 16 chapters:

Chapter 1	General Provisions
Chapter 2	Trade in Goods
Chapter 3	Rules of Origin
Chapter 4	Customs Procedures
Chapter 5	Paperless Trading
Chapter 6	Mutual Recognition
Chapter 7	Trade in Services
Chapter 8	Investment
Chapter 9	Movement of Natural Persons
Chapter 10	Intellectual Property
Chapter 11	Government Procurement
Chapter 12	Competition
Chapter 13	Improvement of the Business Environment
Chapter 14	Cooperation

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215 *Rollo* (G.R. No. 185366), pp. 1428–1433.

216 *Rollo* (G.R. No. 184635), pp. 484–493.

217 *See Japan-Philippines Economic Partnership Agreement (JPEPA): An Assessment*, SENATE ECONOMIC PLANNING OFFICE, September 2007, 1, *available at* http://legacy.senate.gov.ph/publications/PB%202007-01%20-%20Japan-Philippines%20Economic%20Partnership%20Agreement%20(JPEPA),%20An%20assesment.pdf (last accessed on March 11, 2022).

218 *Id.*

219 *See* Aspen Institute, *JPEPA Briefer*, 2, *available at* https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/GHD/japan_philippines.pdf, (last accessed on March 11, 2022).

Chapter 15	Dispute Avoidance and Settlement
Chapter 16	Final Provisions

Eight annexes supplement its provisions:

Annex 1 referred to in Chapter 2	Schedules in relation to Article 18
Annex 2 referred to in Chapter 3	Product Specific Rules
Annex 3 referred to in Chapter 3	Minimum Data Requirement for Certificate of Origin
Annex 4 referred to in Chapter 6	Sectoral Annex in relation to Article 61
Annex 5 referred to in Chapter 7	Financial Services
Annex 6 referred to in Chapter 7	Schedule of Specific Commitments and List of Most-Favored-Nation Treatment Exemptions
Annex 7 referred to in Chapter 8	Reservations for Existing and Future Measures
Annex 8 referred to in Chapter 9	Specific Commitments for the Movement of Natural Persons

To achieve their objective of increasing opportunities, the Philippines and Japan listed several commitments covering different economic sectors, such as trade in services and investment, among others. These liberalization commitments were scheduled using two different types of approaches: the positive list and the negative list approaches.[220]

For the Trade in Services Chapter, the JPEPA uses the positive list approach. Under this approach, the parties' commitments shall only apply to sectors or subsectors appearing in their schedule of commitments.[221]

For the Investment Chapter, the JPEPA adopts the negative list approach, which presupposes that the parties' liberalization commitments shall apply in full except to sectors, measures, or activities enumerated in their schedule. The sectors and measures enumerated in this list are those deemed excluded from the parties' liberalization commitments,[222] which petitioners now assail as violative of the Constitution.

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220 *Rollo* (G.R. No. 184635), p. 493.

221 United Nations Conference on Trade and Development, *Preserving Flexibility in IIAs: The Use of Reservations, United Nations*, UNITED NATIONS, 17–18, *available at* https://unctad.org/system/files/official-document/iteiit20058_en.pdf (last accessed on March 11, 2022). *See also rollo* (G.R. No. 184635), p. 493.

222 *Id.*

V (A)

Some of the liberalization commitments introduced by the JPEPA are the nondiscriminatory principles, such as the national treatment and most-favored-nation treatment obligations.[223]

Under the national treatment rule, a party to an agreement is prohibited from treating the services, service suppliers, investors, and investment of the other party less favorably than it treats those provided by its own nationals.[224] For the chapters on Trade in Services and Investment, Articles 73 and 89 of the JPEPA provide for the rule:

> Article 73
> National Treatment
>
> 1. In the sectors inscribed in its Schedule of Specific Commitments in Part 1 of Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.
>
> Note: Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.
>
> 2. A Party may meet the requirement of paragraph 1 above by according to services and service suppliers of the other Party, 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 favorable if it modifies the conditions of competition in favor of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

> Article 89
> National Treatment
>
> Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").

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223 *See* Peter Van den Bossche, *Principles of Non-Discrimination*, in THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS 320–400 (2008).

224 *See* Peter M. Gerhart & Michael S. Baron, *Understanding National Treatment: The Participatory Vision of the WTO*, 14 IND. INT'L & COMP. L. REV. 505 (2004).

The national treatment provision is complemented by the most-favored-nation-treatment rule, which is set out under Articles 76 and 90 of the JPEPA:

> Article 76
> Most-Favored-Nation Treatment
>
> 1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party.
>
> 2. The provision of paragraph 1 above shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 6.
>
> Article 90
> Most-Favored-Nation Treatment
>
> Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.[225] discusses the purpose of the most-favored-nation treatment:

> The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation.[226] (Citations omitted)

In addition to these nondiscriminatory principles, the two countries likewise stipulated a prohibition against the imposition of performance requirements.[227] This commitment forbids the two countries from imposing performance requirements as a condition for the other parties' investment activities in their respective areas.

Notwithstanding these commitments, the JPEPA recognizes the importance of respecting both parties' laws and regulations.[228] Article 94 allows them to limit their obligations by enumerating the existing and future

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225 368 Phil. 388 (1999) [Per J. Gonzaga-Reyes, Third Division].

226 *Id.* at 410.

227 Agreement Between Japan and the Republic of the Philippines for an Economic Partnership (JPEPA), September 9, 2006, art. 93.

228 JPEPA, preamble provides:
Preamble
Japan and the Republic of the Philippines (hereinafter referred to in this Agreement as "the Philippines"),
. . . .
Recognizing the importance of the implementation of measures by the Governments of the Parties in accordance with their respective laws and regulations[.]

measures that they intend to exclude from the application of Articles 89, 90, and 93. The parties are given the prerogative to list their reservations from their liberation commitments under the Investment Chapter:

Article 94
Reservations and Exceptions

1. Articles 89, 90 and 93 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the central government level, as set out in its Schedule to Part I of Annex 7;

(b) any existing non-conforming measure that is maintained by:

(i) a prefecture in the case of Japan or a province in the case of the Philippines, for one (1) year after the date of entry into force of this Agreement, and thereafter as to be set out by a Party in its Schedule to Part 1 of Annex 7 in accordance with paragraph 2 below; or

(ii) a local government other than prefectures and provinces referred to in subparagraph (i) above;

(c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b) above; or

(d) an amendment to any non-conforming measure referred to in subparagraphs (a) and (b) above, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 89, 90 and 93.

2. Each Party shall set out in its Schedule to Part 1 of Annex 7, within one (1) year of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a prefecture or a province referred to in subparagraph 1(b)(i) above and shall notify thereof the other Party by a diplomatic note.

3. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 7, subject to the conditions set out therein.

4. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Part 2 of Annex 7, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. In cases where a Party makes an amendment referred to in subparagraph 1(d) above, or where a Party adopts any new or more restrictive measure with respect to sectors, subsectors or activities as set out in its Schedule to Part 2 of Annex 7 after the date of the entry into force of this Agreement, that Party shall, prior to the implementation of the amendment or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

(a) notify the other Party of the following elements:

(i) sector and subsector or activity;

(ii) type of reservation;

(iii) level of Government;

(iv) measures; and

(v) description; and

(b) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction.

6. Each Party shall endeavor, where appropriate, to reduce or eliminate the reservation set out in its Schedules to Parts 1 and 2 of Annex 7 respectively.

7. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

8. Articles 89 and 90 shall not apply to any measure covered by an exception to the obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

9. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.

The Vienna Convention defines "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving[,] or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State[.]"[229] Its purpose is to ensure that the national policymakers are not unduly constrained in advancing their countries' national policy objectives amid efforts to enhance investment opportunities.[230]

Annex 7 of the JPEPA contains the schedule of the parties' reservations that do not conform to the obligations under Articles 89, 90, and 93. Particularly on existing measures, the parties agreed that each reservation shall have the following eight elements:

(a) "Sector" refers to the general sector in which a reservation is taken;

(b) "Sub-Sector" refers to the specific sector in which a reservation is taken;

(c) "Industry Classification" refers, where applicable, to the activity covered by the reservation according to domestic industry classification

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229 Vienna Convention on the Law of Treaties, May 23, 1969 (1972), art. 2(1)(D).

230 See United Nations Conference on Trade and Development, Preserving Flexibility in IIAs: The Use of Reservations, UNITED NATIONS, 6, *available at* https://unctad.org/system/files/official-document/iteiit20058_en.pdf (last accessed on March 11, 2022).

codes;

(d) "Type of Reservation" specifies the obligation referred to in paragraph 1 above for which a reservation is taken;

(e) "Level of Government" indicates the level of government maintaining the measure for which a reservation is taken;

(f) "Measures" identifies the existing laws, regulations or other measures for which the reservation is taken.

(g) "Description" sets out, with regard to the obligations referred to in paragraph 1 above, the non-conforming aspects of the existing measures for which the reservation is taken; and

(h) "Phase-Out" set out commitments if any, for liberalization after the date of entry into force of this Agreement.[231]

In interpretating the reservations, the parties adopted these guidelines, still under Annex 7 of the JPEPA:

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of Chapter 8 against which the reservation is taken, and:

(a) to the extent that the Phase-Out element provides for the phasing out of non-conforming aspects of measures, the Phase-Out element shall prevail over all other elements; and

(b) except as provided for in subparagraph (a) above, the Measures element shall prevail over all other elements.[232]

Annex 7, Part 3(b) is instructive: Except for the phase-out element if any is provided, *the measures element shall prevail over the other elements* in each listed reservation. This interpretation, as will be shown, serves as guide in allaying petitioners' fears that the JPEPA possibly violated the Constitution.

V (B)

Petitioners insist that the JPEPA violates Article XII, Section 2 of the Constitution for failure to reserve the limitations on the use and exploitation of land and natural resources, as well as use and enjoyment of marine resources in Philippine waters.[233] In particular, petitioners IDEALS et al. contend that reservation no. 17 under Annex 7 of the Philippines' schedule of nonconforming existing measures is improperly described and defective.[234] They stress that the constitutional limitation covers two types of activities,

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231 JPEPA, Annex 7, Part 1(2).
232 JPEPA, Annex 7, Part 3.
233 *Rollo* (G.R. No. 185366), p. 1433; *rollo* (G.R. No. 184635), pp. 640–644, 648–650.
234 *Rollo* (G.R. No. 184635), pp. 643–644.

namely: (1) respect to ownership; and (2) exploration, development, and utilization of the natural resources. They maintain that the reservation should have indicated that the State's ability to explore, develop, and utilize natural resources may only be conducted through joint ventures, coproduction, or product-sharing agreements to Filipino citizens or corporations or associations with at least 60% Filipino capital. This failure to properly reserve may allegedly lead to the Philippines entering into agreements with corporations or associations fully owned by Japanese investors.[235]

Petitioners' arguments lack merit.

This Court agrees with respondents that the limitation imposed by Article XII, Section 2 of the Constitution has been protected in the Philippine list of reservations.[236] Annex 7 of the JPEPA lists the measures that Japan and the Philippines excluded from the coverage of their commitments. Among the measures is in reservation no. 17,[237] which states:

17 Sector:	Matters Related to Ownership of all lands of the public domain and natural resources other than those covered by other sectors
Sub-Sector:	
Industry Classification:	
Type of Reservation:	National Treatment (Article 89)
Level of Government:	Central Government
Measures:	The Constitution of the Republic of the Philippines, Article XII
Description:	All lands of the public domain and natural resources other than those covered by other sectors are owned by the State. With the exception of agricultural lands, all lands of public domain and other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into coproduction, joint venture, or production-sharing agreements with citizens of the Philippines, or corporations or associations at least 60 percent of whose

[235] *Id.*
[236] *Id.* at 494–497.
[237] JPEPA, Annex 7, p. 890.

capital is owned by such citizens.

Phase-Out: None

To reiterate, all elements shall be considered in interpreting a reservation for existing measures. A reservation shall also be construed in relation to the Chapter 8 provisions against which the reservation is taken, with the additional qualification that the measure element, save for the phase-out element if any, shall prevail over all other elements.[238]

It is true that reservation no. 17's sector element only mentions "[o]wnership of all lands of the public domain and natural resources[.]" However, it should be read together with the other elements, particularly the measure element, which mentions "[t]he Constitution of the Republic of the Philippines, Article XII." This article refers to the mandate on the protection and conservation of the country's national economy and patrimony under the Constitution, which includes not only the aspect of ownership, but the exploration, development, and utilization of all lands of the public domain and natural resources. Through this measure element, the entire constitutional provision is deemed recognized by reservation no. 17.

Reservation no. 17 of Annex 7, therefore, sufficiently protects the constitutional mandate on both ownership and exploration, development, and utilization of natural resources.

The same applies to petitioner's claim that the JPEPA transgresses Article XII, Section 7 of the Constitution on private land ownership.

Petitioners assert that the reservation on matters of private land ownership is inadequate as it only covers the manufacturing sector. They fear that foreign corporations engaged in businesses other than manufacturing may be allowed to own private lands, in violation of the Constitution.[239]

Reservation no. 3 of Annex 7[240] provides for the reservation on matters relating to private land ownership:

Sector:	Manufacturing
Sub-Sector:	Matters Related to Private Land Ownership
Industry Classification:	
Type of Reservation:	National Treatment (Article 89)

[238] JPEPA, Annex 7, Part 3.
[239] *Rollo* (G.R. No. 184635), p. 641; *rollo* (G.R. No. 185366), p. 1435.
[240] JPEPA, Annex 7, p. 873.

Level of Government:	Central Government
Measures:	The Constitution of the Republic of the Philippines, Article XII
Description:	Corporations, associations or partnerships with maximum 40 percent foreign equity can own private land.
Phase-Out:	None

Granted that the reservation's sector element only states "[m]anufacturing[,]" the reservation should be read as a whole, with the measure element prevailing over the other elements. Akin to reservation no. 17, reservation no. 3 has for its measure element Article XII of the Constitution, which embodies the mandate of ensuring the protection and conservation of our national economy and patrimony.

Moreover, one of the Philippine horizontal commitments[241] under Annex 6 of the JPEPA states:

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL SECTION			
	3) . . . . D. <u>Acquisition of Land</u> a. All lands of the public domain are owned by the State. Only citizens of the Philippines or corporations or associations at least 60 percent of		

[241] JPEPA, Annex 6, p. 720.

	whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease. b. Foreign investors may lease only private-owned lands.		

This horizontal commitment provides as a limitation on market access the same limitation found under Article XII of the Constitution. This signifies that all the trade in services sectors and subsectors that the Philippines undertook to liberalize through commercial presence[242] under Annex 6 in relation to Article 72 of the JPEPA shall be subject to the limitation.

Accordingly, there is no merit in petitioners' contentions that the JPEPA violates Article XII, Sections 2 and 7 of the Constitution.

V (C)

Petitioners next contend that the constitutional limitation concerning the operation of public utilities was not included in the schedule of reservations. Therefore, the national treatment rule under Article 89 of the JPEPA will apply, enabling Japanese investors to own more than 40% of a public utility.[243]

Respondents counter that public utilities are covered not by the Investment Chapter, but by the Trade in Services Chapter, under which no liberalization commitment was made. They claim that no public utility is mentioned in the Philippine list of commitments provided under Annex 6 of the JPEPA.[244] Thus, they essentially argue that Article 89 will not apply.

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242 JPEPA, art. 71(b) provides:
Article 71: Definitions
For the purposes of this Chapter:
. . . .
(b) the term "commercial presence" means any type of business or professional establishment, including through:
(i) the constitution, acquisition or maintenance of a juridical person; or
(ii) the creation or maintenance of a branch or a representative office; within the Area of a Party for the purposes of supplying a service[.]

243 *Rollo* (G.R. No. 184635), p. 646; *rollo* (G.R. No. 185366), p. 1433.

244 *Rollo* (G.R. No. 184635), p. 501.

This Court partially agrees with respondents. Public utilities indeed do not fall under the Investment Chapter, but the Trade in Services Chapter. But contrary to respondents' argument, the Philippines has made commitments under the Trade in Services Chapter.

Nonetheless, the limitation provided by the Constitution is preserved with the inclusion of the horizontal commitments in the same chapter.

Article XII, Section 11 of the Constitution states:

> SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

As noted in *Heirs of Gamboa v. Teves*,[245] Article XII, Section 11 is one of the numerous constitutional provisions that embody the preservation, conservation, and development of national economy and patrimony. It recognizes "the sensitive and vital position of public utilities both in the national economy and for national security"—thus mandating the Filipinization of public utilities.[246]

JG Summit Holdings v. Court of Appeals[247] discusses the definition, nature, and characteristics of a public utility:

> A "public utility" is "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service." To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. However, the fact that a business offers services or goods that promote public good and serve the interest of the public does not automatically make it a public utility. Public use is not synonymous with public interest. As its name indicates, the term "public utility" implies public use and service to the public. The principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public as such which has a legal right to demand and receive its services or

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245 696 Phil. 276 (2012) [Per J. Carpio, *En Banc*].
246 *Id.* at 326.
247 458 Phil. 581 (2003) [Per J. Puno, Special First Division].

> commodities. Stated otherwise, the owner or person in control of a public utility must have devoted it to such use that the public generally or that part of the public which has been served and has accepted the service, has the right to demand that use or service so long as it is continued, with reasonable efficiency and under proper charges. Unlike a private enterprise which independently determines whom it will serve, a "public utility holds out generally and may not refuse legitimate demand for service."[248] (Citations omitted)

Meanwhile, the JPEPA defines "services" as "any service in any sector except services supplied in the exercise of governmental authority[.]"[249] Thus, save for those services "supplied neither on a commercial basis nor in competition with one or more service suppliers[,]"[250] the term "services" covers all sectors and factors in the "production, distribution, marketing, sale[,] and delivery of a service[.]"[251] By this definition, public utilities, as respondents correctly argue,[252] are "services" within the meaning of the JPEPA, and therefore, subsumed under the Trade in Services Chapter.

To reiterate, the Trade in Services Chapter uses the positive list approach, where only the listed sectors are subject to liberalization commitments. These sectors and subsectors are enumerated in the Party's Schedule of Specific Commitments under Annex 6 of the JPEPA.

In scheduling these commitments, the parties used and referred[253] to the Services Sectoral Classification List,[254] the Provisional Central Product Classification,[255] and the Guidelines for the Scheduling of Specific Commitments (Guidelines),[256] all of which cover a wide array of services, including, among others, on business, communication, education, environment, finance, health, tourism, and transport.[257]

Under the Guidelines, parties to an agreement should ensure that the following information are indicated, namely, "a clear description of the sector or sub-sector committed, limitations to market access, limitations to national treatment, and additional commitments other than market access and national

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248 *Id.* at 602.
249 JPEPA, art. 71(n).
250 JPEPA, art. 71(o).
251 JPEPA, art. 71(s).
252 *Rollo* (G.R. No. 184635), p. 501.
253 JPEPA, Annex 6, p. 716.
254 *Services Sectoral Classification List, available at* https://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc (last accessed on March 9, 2022).
255 United Nations, *Provisional Central Product Classification, Statistical Papers*, 1991, *available at* https://www.wto.org/english/tratop_e/serv_e/cpc_provisional_complete_e.pdf (last accessed on March 9, 2022).
256 *Guidelines For The Scheduling Of Specific Commitments Under The General Agreement On Trade In Services (GATS), available at* https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/S/L/92.pdf&Open=True (last accessed on March 9, 2022).
257 *Services Sectoral Classification List, available at* https://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc (last accessed on March 9, 2022).

treatment."[258] In addition, under the Guidelines, the commitments may be supplied using four modes: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of natural persons.[259]

Further, the parties' commitments may be scheduled through a horizontal section or sector-specific section.[260]

A horizontal commitment is one that "applies to trade in services in all scheduled services sectors unless otherwise specified." In effect, it constitutes as a limitation to the sector-specific commitments or mode of supply.[261]

A sector-specific commitment, on the other hand, "applies to trade in services in a particular sector."[262]

A perusal of the Philippines' Schedule of Specific Commitments shows that it undertook to grant market access and national treatment to numerous sectors and subsectors, among which are considered public utilities. Some of the sectors and subsectors subject to Philippines' liberalization commitments are: (1) services related to energy distribution;[263] (2) communication services;[264] (3) telecommunication services;[265] (4) educational services;[266] (5) health and social services;[267] and (6) transport services.[268]

Yet, these liberalization commitments are not without limitations.

In the horizontal section of the Philippine Schedule of Commitments, the Philippines indicated several limitations on its market access[269] and national treatment[270] commitments.[271] The horizontal commitments[272] state:

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258 GATS, p. 3.
259 *Id.* at 8–10.
260 *Id.* at 7–8.
261 *Id.* at 10.
262 *Id.* at 11.
263 JPEPA, Annex 6, p. 792.
264 *Id.*
265 *Id.* at 793.
266 *Id.* at 803.
267 *Id.* at 816.
268 *Id.* at 819.
269 JPEPA, art. 72 provides:
Article 72
Market Access
1. With respect to market access through the modes of supply defined in subparagraph (t) of Article 71, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Part 1 of Annex 6.
270 JPEPA, art. 73.
271 JPEPA, Annex 6, p. 716.
272 JPEPA, Annex 6, pp. 718–720.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL SECTION			
	3) A. In activities expressly reserved by the Constitution to Filipino citizens or corporations or association with limited foreign equity participation specific to public utilities and advertising: The participation of foreign investors in the governing body shall be limited to their proportionate share in its capital and all executive and managing officers of such corporations and associations must be citizens of the Philippines. B. In activities where foreign equity is limited to 40 percent or less of the capital stock outstanding and entitled to vote: The percentage of membership in the Board of Directors shall be limited to their proportionate stockholdings. C. In activities where more than 40 percent foreign equity is allowed:	3) A. <u>Access to Domestic Credit</u> A foreign firm, engaged in non manufacturing activities availing itself of peso borrowings, shall observe, at the time of borrowing, the prescribed 50:50 debt to-equity ratio. Foreign firms covered are: a. partnerships, more than 40 percent of whose capital is owned by non Filipino citizens; and b. corporations, more than 40 percent of whose total subscribed capital stock is owned by non-Filipino citizens. This requirement does not apply to banks and non-bank financial intermediaries. B. Banks are prohibited from extending peso loans to non-residents. 1), 2), 3), 4) All measures taken by local government units are unbound.	

	a. A majority of the directors or trustees of all corporations organized must be residents of the Philippines and the corporate Board secretary shall be a resident and citizen of the Philippines; and, b. The paid-in equity must not be less than US$200,000 for domestic market enterprises[273]; or, c. The paid-in equity must not be less than US$100,000 for domestic market enterprises involving advanced technology as determined by the Department of Science and Technology (DOST); or, d. The paid-in equity must not be less than US$100,000 for domestic market enterprises employing at least 50 direct employees; or, e. The juridical entity exports 60 percent or more of its output.		

[273] The Foreign Investments Act (Republic Act No. 7042, as amended by Republic Act No. 8179) defines "domestic market enterprise" as an enterprise that produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least 60% thereof.

	D. Acquisition of Land a. All lands of the public domain are owned by the State. Only citizens of the Philippines or corporations or associations at least 60 percent of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease. b. Foreign investors may lease only private-owned lands. 4) Entry and Temporary Stay of Natural Persons Supplying Services Non-resident aliens may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired. 3), 4) Practice of professions The practice of professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.		

The horizontal commitments constitute limitations that shall apply to all sectors and subsectors where the Philippines made specific sector commitments. This implies that while the Philippines committed to grant

market access through commercial presence to certain public utility sectors, this commitment shall be subject to the constitutional limitation imposed under Article XII, Section 11 of the Constitution.

This Court stresses that the term "commercial presence" under the Trade in Services Chapter of the JPEPA encompasses any business or professional establishment that includes not only "the constitution, acquisition[,] or maintenance of a juridical person[,]" but also "the creation or maintenance of a branch or a representative office[.]"[274]

These limitations are further reinforced by Article 87, which precludes the application of Articles 89, 90, and 93 "to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments."[275] To be sure, the Investment Chapter defines an investment as "every kind of asset owned or controlled, directly or indirectly, by an investor[,]"[276] including a juridical person. The provisions of the Investment Chapter should not be construed to expand the scope of the parties' specific commitments under the Trade in Services Chapter.[277]

V (D)

Likewise, the JPEPA violates none of the limitations imposed by Article XII, Section 14; Article XIV, Section 4(2); and Article XVI, Section 11(1) and (2) of the Constitution. Reservations have been made considering these constitutional limitations.

Article XII, Section 14[278] of the Constitution reserves to Filipino citizens the practice of all professions in the Philippines. However, this

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274 JPEPA, art. 71(b).

275 JPEPA, art. 87 provides:
Article 87
Scope and Coverage
1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
(a) investors of the other Party; and
(b) investments of investors of the other Party in the Area of the former Party.
2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.
3. Nothing in this Chapter shall be construed to expand the scope of the specific commitments undertaken by either Party pursuant to Chapter 7.
4. Articles 89, 90 and 93 shall not apply to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments.

276 JPEPA, art. 88(b).

277 JPEPA, art. 87.

278 CONST, art. XII, sec. 14 provides:
SECTION 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.
The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

limitation is subject to statutory exceptions and reciprocity laws.[279]

Among the sectors and subsectors relating to professional services limited to Filipino citizens[280] and where the Philippines made commitments are engineering;[281] auditing services, including financial auditing and accounting review;[282] architecture;[283] urban (environmental) planning;[284] landscape architecture;[285] health professionals;[286] criminology;[287] chemistry;[288] forestry;[289] librarianship;[290] merchant marine profession;[291] master plumbing;[292] social work;[293] agriculture;[294] fisheries;[295] interior design;[296] geology;[297] professional teachers;[298] and customs brokerage.[299]

To reiterate, while the Constitution restricts the practice of professions to Filipino citizens, the rule is subject to exceptions introduced by law.

A perusal of the specific commitments made by the Philippines on the practice of these professions shows that adequate reservations have been made both for market access and national treatment.

Primarily, the horizontal section of the Philippines' Schedule of Specific Commitments states that the grant of market access for the practice of professions supplied through commercial presence or presence of natural persons is restricted in the sense that "[t]he practice of professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law."[300] In the same way, statutory qualifications for the practice of profession have been incorporated as a limitation to the Philippine national treatment commitment.

For the engineering sector, the limitations imposed by Presidential

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279 JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1226 (2009).
280 *Rollo* (G.R. No. 184635), p. 646.
281 JPEPA, Annex 6, p. 731.
282 *Id.* at 724.
283 *Id.* at 725.
284 *Id.* at 756.
285 *Id.* at 757.
286 *Id.* at 760.
287 *Id.* at 768.
288 *Id.* at 769.
289 *Id.* at 771.
290 *Id.* at 772.
291 *Id.* at 773
292 *Id.* at 774.
293 *Id.* at 776.
294 *Id.* at 777.
295 *Id.* at 778.
296 *Id.*
297 *Id.* at 781.
298 *Id.* at 784.
299 *Id.*
300 *Id.* at 720.

Decree No. 1570,[301] Republic Act No. 8559,[302] Republic Act No. 9297,[303] Republic Act No. 544,[304] Republic Act No. 8495,[305] Republic Act No. 1364,[306] Presidential Decree No. 1536,[307] Republic Act No. 4565,[308] Republic Act No. 9292,[309] Republic Act No. 4274,[310] Republic Act No. 8560,[311] and Republic Act No. 7920[312] were included.

The conditions for medical and allied professions imposed by the following laws have likewise been incorporated in the list of reservations: Republic Act No. 2382[313] as amended,[314] Republic Act No. 4419,[315] Republic Act No. 9173,[316] Republic Act No. 8050,[317] Republic Act No. 7392,[318] Republic Act No. 5527,[319] Republic Act No. 9268,[320] Republic Act No. 5680,[321] and Republic Act No. 7431.[322]

National treatment for the remaining sectors has also been restricted by the inclusion of the following limitations mandated by Republic Act No. 9298[323] on accountancy, Republic Act No. 9266[324] on architecture, Republic Act No. 6506[325] on criminology, Republic Act No. 754[326] on chemistry, Republic Act No. 9280[327] on customs brokerage, Republic Act No. 6239[328] on forestry, Republic Act No. 4209[329] on geology, Republic Act No. 8534[330] on interior design, Republic Act No. 9053[331] on landscape architecture, Republic Act No. 9246[332] on librarianship, Republic Act No. 8544[333] on merchant marine officers, Republic Act No. 1378[334] on master plumbing, Republic Act

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301 Presidential Decree No. 1570 (1978).
302 Republic Act No. 8559 (1998). This was repealed by Republic Act No. 10915.
303 Republic Act No. 9297 (2004).
304 Republic Act No. 544 (1950).
305 Republic Act No. 8495 (1998).
306 Republic Act No. 1364 (1955).
307 Presidential Decree No. 1536 (1978). This was repealed by Republic Act No. 10688.
308 Republic Act No. 4565 (1965). This was repealed by Republic Act No. 10698.
309 Republic Act No. 9292 (2004).
310 Republic Act No. 4274 (1965).
311 Republic Act No. 8560 (1998).
312 Republic Act No. 7920 (1995).
313 Republic Act No. 2382 (1959).
314 Republic Act No. 4224 (1965). This was amended Republic Act No. 2382.
315 Republic Act No. 4419 (1965). This was repealed by Republic Act No. 9484.
316 Republic Act No. 9173 (2002).
317 Republic Act No. 8050 (1995).
318 Republic Act No. 2644 (1992).
319 Republic Act No. 5527 (1969).
320 Republic Act No. 9268 (2004).
321 Republic Act No. 11241 (2018).
322 Republic Act No. 7431 (1992).
323 Republic Act No. 9298 (2004).
324 Republic Act No. 9266 (2004).
325 Republic Act No. 6506 (1972). This was repealed by Republic Act No. 11131.
326 Republic Act No. 754 (1952). This was repealed by Republic Act No. 10657.
327 Republic Act No. 9280 (2004).
328 Republic Act No. 6239 (1971). This was Repealed by Republic Act No. 10690.
329 Republic Act No. 4209 (1965). This was repealed by Republic Act No. 10166.
330 Republic Act No. 8534 (1998). This was repealed by Republic Act No. 10350.
331 Republic Act No. 9053 (2002).
332 Republic Act No. 9246 (2003).
333 Republic Act No. 8544 (1998).
334 Republic Act No. 1378 (1955).

No. 4373[335] on social work, Republic Act No. 7836[336] on teaching, Professional Regulation Commission (PRC) Resolution No. 2000-663[337] on agriculture, PRC Resolution No. 2000-664[338] on fisheries, and Presidential Decree No. 1308[339] on environmental planning.

This Court also notes that foreigners are allowed to practice in the Philippines the professions enumerated under the Eleventh Regular Foreign Investment Negative List, subject to the rule on reciprocity. The list considers agreements that the Philippines enters into with other countries as it includes "[o]ther professions as may be provided by law or by treaty where the Philippines is a party[.]"[340]

The foreign ownership limitation imposed on educational institutions under Article XIV, Section 4(2) of the Constitution has likewise been included as a reservation. The provision states:

> SECTION 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.
>
> (2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.
>
> The control and administration of educational institutions shall be vested in citizens of the Philippines.
>
> No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

An examination of the Philippine commitment on educational services shows that the constitutional mandate has been reproduced as a limitation on market access supplied through commercial presence. The limitation has been imposed on primary education, secondary education, adult education alternative learning system, higher education services, postsecondary

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335 Republic Act No. 4373 (1965).

336 Republic Act No. 7836 (1994).

337 *Creation of the Board of Agriculture under the Professional Regulation Commission and for other purposes, available at* https://www.prc.gov.ph/sites/default/files/PRC%20Resolution%20No.%202000-663%20%28series%20of%202000%29_0.pdf (last accessed on March 10, 2022).

338 *Creation of the Board of Fisheries under the Professional Regulation Commission and for other purposes, available at* https://www.prc.gov.ph/sites/default/files/Fisheries%20Technology%20-%20PRC%20Resolution%20No.%202000-664%20%28series%20of%202000%29_0.pdf (last accessed on March 10, 2022).

339 Presidential Decree No. 1308 (1978). This was repealed by Republic Act No. 10587.

340 Executive Order No. 65 (2018), Annex on Professions.

technical and vocational education services, and other education services.[341]

Finally, the restrictions imposed under Article XVI, Section 11 of the Constitution have also been honored.

This Court agrees with respondents that the Philippines made no commitment regarding mass media. Its commitment on audiovisual services covers only motion-picture or videotape production of animated cartoons.[342] Under the Provisional Central Product Classification, motion-picture or videotape production services are categorized as:

> . . . [p]roduction services of theatrical and non-theatrical motion pictures, whether on film or on video tape, for direct projection in theatres, for broadcasting on television, or for sale or rental to others. The products may be full-length and short theatrical films for public entertainment, for advertising, education, training and news information as well as religious pictures, animated cartoons of any kinds, etc.[343]

On the other hand, the Securities and Exchange Commission, in an opinion,[344] defined mass media as:

> . . . any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses. In addition, the term "mass media" shall mean the gathering, transmission of news, information, messages, signals, and forms of written, oral and all visual communications and shall embrace the print medium, radio, television, film, movies, wire and radio communication services. The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof. The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.
>
> The term "mass media" is also found in the Rules and Regulations ("RR") for Mass Media in the Philippines adopted by the Media Advisory Council. According to said RR, the term "mass media" embraces means of communication that reach and influence large numbers of people including print media (especially newspapers, periodicals and popular magazines) radio, television, and movies, and *involved the gathering, transmission and distribution of news, information, messages, signals and all forms of written, oral and visual communications*.[345] (Emphasis supplied, citations omitted)

The term motion-picture or videotape production, as defined by the Provisional Central Product Classification, covers a wide array of services that

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341 JPEPA, Annex 6, pp. 803–812.

342 *Id.* at 800.

343 United Nations, *Provisional Central Product Classification*, 280, 1991, *available at* https://www.wto.org/english/tratop_e/serv_e/cpc_provisional_complete_e.pdf (last accessed on March 11, 2022).

344 SEC-OGC Opinion No. 21-02 (2021).

345 *Id.* at 1–2.

includes the production of films for entertainment, education, and news, as well as animated cartoon production, among others.

Since, as discussed, only listed sectors under the Trade in Services Chapter shall be the subject of liberalization commitments, the Philippine commitment is limited only to animated cartoons of any kind.

As for the advertising industry, in addition to the commitment indicated in the horizontal section of the Philippine list, the following limitation on market access supplied through commercial presence has been incorporated:

> 3) Up to 30 percent foreign equity is allowed.
>
> The participation of foreign investors in the governing body in such industry shall be limited to their proportionate share in the capital thereof.
>
> All the executive and managing officers of such entities must be citizens of the Philippines.[346]

Annex 6, therefore, implicitly recognizes the limitation provided by the Constitution on the 70-30 equity rule in the advertising industry.[347]

In sum, this Court finds no violation of the constitutional limitations made by the JPEPA.

VI

Likewise unmeritorious is petitioners' assertion that Articles 89, 90, and 93 of the JPEPA conflict with various Philippine laws.

The first law petitioners invoke, Republic Act No. 5181,[348] has been repealed by Republic Act No. 8981 or the PRC Modernization Act of 2000.[349]

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[346] JPEPA, Annex 6, pp. 790–791.

[347] CONST., art. XVI, sec. 11(2) states:
(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.
Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

[348] Republic Act No. 5181 (1967), sec. 1 states:
Section 1. No person shall be allowed to practice any profession in the Philippines unless he has complied with the existing laws and regulations, is a permanent resident therein for at least three years, and, if he is an alien, the country of which he is a subject or citizen permits Filipinos to practice their respective professions within its territories: Provided, That the practice of said professions is not limited by law to citizens of the Philippines: Provided, further, That Filipinos who became American nationals by reason of service in the Armed Forces of the United States during the Second World War and aliens who were admitted into the practice of their profession before July 4, 1946 shall be exempted from the restriction provided herein.

[349] Republic Act No. 8981 (2000), sec. 20 states:

Further, as previously discussed, the practice of professions is governed by Annex 6 of the JPEPA, which incorporates the necessary reservations imposed by law particularly on the professions where the Philippines made specific commitments.

Likewise, there is no violation of Republic Act No. 8762, Section 5[350] on retail trade business; Republic Act No. 5487, Section 4 as amended[351] on

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Section 20. Repealing Clause. — Republic Act No. 546, Presidential Decree No. 223, as amended by Presidential Decree No. 657, Republic Act No. 5181, and Executive Order No. 266, Series of 1995 are hereby repealed. Section 23 (h) of Republic Act No. 7836, Section 4 (m & s), Section 23 of Republic Act No. 7920, and Section 29 of Republic Act No. 8050, insofar as it requires completion of the requirements of the Continuing Professional Education (CPE) as a condition for the renewal of the license are hereby repealed. All other laws, orders, rules and regulations or resolutions and all part/s thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

350 Republic Act No. 8762 (2000), sec. 5 states:
Section 5. Foreign Equity Participation. — Foreign-owned partnerships, associations and corporation formed and organized under the laws of the Philippines may, upon registration with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI), or in case of foreign owned single proprietorships, with the DTI, Engage or invest in the retail trade business, subject to the following categories.
Category A – Enterprises with paid-up capital of the equivalent in Philippine Peso of the than Two million five hundred thousand US dollars (US$2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.
Category B – Enterprises with a minimum paid-up capital of the equivalent in Philippine Pesos of two million five hundred thousand US dollar (US$2,500,000.00) but less than Seven million five hundred thousand US dollars (US$7,500,000.00) may be wholly owned by foreigners except for the first two (2) years after the effectivity of this Act wherein foreign participation shall be limited to not more than sixty percent (60%) of total equity.
Category C – Enterprises with a paid-up capital of the equivalent in Philippine Pesos of Seven million five hundred thousand US dollars (US$7,500,000.00) or more may be wholly owned by foreigners: Provided, however, That in no case shall the investments for establishing a store in Categories B and C be less than the equivalent in Philippine pesos of Eight hundred thirty thousand US dollars (US$830,000.00).
Category D – Enterprises specializing in high-end or luxury products with a paid-up capital of the equivalent in Philippine Pesos of Two hundred fifty thousand US dollars (US$250,000.00) per store may be wholly owned by foreigners.
The foreign investor shall be required to maintain in the Philippines the full amount of the prescribed minimum capital, unless the foreign investor has notified the SEC and the DTI of its intention to repatriate its capital and cease operations in the Philippines. The actual use in Philippine operations of the inwardly remitted minimum capital requirement shall be monitored by the SEC.
Failure to maintain the full amount of the prescribed minimum capital prior to notification of the SEC and the DTI, shall subject the foreign investor to penalties or restrictions on any future trading activities/business in the Philippines.
Foreign retail stores shall secure a certification from the Bangko Sentral ng Pilipinas (BSP) and the DTI, which will verify or confirm inward remittance of the minimum required capital investment.

351 Republic Act No. 5487 (1969), sec. 4, as amended by Presidential Decree No. 11 (1972), states:
Section 4. Who May Organize a Security or Watchman Agency. — Any Filipino citizen or a corporation, partnership, or association, with a minimum capital of five thousand pesos, one hundred per cent of which is owned and controlled by Filipino citizens may organize a security or watchman agency: Provided, That no person shall organize or have an interest in, more than one such agency except those which are already existing at the promulgation of this Decree: Provided, further, That the operator or manager of said agency must be at least 25 years of age, a college graduate and/or a commissioned officer in the inactive service of the Armed Forces of the Philippines; of good moral character; having no previous record of any conviction of any crime or offense involving moral turpitude and not suffering from any of the following disqualifications:
(1) Having been dishonorably discharged or separated from the Armed Forces of the Philippines;
(2) Being a mental incompetent;
(3) Being addicted to the use of narcotic drug or drugs; and
(4) Being a habitual drunkard. lawphil.net
For purposes of this Act, elective or appointive government employees who may be called upon on account of the functions of their respective offices in the implementation and enforcement of the provisions of this Act and any person related to such government employees by affinity or consanguinity in the third civil degree shall not hold any interest, directly or indirectly in any security guard or watchman agency.

private security agencies; Presidential Decree No. 449, Section 5(a)[352] on cockpit ownership, operation, and management; Act No. 3846, Section 4[353] on private radio communications network; Labor Code, Article 27[354] on private recruitment of labor; Commonwealth Act No. 541, Section 1[355] on contracts for the construction of defense-related structures; and Republic Act No. 7042, Section 8(b)(2)[356] on gambling, saunas, massage clinics, and other like activities. As correctly argued by respondents, these sectors were not included in the Philippines' list of specific commitments and, therefore, are not the subject of JPEPA's liberalization commitments.

Neither was Republic Act No. 6957, Section 2(a), as amended by Republic Act No. 7718,[357] violated. This Court reiterates that all sectors where

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352 Presidential Decree No. 449 (1974), sec. 5(A) states:
Section 5. Cockpits and Cockfighting: In General:
(a) Ownership, Operation and Management of Cockpits. Only Filipino citizens not otherwise inhibited by existing laws shall be allowed to own, manage and operate cockpits. Cooperative capitalization is encouraged.

353 Act No. 3846 (1931), sec. 4 states:
Section 4. No radio station license shall be transferred to any person, firm, company, association or corporation without express authority of the Secretary of Commerce and Communications, and no license shall be granted or transferred to any person who is not a citizen of the United States of America or of the Philippine Islands; or to any firm or company which is not incorporated under the laws of the Philippine Islands or any state or territory of the United States of America; or to any company or corporation twenty ercent (20%) of whose capital stock may be voted by aliens or their representatives, or by a foreign government or its representatives, or by any company, corporation, or association organized under the laws of a foreign country.

354 LABOR CODE, art. 27 states:
Article 27. Citizenship requirement. Only Filipino citizens or corporations, partnerships or entities at least seventy-five percent (75%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas.

355 Commonwealth Act No. 541 (1940), sec. 1 states:
Section 1. All branches, offices, and subdivisions of the Government and all government-owned or controlled companies, authorized to contract and make disbursements for the construction or repair of public works, shall give preference in awarding contracts for such works to Filipino or American contractors and domestic entities when the lowest bid of a domestic bidder is not more than fifteen per centum in excess of the lowest foreign bid: Provided, however, That for the construction of land, air, and sea-coast defenses, arsenals, barracks, depots, hangars, landing fields, quarters, hospitals, and all other buildings and structures required for the national defense of the Philippines, no foreign bids shall be allowed.

356 Republic Act No. 7042, (1991), sec. 8(b)(2) states:
Section 8. List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List). — The Foreign Investment Negative List shall have three (3) component lists: A, B, and C:
. . . .
b) List B shall contain the areas of activities and enterprises pursuant to law:
. . . .
2) Which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steambath houses and massage clinics.
Small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of five hundred thousand US dollars (US$500,000) are reserved to Philippine nationals, unless they involve advanced technology as determined by the Department of Science and Technology. Export enterprises which utilize raw materials from depleting natural resources, with paid-in equity capital of less than the equivalent of five hundred thousand US dollars (US$500,000) are likewise reserved to Philippine nationals.
Amendments to List B may be made upon recommendation of the Secretary of National Defense, or the Secretary of Health, or the Secretary of Education, Culture and Sports, indorsed by the NEDA, or upon recommendation *motu proprio* of NEDA, approved by the President, and promulgated by Presidential Proclamation.

357 Republic Act No. 6957 (1990), as amended by Republic Act No. 7718 (1994), sec. 2(a) states:

the Philippines made commitments under Annex 6 of the JPEPA shall be subject to the limitation on market access imposed on foreign ownership of public utilities. With this limitation on ownership of public utilities, Japan and the Philippines are mandated to ensure that the constitutional limitation on foreign equity participation shall always be followed, particularly when services are supplied through commercial presence.

Finally, a review of the Philippine commitments on financial services reveals that a proper reservation of the statutory limitations has been included.[358]

Article 70 of the JPEPA states that for measures affecting the supply of financial services, Annex 5 of the JPEPA shall supplement the provisions under the Trade in Services Chapter.[359]

Annex 5 enumerates the financial services that the Philippines undertakes to liberalize. Among these are the insurance and insurance-related services.[360]

Annex 5 should be read with the provisions of Annex 6, which incorporated in the JPEPA the World Trade Organization Document

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Section 2. Definition of Terms. — The following terms used in this Act shall have the meanings stated below:
(a) Private sector infrastructure or development projects — The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.
For the construction stage of these infrastructure projects, the project proponents may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: Provided, That in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos: Provided, further, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of the construction where Filipino skills are available: Provided, finally, That subjects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent.

358 *Rollo* (G.R. No. 184635), pp. 510–512.

359 JPEPA, art. 70 states:
Scope and Coverage
1. This Chapter shall apply to measures by a Party affecting trade in services.
. . . .
4. Annex 5 provides supplementary provisions to this Chapter with respect to measures affecting the supply of financial services.

360 JPEPA, Annex 5, p. 651.

GATS/SC/70/Suppl.3,[361] or the Trade in Services - Philippines - Schedule of Specific Commitments - Supplement 3.[362] A few of the Philippine commitments under the World Trade Organization deal with banking and other financial services, investment houses, financial leasing, insurance, and insurance auxiliary services, such as average adjustors. These sectors and subsectors that the Philippines undertook to liberalize are subject to market access limitations, including the foreign equity requirement prescribed by our laws.

VII

Another constitutional provision that the JPEPA allegedly violated[363] is Article XII, Section 13, which states:

> 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.

Petitioners FairTrade et al. insist that despite this constitutional provision requiring all Philippine trade agreements to be based on equality and reciprocity, the JPEPA contains imbalances and is deemed a one-sided treaty that only favors Japan.[364]

To prove their point, they emphasize that under the JPEPA, the Philippines agreed to reduce 98% of its 5,900-plus tariff lines, while Japan only committed to liberalize 90% of its 9,300-plus tariff lines. They also underscore Japan's exclusion of 7% of their total tariff lines, or 651 products, while the Philippines only excluded six product lines.[365] Petitioners maintain that the table below shows the allegedly disproportionate concessions between Japan and the Philippines:

	Philippines		*Japan*	
Tariff elimination upon entry into	3,947	66.12%	7,476	80.17%
Reducing of tariffs by stages	1,899	31.81%	882	9.46%
With notes	117	1.96%	316	3.39%
Exclusions	6	0.10%	651	6.98%
Total tariff lines	5,969	100%	9,325	100%[366]

[361] World Trade Organization, Philippines, Schedule of Specific Commitments, Supplement 3 *available at* <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-SC/SC70S3.pdf&Open=True> (last accessed on March 11, 2022).

[362] JPEPA, Annex 6, p. 814, n18.

[363] *Rollo* (G.R. No. 185366), p. 1448.

[364] *Id.* at 1449.

[365] *Id.* at 1449–1450.

[366] *Id.*

Petitioners further insist that the Philippines was put at a disadvantage with Japan's exclusion list, saying that it should have been shorter since Japan is a developed country with less economic vulnerabilities.[367] They also contend that while the existing market access for Philippine agricultural products in Japan was expanded, it did not equate to actual market access since Philippine products would have to go through Japan's bureaucratic sanitary and phytosanitary processes. They maintain that the projected increase in the export of Philippine agricultural products is uncertain and subject to certain circumstances.[368]

Petitioners' contentions deserve scant consideration. The issues raised are purely questions of policy, which are beyond this Court's power of review.

Tañada v. Cuenco[369] discussed what a political question is:

> In the case of *In re McConaughy*, the nature of political question was considered carefully. The Court said:
>
> > "At the threshold of the case we are met with the assertion that the questions involved are political, and not judicial. If this is correct, the court has no jurisdiction as the certificate of the state canvassing board would then be final, regardless of the actual vote upon the amendment. The question thus raised is a fundamental one; but it has been so often decided contrary to the view contended for by the Attorney General that it would seem to be finally settled.
> >
> > . . . .
> >
> > ". . . What is generally meant, when it is, said that a question is political, and not judicial, is that it is a matter which, is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. Thus the Legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve political question, but because they are matters which the people have by the Constitution delegated to the Legislature. The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. But every officer under a constitutional

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367 *Id.* at 1450.
368 *Id.* at 1451.
369 103 Phil. 1051 (1957) [Per J. Concepcion, *En Banc*].

> government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, to the end that the government may be one of laws and not men'—words which Webster said were the greatest contained in any written constitutional document."
>
> In short, the term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum, it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.[370] (Citations omitted)

Previously, this Court had refrained from taking cognizance of cases involving political questions. Owing to the doctrine of separation of powers, courts do "not normally interfere with the workings of another coequal branch unless the case shows a clear need for the courts to step in to uphold the law and the Constitution."[371] While, as discussed much earlier, this Court's power of judicial review has been expanded to cover certain cases involving matters of policy, the Constitution still limits the extent of that power. The inquiry shall only be limited to the question of whether the act done by a political branch of the government was done with grave abuse of discretion amounting to lack or excess of jurisdiction.[372] This Court held:

> The 1987 Constitution expands the concept of judicial review by providing that "[T]he Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Under this definition, the Court cannot agree with the Solicitor General that the issue involved is a political question beyond the jurisdiction of this Court to review. When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable — the problem being one of legality or validity, not its wisdom. Moreover, the jurisdiction to delimit constitutional boundaries has been given to this Court. When political questions are involved, the Constitution limits the determination as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the

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370 *Id.* at 1066–1067.
371 *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 637–638 (2000) [Per J. Kapunan, *En Banc*].
372 *Id.* at 638–639.

part of the official whose action is being questioned.[373] (Citations omitted)

There remain issues that this Court cannot pass upon. Certain matters, such as those relating to foreign relations, are generally deemed political questions. *Marcos v. Manglapus*[374] teaches:

> The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. But nonetheless there remain issues beyond the Court's jurisdiction the determination of which is exclusively for the President, for Congress or for the people themselves through a plebiscite or referendum. We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.[375] (Citations omitted.)

Of course, *Vinuya v. Romulo*[376] explains that not all cases involving foreign relations entail questions of policy beyond this Court's review:

> Certain types of cases often have been found to present political questions. One such category involves questions of foreign relations. It is well-established that "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative — 'the political' — departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." The US Supreme Court has further cautioned that decisions relating to foreign policy
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> > are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility.
>
> To be sure, not all cases implicating foreign relations present political questions, and courts certainly possess the authority to construe or invalidate treaties and executive agreements. However, the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951. The wisdom of such decision is not for the courts to question. Neither could

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373 *Id.*

374 258 Phil. 479 (1989) [Per J. Cortes, *En Banc*].

375 *Id.* at 506.

376 633 Phil. 538 (2010) [Per J. Del Castillo, *En Banc*].

> petitioners herein assail the said determination by the Executive Department via the instant petition for certiorari.[377] (Citation omitted)

Here, however, petitioners FairTrade et al. advance questions of policy concerning the wisdom, not the legality, of the impugned act. The decision to reduce or eliminate tariff duties on some Philippine tariff lines is a matter of foreign relations, over which the Constitution has given the authority to the political branches.

Again, the authority to manage our external affairs and to shape foreign policy is given to the president by constitutional fiat. The president wields "vast power and influence,"[378] having "the better opportunity of knowing the conditions which prevail in foreign countries[.]"[379] *Vinuya*, citing Chief Justice Reynato Puno's dissent in *Secretary of Justice v. Lantion*,[380] elaborates on this principle:

> This ruling has been incorporated in our jurisprudence through *Bayan v. Executive Secretary* and *Pimentel v. Executive Secretary*; its overreaching principle was, perhaps, best articulated in (now Chief) Justice Puno's dissent in *Secretary of Justice v. Lantion*:
>
> > . . . The conduct of foreign relations is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness. . . . It is also the President who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data. In fine, the presidential role in foreign affairs is dominant and the President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs. The regularity, nay, validity of his actions are adjudged under less stringent standards, lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.[381] (Citations omitted)

Whether reducing or eliminating tariff duties under the JPEPA would benefit the Philippines is a foreign policy matter—an issue of wisdom, not

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377 *Id.* at 569.

378 *Bayan v. Zamora*, 396 Phil. 623, 663 (2000) [Per J. Buena, *En Banc*].

379 *Vinuya v. Romulo*, 633 Phil. 538, 569 (2010) [Per J. Del Castillo, *En Banc*], *citing United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936).

380 379 Phil. 165 (2000) [Per J. Melo, *En Banc*].

381 *Vinuya v. Romulo*, 633 Phil. 538, 569–570 (2010) [Per J. Del Castillo, *En Banc*].

legality. The political branches considered abounding circumstances in adopting the policy, a decision to which this Court shall accord great respect.

VIII

Article II, Sections 15 and 16 of the Constitution provide for the people's rights to health and to a balanced and healthful ecology:

> ARTICLE II
>
> Declaration of Principles and State Policies
>
> . . . .
>
> SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.
>
> SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

These provisions highlight the State's obligation to ensure the protection and preservation of our environment as to guarantee that the government do not adopt policies that tend to harm the environmental balance.[382]

According to petitioners IDEALS et. al., the JPEPA violates their fundamental rights to health and to a balanced and healthful ecology through the elimination of tariff on certain products, which they claim are "toxic, hazardous[,] and other kinds of waste[s.]"[383]

However, contrary to their allegations, we find that the JPEPA does not facilitate the indiscriminate importation of hazardous and toxic wastes into the Philippines.[384]

Article 18 of the JPEPA provides for the parties' commitment to eliminate or reduce the customs duties that each party imposes on the originating goods of the other party:

> Article 18
> Elimination of Customs Duties
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> 1. Except as otherwise provided for in this Agreement, each Party shall

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382 *Oposa v. Factoran, Jr.*, 296 Phil. 694 (1993) [Per J. Davide, Jr., *En Banc*]. *See also Zabal v. Duterte*, 846 Phil. 743 (2019) [Per J. Del Castillo, *En Banc*].

383 *Rollo* (G.R. No. 184635), p. 623.

384 *Id.* at 535–539.

eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

2. On the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

3. Each Party shall eliminate other duties or charges of any kind imposed on or in connection with the importation of originating goods of the other Party, customs duties of which shall be eliminated or reduced in accordance with paragraph 1 above, if any. Neither Party shall introduce other duties or charges of any kind imposed on or in connection with the importation of those originating goods of the other Party.

4. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any goods of the other Party:

   (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

   (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement respectively; and

   (c) fees or other charges commensurate with the cost of services rendered.

For this purpose, originating goods are those classified under Article 29 of the JPEPA:

Article 29
Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

   (a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2 below;
   (b) the good is produced entirely in the Party exclusively from originating materials of the Party; or
   (c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using nonoriginating materials.

2. For the purposes of subparagraph 1(a) above, the following goods shall be considered as being wholly obtained or produced entirely in a Party:

(a) live animals born and raised in the Party;
(b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;
(c) goods obtained from live animals in the Party;
(d) plants and plant products harvested, picked or gathered in the Party;
(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d) above, extracted or taken in the Party;
(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial sea of a Party;
(g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f) above;
(h) goods taken from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights over such seabed or subsoil in accordance with its laws and regulations and international law;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

(i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
(k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k) above.

Contrary to the contention of petitioners IDEALS et al., the preferential tariff treatment given to these products does not equate to the indiscriminate importation of toxic and hazardous wastes into the Philippines.

The JPEPA acknowledges that the parties are entitled to adopt and implement policies necessary to protect the health of their people and the environment. Its Article 23 states:

Article 23
General and Security Exceptions

For the purposes of this Chapter, Article XX and XXI of the GATT 1994 respectively, shall apply *mutatis mutandis*.

Article XX of the General Agreement on Tariffs and Trade 1994, or GATT 1994, provides that the parties may enforce measures geared toward

the protection of "human, animal[,] or plant life or health[.]"[385]

The following provisions of the JPEPA further illustrate that the parties' trade liberalization commitments will not facilitate the indiscriminate importation of the hazardous and toxic wastes:

> Article 66
> General Exceptions
>
> Nothing in this Chapter shall be construed to limit the authority of a Party to take measures it considers appropriate, for protecting health, safety or the environment or prevention of deceptive practices.
>
> Article 83
> General Exceptions
>
> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
>
> (a) necessary to protect public morals or to maintain public order;
>
> Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
>
> (b) necessary to protect human, animal or plant life or health[.]
>
> Article 99
> General and Security Exceptions
>
> 1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of the other Party in the Area of a Party, nothing in this Chapter other than Article 96 shall be construed to prevent a Party from adopting or enforcing measures:
>
> (a) necessary to protect human, animal or plant life or health[.]
>
> Article 102
> Environmental Measures
>
> Each Party recognizes that it is inappropriate to encourage investments by

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[385] General Agreement on Tariffs and Trade (1994), art. XX states in part:
Article XX
General Exceptions
Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life or health[.]

> investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Party.
>
> Article 114
> General Exceptions
>
> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on movement of natural persons between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
>
> (a) necessary to protect public morals or to maintain public order;
>
> Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
>
> (b) necessary to protect human, animal or plant life or health[.]

Furthermore, Article 11(1) of the JPEPA reaffirms the Philippines' and Japan's rights and obligations under other agreements, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), to which they are both signatories.[386] It states:

> Article 11
> Relation to Other Agreements
>
> 1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

The Basel Convention is a multilateral treaty that seeks to "protect human health and the environment against the adverse effects of hazardous wastes."[387]

Under the Basel Convention, state parties are obligated to take the appropriate measures to:

> (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and

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386 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), March 22, 1989 (entered into force on January 19, 1994).
See Basel Convention, *Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, available at* http://www.basel.int/?tabid=4499 (last accessed on March 11, 2022). *See also rollo* (G.R. No. 184635), p. 538.

387 Basel Convention, *Overview, available at* http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx (last accessed on March 11, 2022).

economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.[388]

In keeping with its obligations under the Basel Convention, the Philippines enacted Republic Act No. 6969, or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.[389] The law considers unlawful the act of causing, aiding, or facilitating the direct or indirect "storage, importation[,] or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines."[390]

In addition, the Romulo-Aso Exchange of Notes shows Japan's commitment that it will not export toxic wastes into the Philippines. It reads:

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388 Basel Convention, art. 4(2).

389 *Rollo* (G.R. No. 184635), p. 538.

390 Republic Act No. 6969 (1990), sec. 13(d).

22 May 2007

Excellency,

I would like to express appreciation for His Excellency Prime Minister Abe's statement during the 9 December 2006 bilateral meeting between His Excellency and Her Excellency President Gloria Macapagal-Arroyo that Japan would not be exporting toxic wastes to the Philippines, as defined and prohibited under the laws of the Philippines and Japan, in accordance with the Basel Convention. This letter serves to confirm our understanding to this effect and that provisions related to this topic in the Japan-Philippines Economic Partnership Agreement do not prevent the adoption or enforcement of such measures under existing and future national laws, rules and regulations of the Philippines and Japan. It would be opportune receiving confirmation from your side to put to rest the concerns raised on this subject in the JPEPA. The Philippine Government is committed to the early ratification of the JPEPA and to realize the benefits therein for the well-being of our peoples.

Accept, Excellency, the assurances of our highest consideration.

Very truly yours,

ALBERTO G. ROMULO

HIS EXCELLENCY
TARO ASO
Foreign Minister
Japan

23 May 2007

Excellency,

I acknowledge receipt of Your Excellency Secretary Alberto G. Romulo's letter dated 22 May 2007.

I am pleased to confirm the statement and commitment of Prime Minister Shinzo Abe that Japan would not be exporting toxic wastes to the Philippines, as defined and prohibited under the laws of Japan and the Philippines, in accordance with the Basel Convention, and the understanding that provisions related to this topic in the Japan-Philippines Economic Partnership Agreement (JPEPA) do not prevent the adoption or enforcement of such measures under existing and future national laws, rules and regulations of the Philippines and Japan.

It is our hope that your Government complete the procedure necessary for entry into force of the JPEPA soon to attain our common objectives under the JPEPA and to further strengthening our relations.

Accept, Excellency, the assurances of our highest consideration.

Taro Aso
Minister for Foreign Affairs of Japan

HIS EXCELLENCY
ALBERTO G. ROMULO
Secretary of Foreign Affairs
Republic of the Philippines[391]

A rundown of these laws, treaties, and exchange of notes shatters the conjectural contention that the JPEPA facilitates the indiscriminate importation of hazardous and toxic wastes into the Philippines. Petitioners' fears have no basis.

IX

The alleged violation of Executive Order No. 156[392] is likewise unfounded.

Petitioners cite Articles 4 and 27 of the JPEPA, which they claim authorize the importation of used motor vehicles in the Philippines.[393] These provisions are allegedly complemented by Annex 1, Part 3, Section 1(3) of the JPEPA, which states:

Part 3

Section 1
Notes for Schedule of the Philippines

. . . .

3. (a) The Philippines may apply import duties specified in Annex A of the Executive Order No. 418 of the Philippines dated April 4, 2005, as may be amended (hereinafter referred to as "EO 418") on used motor vehicles among the originating goods to which this note is applied, in addition to customs duties as indicated in Column 4.

(b) For the purposes of subparagraph (a) above, the Philippines shall follow its normal domestic procedures in any amendment of EO 418, and shall notify Japan of the amendment of EO 418 in 60 days advance of its publication.

(c) On the request of either Party, the Parties shall negotiate on issue such as market access conditions on used motor vehicles.[394]

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391 Romulo-Aso Exchange of Notes, *available at* https://www.mofa.go.jp/region/asia-paci/philippine/epa0609/letter.pdf (last accessed on March 9, 2022).

392 Executive Order No. 156 (2002). Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and Its Implementing Guidelines.

393 *Rollo* (G.R. No. 185366), pp. 1458–1463.

394 JPEPA, Annex 1, pp. 278–279.

We recognize petitioners' pursuit of protecting and promoting the Philippine locomotive industry. However, this Court finds no violation of Executive Order No. 156.

As respondents correctly argue, Articles 4 and 27 of the JPEPA merely provide a mechanism through which parties may discuss cooperation in the importation of used motor vehicles.[395]

Executive Order No. 156, which provides for the guidelines concerning motor vehicle development program, was adopted to protect and accelerate the sound development of the Philippine motor vehicle industry. Yet, it does not completely prohibit importing used motor vehicles into the Philippines; exceptions are listed in Article 2, Section 3.[396]

Nonetheless, to ensure that its objective is achieved, Executive Order No. 156 further requires compliance with emission standards before used

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[395] *Rollo* (G.R. No. 184635), p. 534.

[396] Executive Order No. 156 (2002), art. 2, sec. 3 states:
Section 3. Used motor vehicles.
3.1 The importation into the country, inclusive of the Freeport, of all types of used motor vehicles is prohibited, except for the following.
3.1.1 A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-Dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;
3.1.2 A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs;
3.1.3 Trucks excluding pick-up trucks;
1. with GVW of 2.5–6.0 tons covered by an authority to import issued by DTI.
2. With GVW above 6.0 tons.
3.1.4 Buses:
1. with GVW of 6–12 tons covered by an authority to import issued by DTI;
2. with GVW above 12 tons.
3.1.5 Special purpose vehicles:
1. fire trucks
2. ambulances
3. funeral hearses/coaches
4. crane lorries
5. tractor heads or truck tractors
6. boom trucks
7. tanker trucks
8. tank lorries with high pressure spray gun
9. reefers or refrigerated trucks
10. mobile drilling derricks
11. transit/concrete mixers
12. mobile radiological units
13. wreckers or two trucks
14. concrete pump trucks
15. aerial/bucket flat-form trucks
16. street sweepers
17. vacuum trucks
18. garbage compactors
19. self[-]loader trucks
20. man lift trucks
21. lighting trucks
22. trucks mounted with special purpose equipment
23. all other types of vehicles designed for a specific use.

motor vehicles may be registered with the Land Transportation Office.[397] Notably, conforming to vehicle emission standards is one of the matters of discussion which the Philippines and Japan seek to achieve, as stated in the JPEPA.[398] Accordingly, this Court rules that JPEPA does not violate Executive Order No. 156.

X

This Court shall now discuss the binding nature of the Romulo-Koumura Exchange of Notes.

Treaties and executive agreements are both international agreements. In the international sphere, they are both binding. However, unlike a treaty, which to be valid and effective requires Senate concurrence after executive ratification, an executive agreement does not.[399]

In *Bayan Muna v. Romulo*,[400] this Court categorized an exchange of notes as an internationally accepted form of intergovernmental agreement:

> An exchange of notes falls "into the category of inter-governmental agreements," which is an internationally accepted form of international agreement. The United Nations Treaty Collections (Treaty Reference Guide) defines the term as follows:
>
> > An "exchange of notes" is a record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

Again, treaties and executive agreements are both legally binding in our jurisdiction.[401] *Pangilinan* explains:

> Treaties and executive agreements are equally binding on the Philippines. However, an executive agreement: "(a) does not require legislative concurrence; (b) is usually less formal; and (c) deals with a narrower range of subject matters." Executive agreements dispense with

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397 Executive Order No. 156 (2002), art. 2, sec. 4(4.1.4).
398 JPEPA, art. 27.
399 *Bayan Muna v. Romulo*, 656 Phil. 246, 269–270 (2011) [Per J. Velasco, *En Banc*].
400 *Id.*
401 *Id.* at 269.

> Senate concurrence "because of the legal mandate with which they are concluded." They simply implement existing policies, and are thus entered into:
>
> (1) to adjust the details of a treaty;
>
> (2) pursuant to or upon confirmation by an act of the Legislature; or
>
> (3) in the exercise of the President's independent powers under the Constitution.
>
> The *raison d'être of executive agreements hinges on prior constitutional or legislative authorizations.*[402] (Emphasis supplied, citations omitted)

Further, the Vienna Convention expressly provides for the rule in interpreting a treaty in relation to any subsequently executed agreement between the parties:

> SECTION 3. INTERPRETATION OF TREATIES
>
> *Article 31*
> *General rule of interpretation*
>
> . . . .
>
> 3. There shall be taken into account, together with the context:
>
> Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions[.]

Thus, the Vienna Convention allows the consideration of any subsequent agreement between the parties in interpreting the treaty or applying its provisions.

To clarify, treaties and executive agreements are not wholly the same. An executive agreement can be distinguished from a treaty based on two essential features: (1) the existence of an executive agreement must be "traceable to an express or implied authorization under the Constitution, statutes, or treaties";[403] and (2) treaties are regarded as "superior to executive agreements."[404]

An exchange of notes, as an executive agreement, is concluded to implement existing policies, or to be considered in interpreting a treaty or applying its provisions. It is just as binding as a treaty but must yield in case of conflict with the Constitution, a statute, or a treaty. The obligations created

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402 *Pangilinan v. Cayetano*, G.R. Nos. 238875 et al., March 16, 2021 [Per J. Leonen, *En Banc*].
403 *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 388 (2016) [Per C.J. Sereno, *En Banc*].
404 *Id.* at 389.

by an executive agreement cannot go beyond what is explicitly allowed or reasonably implied by the mandate it seeks to implement. An executive agreement that contains overbroad obligations renders its validity and effectivity questionable.[405]

Here, petitioners FairTrade et al. contend that the Romulo-Koumura Exchange of Notes has no useful function, it being a merely shared understanding of the JPEPA's interpretation. They, along with petitioners IDEALS et al., claim that it has no bearing and did not cure the JPEPA's legal and constitutional infirmities.[406]

Petitioners' arguments are unavailing.

At its core, the issue is the validity and effectivity of the Romulo-Koumura Exchange of Notes as to the shared understanding between the Philippines and Japan of the JPEPA's provisions.

On August 22, 2008, Foreign Affairs Secretary Romulo sent former Japanese Prime Minister of Foreign Affairs Koumura (Minister Koumura) a letter containing the Philippines and Japan's shared understanding on how the JPEPA would be implemented. Minister Koumura replied on August 28, 2008, confirming the shared understanding.

This exchange of letters constitutes the Romulo-Koumura Exchange of Notes, which is reproduced below:

28 August 2008

Excellency,

I have the honor to refer to Your Excellency's letter dated 22 August 2008, which reads as follows:

"I have the honor to state the shared understanding of the Republic of the Philippines and Japan on the interpretation of the Japan-Philippine Economic Partnership Agreement (JPEPA) as follows:

1. The JPEPA, as stated in its Preamble, affirms and recognizes the importance of the implementation of measures by the Governments of the Parties in accordance with their respective laws and regulations, including their constitutions.

2. All the provisions stipulated in the JPEPA shall be implemented in accordance with the Constitution of the Republic of the Philippines and the Constitution of Japan.

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405 *Pangilinan v. Cayetano*, G.R. Nos. 238875 et al., March 16, 2021 [Per J. Leonen, *En Banc*], *citing Saguisag v. Ochoa, Jr.*, 777 Phil. 280 (2016) [Per C.J. Sereno, *En Banc*].

406 *Rollo* (G.R. No. 185366), pp. 1454–1458 and *rollo* (G.R. No. 184635), pp. 663–665.

3. Nothing in the JPEPA requires amendment of any of the existing provisions of the Constitution of the Republic of the Philippines including Article II, Section 15; Article XII, Sections 1, 2, 3, 7, 8, 10, 11, 12 and 14; Article XIV, Sections 4 and 12; and Article XVI, Section 11; which cover, inter alia,

(1) the protection and promotion of the right to health of the people,

(2) the protection of Filipino enterprises against unfair foreign competition and trade practices,

(3) the ownership of all lands of public domain and the exploration, development, and utilization of all waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources,

(4) lease and ownership of alienable public lands,

(5) ownership and transfer of private lands,

(6) limitation to Philippine citizens and corporations or associations meeting a prescribed minimum local equity requirement in certain areas of investments,

(7) preferential rights, privileges, and concessions granted to qualified Filipinos covering the national economy and patrimony,

(8) regulation of foreign investments,

(9) the operation of public utilities,

(10) promotion of the preferential use of Filipino labor, domestic materials and locally produced goods, and adoption of measures to help them being competitive,

(11) the practice of all professions,

(12) the ownership, control, and administration of educational institutions,

(13) state regulation of the transfer and promotion of technology,

(14) the ownership and management of mass media,

(15) the ownership of corporations and associations engaged in the advertising industry.

4. The present exchange serves only to confirm the interpretation of, and does not modify the rights and obligations of the Parties under, the provisions of the JPEPA.

In reference to this letter, I should like to recall the letters of 22 and 23 May 2007, which were exchanged in relation to the JPEPA, that confirmed the interpretation of the JPEPA in the area of environmental matters.

I have further the honour to confirm that the JPEPA also provides that:

Article 161

> "The Parties shall undertake a general review of the Agreement and its implementation and operation in 2011 and every five years thereafter, unless otherwise agreed by both Parties."

First sentence of paragraph 1 of Article 163

> "This Agreement may be amended by agreement between the Parties."

I would appreciate your Excellency's letter in reply on behalf of the Government of Japan to confirm that the above is the shared understanding of our two Governments on the interpretation of the JPEPA.

Accept, Excellency the assurances of my highest consideration."

In reply, I have the honor to confirm that the above is the shared understanding of our two Governments on the interpretation of the JPEPA.

Accept, Excellency, the renewed assurances of my highest consideration.

(sgd.)
Masahiko Koumura
Minister for Foreign Affairs of Japan

His Excellency Alberto G. Romulo
Secretary of Foreign Affairs
of the Republic of the Philippines[407]

The Romulo-Koumura Exchange of Notes shows that both countries confirmed their shared understanding that the JPEPA's provisions shall be implemented in accordance with the Constitution of the Philippines and that of Japan.

On the strength of the Romulo-Koumura Exchange of Notes, both countries recognized the Philippine Constitution's supremacy by confirming that "[n]othing in the JPEPA requires amendment of any of the existing provisions of the Constitution of the Republic of the Philippines and the Constitution of Japan."[408] Its contents served to clarify and confirm the shared understanding of both countries as to the interpretation of the JPEPA and the application of its provisions.

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[407] *Rollo* (G.R. No. 185366) pp. 1055–1057.
[408] *Id.* at 1055.

The Senate of the Fourteenth Congress, upon concurring in the JPEPA's ratification, expressly recognized the Romulo-Koumura Exchange of Notes, together with the Romulo-Aso Exchange of Notes, as an integral part of the JPEPA.[409]

Undoubtedly, the Romulo-Koumura Exchange of Notes is a valid executive agreement. Therefore, as with the JPEPA, it is likewise binding.

Finally, as to petitioners' claims that the government made insufficient consultations, and that the JPEPA failed to account for the position of various stakeholders, these are questions of fact that require a formal trial. This is especially since respondents counter that numerous public hearings and meetings with different government agencies were conducted to ascertain the view of the general public. This Court is no trier of facts.

ACCORDINGLY, the Petitions for *Certiorari* and Prohibition are **DISMISSED** for lack of merit.

SO ORDERED.

MARVIC M.V.F. LEONEN
Acting Chief Justice
Per S.O No. 2989 dated June 24, 2023

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[409] S. Res. 131, 14th Cong. 2nd Sess. (2008). Resolution Concurring in the Ratification of the Japan-Philippines Economic Partnership Agreement (JPEPA).

WE CONCUR:

On official leave
ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official leave
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

On leave
JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the court.

MARVIC M.V.F. LEONEN
Acting Chief Justice
Per S.O No. 2989 dated June 24, 2023