

REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

AKBAYAN, ET AL.

Petitioners

- versus -

G.R. No.

HON. THOMAS G. AQUINO, in his capacity as Chairman and Chief Delegate of the Philippine Coordinating Committee for the Japan-Philippines Economic Partnership Agreement, et al.

For Mandamus and Prohibition With Application for Temporary Restraining Order.

Respondents.

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URGENT PETITION FOR MANDAMUS AND PROHIBITION
With Application for a Temporary Restraining Order

PETITIONERS, by counsel, respectfully state:

PRELIMINARY STATEMENT

Over the past two decades, the Philippines has borne witness to tremendous changes in trade policy both nationally and internationally. The phenomena of membership in the multilateral trading system,¹ liberalization,² and globalization³ have

¹ This generally refers to the system operated by the World Trade Organization (“WTO”), which is concurrently an organization for liberalizing trade, a forum for governments to negotiate trade agreements, a place for settling trade disputes, and the operator of a system of trade rules. The WTO multilateral trading system operates on the following foundational principles: (1) non-discrimination, which is operationalized among trading partners through the “most-favored-nation” or “MFN” principle (i.e., a special favor extended to one trading partner must be extended to all other trading partners in the WTO) and the “national treatment” principle (i.e., foreigners should be treated the same way as locals); (2) freer trade by lowering trade barriers through negotiations among trading partners; (3) predictability through binding of tariffs and transparency in trade rules; and (4) promotion of competition.

² Liberalization refers to the freeing of trade, investment, and capital flows between countries.

³ Globalization refers to the integration of product and financial markets facilitated by liberalization, as well as the integration of production facilities in different countries under the aegis or ownership of multinational corporations.

opened up the Philippine economy to foreign competition on a massive scale, through the various trade commitments undertaken by the Philippines unilaterally through the Tariff Reform Program,⁴ multilaterally as a member of the World Trade Organization,⁵ and regionally as a member of the ASEAN Free Trade Area (“AFTA”).⁶ The effects of these trade commitments on the average Filipino have been manifold, affecting not just prices on agricultural and industrial products, but more importantly, the job security and employment of the Filipino workers who make them, the household income of the families who rely on them, and the continued viability of the local industries who employ them. Moreover, these trade commitments determine to a large extent the flow of revenues into the national treasury, and shape how our economy is run, what economic policies are adopted, what legislation is passed, and in more extreme cases, how the Philippine Constitution and existing legislation is to be amended or revised.

In short, the Philippines’ trade commitments determine the state of the Philippine economy and of the lives of all Filipinos who are part of that economy.

And yet despite this tremendous impact on the lives of the average Juan and Maria dela Cruz, information on the full extent of these trade commitments has remained largely out of reach, with the Philippine government either neglecting, or worse, refusing to disclose vital information despite sustained clamor from concerned industries and sectors for such information. In most instances, the Filipino public is informed of new

⁴ The Tariff Reform Program (“TRP”) is an ongoing program of tariff reduction that was instituted by the Philippine government starting in 1981 as part of the structural adjustment program of the International Monetary Fund and World Bank. The tariffs imposed under the TRP are contained in the Tariff and Customs Code of the Philippines and form the basis of the country’s MFN (a.k.a. “applied”) tariff obligations under the WTO. Throughout the past two decades, the TRP has gone through four phases and has reduced the average nominal tariff from 42% (in 1981) to 28% (in 1990) to 20% (in 1995) to 13% (in 1997) to approximately 5% (in 2004).

⁵ Under the WTO, countries make commitments not to increase tariffs above listed rates. Such commitments are referred to as “bound” rates, and serve as “ceilings” or maximum rates that each country can validly impose. In many developing countries, the bound rates are somewhat higher than the applied tariff rates, as in the case of the Philippines. When the country joined the WTO in 1995, it bound 66% of its total tariff lines at 10 percentage points above the applied/MFN tariff rates prevailing in 1995. However, as a result of the unilateral tariff reduction under the TRP, the Philippines has been continuously reducing tariffs to levels far lower than the bound rates.

⁶ A free trade area refers to a group of countries that adopt free trade (i.e., zero tariffs and no other trade restrictions) among themselves, without necessarily changing the trade barriers that each member has for countries outside the group. The AFTA was implemented in 1992 via the Common Effective Preferential Tariff Scheme, which requires ASEAN countries to systematically reduce their tariffs until full liberalization is achieved. The AFTA is targeted to be fully implemented by 2010.

trade commitments or new trade policies only *after the fact*, and *sans* public consultation and involvement in the decision-making process. This is what happened when the Philippines joined the AFTA in 1992, and the WTO in 1994. And these happened despite Art. III, Sec. 7 of the Constitution, which guarantees the right of the people to information on matters of public concern, and Art. XIII, Sec. 16 which guarantees the right of the people to effective and reasonable participation at all levels of social, political, and economic decision-making.

At present, the Philippine government is embarking on a new series of trade commitments consisting of bilateral and plurilateral international trade agreements with various countries.⁷ The first such bilateral agreement is the Japan-Philippines Economic Partnership Agreement (“JPEPA”), which is reportedly scheduled to be signed before the end of this year.⁸ The JPEPA is reportedly more comprehensive and with potentially more far-reaching effects than our existing trade commitments.

And yet, the preparations and negotiations surrounding the JPEPA have been shrouded in secrecy, with the government negotiating panel refusing to provide substantial information and documents on the JPEPA even to members of Congress, who are mandated under the Constitution to represent the Filipino people and to protect their interests, and despite repeated requests for such information and documents. The refusal of the negotiating panel, particularly of Chief Negotiator Department of Trade and Industry (“DTI”) Undersecretary Thomas G. Aquino, to disclose the contents of the JPEPA and to involve the Filipino people in the process of decision-making continues up to the time of the filing of this Petition, and continues despite the fact that the JPEPA will become binding on the Filipino nation once it is signed within the month, and can no longer be undone once it has become a *fait accompli*.

It is for this reason that Petitioners file this Urgent Petition for Mandamus and Prohibition with an Application for the Issuance of a Temporary Restraining Order (the “Petition”), to compel the Philippine government to publicly disclose the full text of the

⁷ Included in this new wave of trade agreements are the ASEAN-China Free Trade Agreement (“FTA”), ASEAN-Korea FTA, ASEAN-India FTA, and the ASEAN-CER FTA (involving Australia and New Zealand), all of which will necessarily entail bilateral agreements between the Philippines and the non-ASEAN trading partners concerned. The U.S. is also actively pushing for an R.P.-U.S. FTA.

⁸ See Annex A.

proposed JPEPA, including the Philippine and Japanese offers and all pertinent attachments, to restrain the Philippine Government from signing such agreement until such time that full public disclosure has been made, full opportunity given for public consultation, and ample time afforded the Philippine Senate to properly study and review the JPEPA.

OVERVIEW AND NATURE OF THE JPEPA

The JPEPA is a bilateral preferential trade agreement between Japan and the Philippines that seeks to remove barriers to trade, and to promote a freer trans-border flow of the trade of goods, persons, services, and capital between the two countries, resulting in a free trade area between the two countries. The JPEPA is being negotiated in the context of an ASEAN-Japan Comprehensive Economic Partnership (“CEP”), which was proposed by Prime Minister Koizumi to ASEAN in January 2002. The JPEPA will constitute the Philippine component of such Japan-ASEAN CEP.

The JPEPA will inevitably affect much of the Philippine economy given its wide coverage.⁹ The JPEPA will cover (1) trade in goods,¹⁰ (2) rules of origin,¹¹ (3) customs procedures,¹² (4) paperless trading,¹³ (5) emergency measures,¹⁴ (6) trade in services,¹⁵ (7)

⁹ This is based on the reports made by the Department of Trade and Industry (“DTI”) during inquiries conducted by the Special Committee on Globalization of the House of Representatives (the “Committee”).

¹⁰ Trade in goods covers substantially all of the 11,000++ tariff lines of the Tariff and Customs Code, encompassing agricultural and food products (Chapters 1-24), mining products (Chapters 25-26), and manufactured and industrial products (Chapters 27-97). This section of the JPEPA consists primarily of the reduction of tariff rates, with full tariff liberalization (i.e., reduction of tariffs to 0%) to take effect in 2010. It must be noted that the JPEPA stands to affect the country’s MFN tariff rates, which, as previously mentioned, are governed by the country’s unilateral trade commitments under the TRP, and its multilateral trade commitments under the WTO.

¹¹ Rules of Origin are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries; Rules of Origin ensure that preferences benefit only those products originating in the beneficiary countries. It must be noted that the Philippines is a party to the WTO Rules of Origin Agreement.

¹² Customs Procedures will reportedly provide information exchange and cooperation to facilitate trade through simplified and harmonized customs procedures.

¹³ Paperless Trading will reportedly provide information exchange on best practices.

¹⁴ Emergency Measures will provide the rules for addressing serious injury or threat thereof caused by increased imports. Under present Philippine law, emergency measures are governed by Republic Act No. 8800, otherwise known as the Safeguard Measures Act. However, relief is currently not available to

movement of natural persons,¹⁶ (8) investment,¹⁷ (9) mutual recognition,¹⁸ (10) competition policy,¹⁹ (11) intellectual property,²⁰ (12) government procurement,²¹ (13) bilateral cooperation,²² (14) improvement of the business environment, and (15) dispute avoidance and settlement.²³ The sheer comprehensiveness of the JPEPA – which sets it apart from most of the free trade agreements (“FTA”) currently being negotiated in the world today - has led many officials from the DTI and the Department of Foreign Affairs (“DFA”) to label the envisioned JPEPA as an “FTA-plus.”²⁴

Philippine industries under the Safeguard Measures Act in view of this Honorable Court’s ruling in *Filipino Metals, Inc., et al. v. Secretary of Trade and Industry, et al.*, G.R. No. 157498, 15 July 2005.

¹⁵ It must be noted that the Philippines is a party to the WTO General Agreement on Trade in Services (“GATS”), which is the first and only set of multilateral rules governing international trade in services.

¹⁶ Movement of Natural Persons is also known as Mode 4 under the GATS. This area is of particular interest to the Philippines in view of the potential to open up the Japanese market to accept Filipino nurses, caregivers, health workers, and I.T. professionals.

¹⁷ This area involves the rules on investment of Japanese corporations in the Philippines and vice-versa. Foreign investments are currently governed by the applicable provisions of the Constitution, Executive Order No. 226, otherwise known as the Omnibus Investments Code, and Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1992, and the WTO Trade-Related Investment Measures (“TRIMs”) Agreement. Also, it must be noted that under the multilateral trading system, the proposed Multilateral Investment Agreement has been vigorously opposed by developing country members due to inordinately onerous provisions in favor of developed country investors.

¹⁸ Mutual recognition refers to the acceptance by one country of another country’s certification that a product has met a satisfactory standard for ability, performance, safety and the like.

¹⁹ Competition policy refers to legislation and regulations designed to protect and stimulate competition in markets by outlawing anti-competitive business practices such as cartels, market sharing, or price fixing. At present, Philippine competition policy is fragmented in the absence of a single piece of comprehensive and consolidated legislation on the subject.

²⁰ Philippine rules on intellectual property are governed by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPS Agreement”), Republic Act No. 8293 or the Intellectual Property Code, and other intellectual property conventions prior to the TRIPS Agreement to which the Philippines is a party.

²¹ Government procurement, or the purchase of goods and services by governments and state-owned enterprises, is governed by Republic Act No. 9184, otherwise known as the Government Procurement Act. Under the WTO, there is an Agreement on Government Procurement; however, the Philippines is not a signatory to this agreement.

²² Bilateral economic cooperation is reportedly to be pursued within the context of Overseas Development Assistance (ODA), which is governed by Republic Act No. 8182, otherwise known as the Official Development Assistance Act of 1996.

²³ Dispute avoidance and settlement refers to the manner by which disputes arising out of the implementation of the JPEPA will be settled by the two countries bilaterally. It must be noted that under the WTO, dispute settlement is done multilaterally through the Dispute Settlement Body, and consists of two stages: the Panels and the Appellate Body.

After almost a year of indecision as to whether the JPEPA is a mere executive agreement or a full treaty,²⁵ the DFA finally announced in October 2005 that JPEPA is a treaty that will require the concurrence of the Senate.²⁶

The JPEPA is a “first” for the Philippines in many respects. As the first bilateral free trade agreement that the Philippines will be entering into, the JPEPA will necessarily set a precedent for all future trade negotiations that the country will embark on.²⁷ Also, as the first possible Economic Partnership Agreement (“EPA”) within ASEAN

²⁴ Ronald A. Rodriguez, Understanding the Political Motivations Behind Japan’s Pursuit of an Economic Partnership Agreement (EPA) with the Philippines: Considerations for the Philippines Side, PIDS Discussion Paper Series No. 2004-09, March 2004, page 1.

²⁵ When the Committee commenced hearings on the JPEPA on 28 February 2005, the DFA still had no position or recommendation as to whether the JPEPA was a treaty or an executive agreement. It was only during the committee hearing on 12 October 2005 that the DFA stated definitively that the JPEPA is a treaty, and only after the committee hearing on 31 August 2005 when Prof. Ma. Lourdes Sereno testified that the JPEPA is a “mega-treaty” that combines features of a bilateral investment treaty and a free trade agreement.

²⁶ During the 12 October 2005 hearing of the Committee, USec. Thomas G. Aquino of the DTI and Ms. Malou Montero of the DFA made the following pronouncements:

“MR. AQUINO. Sir, from our understanding, it will be the Department of Foreign Affairs that makes a determination on whether it partakes the form of an executive agreement or a treaty that will partake of a Senate ratification.

“We have received a communication from the Department of Foreign Affairs, based on their initial legal view, that this partakes of a treaty and hence will require Senate ratification. That specific communication from the Department of Foreign Affairs has been shared with the rest of the agencies involved in the JPEPA, Sir.”

x x x

“MS. MALOU MONTERO (Foreign Service Officer I, Department of Foreign Affairs). x x x Firstly, we’d like to reiterate the position taken by the Department of Foreign Affairs that the JPEPA partakes of the nature of treaty that would require Senate concurrence. x x x” (underscoring supplied)

²⁷ See note 7. In her testimony at the hearing of the Committee on 31 August 2005, Prof. Sereno – who has been tapped by the Office of the Solicitor-General to assist in the review of the draft of the JPEPA - stated that:

“MS. MA. LOURDES SERENO (Professor, College of Law, University of the Philippines). x x x We believe that our review of the drafts is a review that ... to a large extent must take into account the constitutional role that each Department plays in the matter of policy setting in the area of trade, as well as, in the matter of treaty execution. I refer not only to the fact that if there are major changes, for example, in the legal obligations of the Philippines in the area of international law, and a bilateral treaty made with that, then, that is already ... that must already be subjected to the scrutiny, principally of the Senate under the articles on Senate Ratification of Treaties

after Singapore, it will likewise set a precedent for the EPAs that will subsequently be entered into by our ASEAN neighbors Thailand, Malaysia, and Indonesia. More ominously, the JPEPA signals a radical shift in national policy, i.e., from one of multilateralism (under the WTO) to bilateralism,²⁸ as can be seen from the apparent

and if there is going to be any change and it may even require full-Body legislation coming from both Houses of Congress. With that in view, we view this role of ours as being of a serious nature because it might possibly set the pattern of the review of all the other bilateral investment treaties that have been mentioned already in the House Resolution as being reported both by the Department of Trade and Industry, as well as those that have been physically counted as existing.” (underscoring supplied)

²⁸ In his testimony at the Committee hearing on 12 October 2005, Justice Florentino Feliciano made the following observations:

“MR. FELICIANO. x x x A third point and my last point, after this I will stop talking, Mr. Chairman, the JPEPA as it now exist absorb a (sic) certain provisions or many provisions of the WTO agreements. They reproduce or basically reproduce but not, sometimes, not in identical terms, provisions of certain agreements of the WTO.”

“What does that mean? What it means, Sir, is the following: that we are incorporating into a bilateral agreement, bilateral because it is between Japan and the Republic of the Philippines; provisions which are found in a multilateral agreement but the bilateral agreement between the Philippines and Japan has its own dispute settlement provisions. The result, Sir, would be that if a dispute arose which under the ordinary provisions of the WTO agreements should be brought ... it should be brought to Geneva. That is to say, should be brought to a multi-lateral forum will become subject to the bilateral dispute settlement provisions of JPEPA.”

“You may ask – What difference does it make, Mr. Chairman? The difference is this, Sir – if you have recourse to a multilateral forum you are in a forum where there are 147, 148 other members. So, you don’t feel very alone. But if you are alone, facing either Japan, I hope there is no Japanese Ambassador here or diplomat, or the US or the EC, well, you know, that is a David and Goliath types (sic) Mr. Chairman. And it’s not so easy to ... I’m not saying it’s impossible, all I’m saying it is very difficult to deal with it.”

“So, I really am not so sure why we should do that. I’m not so sure that ... well, maybe Usec Aquino will clarify this, what special benefits can accrue to the Philippines because of this incorporation of multilateral provisions in a bilateral agreement. From the viewpoint of a simple minded lawyer like myself, Mr. Chairman, what it means is adding an optional and additional, optional forum, bilateral forum for what should otherwise go to a multilateral forum.” (underscoring supplied)

x x x

“MR. FELICIANO. x x x Now, let me mention, sir, that in principle, multilateral agreements are always far suited to the requirements, to the needs of the smaller countries. In a bilateral agreement context, it is the ... it is the respective bargaining leverage of each party that, in the end, matters. You forget about the very fine rhetoric that will be exposed, ‘no? Rhetoric is rhetoric but rhetoric is also (sic) will not fill the bellies of the ... will not generate by themselves jobs, will not create income by itself. So ... and besides, rhetoric is expected, you know, it’s part of the context, but let’s not be ... let’s not kid ourselves, ‘no? At the end of the day, it’s not rhetoric that matters. It’s bargaining leverage. And there, as I’ve mentioned, the ... if the major trading companies or major investment-exporting countries want to enter”

willingness of the Philippine government to discuss the so-called “Singapore issues” of investment, competition policy, and government procurement, which negotiations have been shelved by the WTO for the meantime in view of the immense opposition posed by developing and least-developed countries around the world.

Moreover, as revealed by Philippine trade law experts Justice Florentino Feliciano and Prof. Ma. Lourdes Sereno – who have been given privileged access to the full text of the JPEPA²⁹ - during the hearings of the Special Committee on Globalization of the House of Representatives (the “Committee”) on 31 August 2005 and 12 October 2005, the JPEPA is not just any other ordinary bilateral trade agreement, but a “mega-treaty.” Reportedly an amalgam of a Bilateral Investment Treaty and a Bilateral Free Trade Agreement, the JPEPA adopts many key features of the North American Free Trade Agreement between the United States, Canada and Mexico, which took ten (10) years to negotiate before finally being signed in its eleventh year.³⁰

into a bilateral agreement, it must be because they think it will benefit them. Nobody enters into an agreement with the understanding it will be worked against their own interest. Nobody does that. Not even we do that, ‘no. If we do it, we think it’s going to help us. But sometimes our analysis is probably not as clear, is not as through as it should be. So we wind up in the short end, with the short end of the stake (sic). So, in principle, I always worry when a ... if it’s a bilateral agreement because I know ... sir, our negotiators, we come from a different culture. Our culture is different from the Western, very aggressive culture. Why? Because we treat strangers differently, you know. We go out of our way to be nice to strangers. It is a matter of face, of family honor, of tribal honor to be nice to ... But in the bargaining table, you forget that. You forget that. You just go straight forward. We have to learn to say “no” at times. We almost never say “no.” We always (say) maybe or maybe next time, or, you know, that kind of thing. x x x The other thing, Sir, is that (in) bilateral free trade agreements, the other side will always exclude benefits which it owes to members of a regional organization, regional grouping x x x” (underscoring supplied)

²⁹ It must be noted that during her testimony during the Committee hearing on 31 August 2005, Prof. Sereno stated that:

“The Office of the Solicitor-General contacted us to help in the review of the draft of the JPEPA, but as to whether the drafts that whether the drafts that were with us are the complete or the most current ones, even we, are not competent to say so. I believe that perhaps, the DTI can really provide that information.” (underscoring supplied)

³⁰ In her testimony during the Committee hearing on 31 August 2005, Prof. Sereno stated:

“x x x The JPEPA unlike the other bilateral investment treaties, is basically a very large, it’s a mega treaty which has the character somehow of the NAFTA. It takes off from a lot of the patterns of the NAFTA, and it comprises of (sic) three (3) major portions. The first major portion is the *investment portion*; the second portion is the *trade portion*; and, the third is a *quasi-dispute settlement cooperative portion*. Because it might even be so comprehensive in its impact on so many existing legislation in the Philippines, with more reason I think that this is one agreement that

Justice Feliciano and Prof. Sereno have warned that such a combined treaty would have difficulties that are “twice as large, twice as formidable” than if they were negotiated separately, and thus, the Philippine government needs to be “twice as awake, twice as vigilant” in determining whether the country is indeed ready to undertake a treaty of this nature. Prof. Sereno stated that the implications of JPEPA are “very far-reaching”, and may possibly require full-bodied legislation and/or amendments to existing legislation. She thus warned that the Philippine government should not be rushed into concluding and ratifying the JPEPA.

Despite its enormous implications on the Philippine economy and national life, however, the issue of the JPEPA has unfortunately not been sufficiently publicized so as

should not at all be hurried, but must be afforded all the scrutiny possible not only because of its impact on legislation, and that is one very big portion already on the existing legislation, but also because of the administrative and financial resource requirements in order that the Philippines can manage this now very complicated obligation and relationship it will have vis-à-vis Japan. So it may also require therefore that there be budgetary apportioning to handle these complications. So it is not a simple question of whether we are recognizing ordinary investor rights, but it may take on .. the character of the question may take on the nature of finding out the state of readiness that we have in administering a NAFTA-type treaty.” (underscoring supplied)

In his testimony during the Committee hearing on 12 October 2005, Justice Feliciano stated:

“x x x Sir, the JPEPA is an amalgam of two (2) distinct agreement. It is an amalgam of a BIT, a Bilateral Investment Treaty and a Bilateral Free Trade Agreement. So it is a combination of both. What that means, Sir, into (sic) my personal view, is that you must be twice as awake, twice as vigilant, make sure that you are able to examine very carefully the provisions of the agreement.

“Let me mention that this is the first so-called economic protection agreement combining a BIT with a Bilateral Free Trade Agreement that Japan is seeking to enter. All the other agreements with the ASEAN countries are BIT or are Bilateral Free Trade Agreements. But we are the first one and I think they are experimenting with us to see how we will react to a combined treaty. I say, the difficulties are twice as large, twice as formidable.

“The example I have in mind is the NAFTA. NAFTA is the North American Free Trade Agreement. That, Sir, is a combination of an investment agreement and a free trade agreement. There are only three (3) countries who are members of the NAFTA. That’s the US, Canada and Mexico. And that agreement took ten (10) years to negotiate. It was signed on the 11th year. And the US did not sign it until it came out with a statute, an act of Congress, identifying the requirements of ... and the positions of the United States.

“So, if USec Aquino will forgive an unsolicited piece of advice, we should try to separate the two (2) because each one is already sufficiently difficult to deal with. Let’s not make life too hard for ourselves. Let’s do it one by one.”

to come within the scope of popular public perception. On the few occasions that it has managed to receive coverage in the newspapers, it is usually relegated to an inconspicuous corner of the business pages.³¹

NATURE AND PURPOSE OF THE PETITION

This is a Petition, under Rule 65 of the Rules of Court, for mandamus and prohibition, with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction. Petitioners are bringing this Petition due to public Respondents' continued refusal - despite repeated requests - to provide access to the full text of the JPEPA and all pertinent attachments and annexes, such refusal being in violation of a duty enjoined by law and the Constitution. Petitioners file this Petition directly with this Honorable Court in view of the fact that along with this deliberate refusal to provide information on the treaty, the Philippine government has already manifested its intention to sign the JPEPA within the month, in violation of Petitioners' constitutional and statutory rights and with grave abuse of discretion amounting to lack or excess of jurisdiction, and there being no plain, speedy, and adequate remedy available under the ordinary course of law. The Petition prays that this Honorable Court issue:

1. A judgment ordering Respondents to provide the Petitioners with the full text of the JPEPA, including the Philippine and Japanese offers and all pertinent attachments and annexes;
2. A judgment ordering Respondents to refrain from concluding negotiations, signing the JPEPA, and transmitting the same to the President until such full disclosure has been made to the Petitioners;
3. A Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining the Respondents from concluding negotiations, signing the JPEPA, and transmitting the same to the President.

³¹ In an extremely rare instance, however, the JPEPA merited a two-page article in the October 10, 2005 issue of Newsbreak Magazine.

GROUNDS FOR GRANTING THE PETITION

The refusal of the lead negotiators of the Philippine Coordinating Committee (“PCC”) - the government agency tasked to undertake the negotiation of the JPEPA - to disclose the full text of the JPEPA, even to members of Congress, is unconstitutional as such refusal violates:

1. Article III, Section 7, which guarantees the right of the people to information on matters of public concern;
2. Article II, Section 28, which provides that the state adopts and implements a policy of full public disclosure of all its transactions involving public interest;
3. Article XI, Section 1, which provides that public officers and employees must at all times be accountable to the people; and
4. Article XIII, Section 16, which guarantees the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making.

Such refusal to disclose also impairs the powers of Congress under Article VII, Section 21, which provides that 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.

THE PARTIES

Petitioners

1. Petitioner Akbayan Citizens’ Action Party is a party-list organization duly registered with the Commission on Elections representing a multi-sectoral constituency that includes labor, peasant, fisherfolk, urban poor, women, and youth organizations. Its principal office address is 101 Matahimik Street, Teachers’ Village, Quezon City. Akbayan is represented in this Petition by its President Ronaldo Llamas.

2. Petitioner Pambansang Katipunan ng mga Samahan sa Kanayunan (“PKSK”) is a national organization of peasant organizations, duly organized and existing under Philippine laws, and is engaged in advocacy for the protection and advancement of farmers’ rights and interests. Its principal office address is 18-A Marunong Street, Barangay Central, Quezon City. Petitioner is represented in this Petition by its Vice-Chairperson Ruperto B. Aleroza.

3. Petitioner Alliance of Progressive Labor (“APL”) is a national labor center composed of federations, national unions, and independent unions whose advocacy is the advancement of social movement unionism and the protection of the rights of all workers. Its principal office address is 102 Scout de Guia St., Barangay Sacred Heart, Quezon City. APL is represented in this Petition by its Chairperson, Daniel L. Edralin.

4. Petitioner Vicente A. Fabe is a Filipino, of legal age, and the National Chairperson of the Pambansang Kilusan ng mga Samahang Magsasaka (PAKISAMA), a peasant organization engaged in advocacy for the rights and interests of farmers nationwide, with principal office at Room 202, Partnership Center, 59 C. Salvador Street, Loyola Heights, Quezon City. He is suing in his capacity as a citizen, taxpayer, and officer of an organization whose members’ livelihoods stand to be directly affected by the JPEPA.

5. Petitioner Angelito R. Mendoza is a Filipino, of legal age, and is concurrently the lead convenor of the Garments, Textile, and Allied Industries Labor Council of the Philippines (“GARTEX” is an alliance of 17 plus labor federations in the garments and textile industry), the deputy secretary general of the National Confederation of Labor, and a member-convenor for labor of the Fair Trade Alliance. He resides at 94-D (new no. 18) J. Basa St., San Juan, Metro Manila and is suing in his capacity as a citizen, taxpayer, and officer of organizations whose members’ livelihoods stand to be directly affected by the JPEPA.

6. Petitioner Manuel P. Quiambao is a Filipino, of legal age, and is concurrently the co-convenor for agriculture of the Fair Trade Alliance and the President of the PEACE (Philippine Ecumenical Action for Community Empowerment) Foundation, a non-profit organization whose main advocacy is land reform and agricultural-based workers empowerment. He resides at Lot 11 Moran St., U.E. Village,

Cainta, Rizal and is suing in his capacity as a citizen, taxpayer, and officer of organizations whose members' livelihoods stand to be directly affected by the JPEPA.

7. Petitioner Rose Beatrix Cruz-Angeles is a Filipino, of legal age, and residing at 257 15th Ave., Cubao, Quezon City. She is suing in her capacity as a citizen, taxpayer, and as a mother of four children who is concerned about how the JPEPA will impact on the Philippine economy, her ability to provide for her family, and the welfare of her children both in the immediate and distant future.

8. Petitioner Lorenzo R. Tañada III is a Filipino, of legal age, and the principal author of House Resolution No. 551, which called for an inquiry into the JPEPA negotiations. He is the duly elected representative of the Fourth District of Quezon Province, holding office at Room N-409, House of Representatives, Constitution Hills, Quezon City. He is suing in his capacity as a citizen, taxpayer, and member of the House of Representatives.

9. Petitioner Mario "Mayong" Joyo Aguja is a Filipino, of legal age, the Vice Chairperson of the House Committee on Agriculture and Food, and a co-author of House Resolution No. 551, which called for an inquiry into the JPEPA negotiations. He is a duly elected party-list representative of the Akbayan Citizens' Action Party, holding office at Room S-514, House of Representatives, Constitution Hills, Quezon City. He is suing in his capacity as a citizen, taxpayer, and member of the House of Representatives.

10. Petitioner Loretta Ann P. Rosales is a Filipino, of legal age, and a Deputy Minority Floor Leader of the House of Representatives. She is a duly elected party-list representative of the Akbayan Citizens' Action Party, holding office at Room S-511, House of Representatives, Constitution Hills, Quezon City. She is suing in her capacity as a citizen, taxpayer, and member of the House of Representatives.

11. Petitioner Ana Theresia Hontiveros-Baraquel is a Filipino, of legal age, and a duly elected party-list representative of the Akbayan Citizens' Action Party, holding office at the Room S-611, House of Representatives, Constitution Hills, Quezon City. She is suing in her capacity as a citizen, taxpayer, and member of the House of Representatives.

12. Petitioner Emmanuel Joel J. Villanueva is a Filipino, of legal age, and a duly elected party-list representative of the Citizens' Battle Against Corruption ("CIBAC"), an organization whose primary advocacy is transparency and accountability in government. He holds office at Room N-317, House of Representatives, Constitution Hills, Quezon City, and is suing in his capacity as a citizen, taxpayer, and member of the House of Representatives.

Respondents

1. Public respondent Thomas G. Aquino is being sued in his official capacity as DTI Undersecretary, as Chief Delegate and Chair of the PCC for the JPEPA, and as lead negotiator for Improvement of the Business Environment of the JPEPA. Respondent Aquino may be served summons and other processes at his office at the Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

2. Public respondent Edsel T. Custodio is being sued in his official capacity as DFA Undersecretary, and as Co-Chair of the PCC for the JPEPA. Respondent Custodio may be served summons and other processes at his office at the Department of Foreign Affairs, Roxas Boulevard, Pasay City, Metro Manila.

3. Public respondent Edgardo Abon is being sued in his official capacity as Chairman of the Tariff Commission ("TC"), and lead negotiator for Competition Policy and Emergency Measures of the JPEPA. Respondent Abon may be served summons and other processes at his office at the Tariff Commission, 5th Floor, Philippine Heart Center, East Avenue, Quezon City, Metro Manila.

4. Public respondent Margarita Songco is being sued in her official capacity as Assistant Director-General of the National Economic Development Authority ("NEDA") and lead negotiator for Trade in Services and Cooperation of the JPEPA. Respondent Songco may be served summons and other processes at her office at the NEDA Building, Josemaria Escriva Drive, Ortigas Center, Pasig City, Metro Manila.

5. Public respondent Malou Montero is being sued in her official capacity as Foreign Service Officer I, Office of the Undersecretary for International Economic Relations ("OUIER") of the DFA, and lead negotiator for the General and Final Provisions

of the JPEPA, Respondent Montero may be served summons and other processes at her office at the OUIER, Department of Foreign Affairs, Roxas Boulevard, Pasay City, Metro Manila.

6. Public respondent Erlinda Arcellana is being sued in her official capacity as Director of Board of Investments, and lead negotiator for Trade in Goods (General Rules) of the JPEPA., Respondent Arcellana may be served summons and other processes at her office at the Board of Investments, Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

7. Public respondent Raquel Echague is being sued in her official capacity as lead negotiator for Rules of Origin of the JPEPA. Respondent Echague may be served summons and other processes at her office at the Board of Investments, Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

8. Public respondent Gallant Soriano is being sued in her official capacity as Deputy Commissioner of the Bureau of Customs and lead negotiator for Customs Procedures and Paperless Trading of the JPEPA. Respondent Soriano may be served summons and other processes at her office at the Bureau of Customs, Port Area, Manila.

9. Public respondent Ma. Luisa Gigette Imperial is being sued in her official capacity as Director of the Bureau of Local Employment of the Department of Labor and Employment, and lead negotiator for Movement of Natural Persons of the JPEPA. Respondent Imperial may be served summons and other processes at her office at the Bureau of Local Employment, Department of Labor and Employment, Intramuros, Manila.

10. Public respondent Pascual de Guzman is being sued in his official capacity as Director of the Board of Investments, and lead negotiator for Investment of the JPEPA. Respondent Imperial may be served summons and other processes at his office at the Board of Investments, Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

11. Public respondent Jesus Motoomull is being sued in his official capacity as Director for the Bureau of Product Standards of the Department of Trade and Industry,

and lead negotiator for Mutual Recognition of the JPEPA. Respondent Motoomull may be served summons and other processes at his office at the Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

12. Public respondent Louie Calvario is being sued in his official capacity as lead negotiator for Intellectual Property of the JPEPA. Respondent Calvario may be served summons and other processes at his office at the Intellectual Property Office, Department of Trade and Industry, Sen. Gil J. Puyat Ave., Makati City, Metro Manila.

13. Public respondent Elmer H. Dorado is being sued in his official capacity as Officer-in-Charge of the Government Procurement Policy Board Technical Support Office, the government agency that is leading the negotiations on Government Procurement of the JPEPA.³² Respondent Dorado may be served summons and other processes at his office at the Government Procurement Policy Board Technical Support Office, Unit 2506, Raffles Corporate Center, F. Ortigas, Jr. Road, Ortigas Center, Pasig City, Metro Manila.

14. Public respondent Ricardo V. Paras is being sued in his official capacity as Chief State Counsel of the Department of Justice and lead negotiator for Dispute Avoidance and Settlement of the JPEPA. Respondent Paras may be served summons and other processes at his office at the Department of Justice, Padre Faura Ave., Manila.

15. Public respondent Adonis Sulit is being sued in his official capacity as lead negotiator for the General and Final Provisions of the JPEPA. Respondent Sulit may be served summons and other processes at his office at the Department of Justice, Padre Faura Ave., Manila.

16. Public respondent Eduardo R. Ermita is being sued in his official capacity as the incumbent Executive Secretary, who is primarily charged with the duty of receiving signed treaties for ratification by the President, as well as exercising supervision and control over the other public respondents on behalf of the President. Respondent Ermita may be served summons and other processes at his office at Malacañang Palace, Manila.

³² Please note that Dir. Martin Syquia, who is the person indicated in the list of PCC negotiators furnished by USec Aquino under Annex E, has since been replaced by Mr. Dorado.

17. Public respondent Alberto Romulo is being sued in his official capacity as Secretary of the DFA, who is primarily charged with the duty to receive treaties after their signing by the Philippine representative and to transmit the same to the President for ratification. Respondent Romulo may be served summons and other processes at his office at the Department of Foreign Affairs, Roxas Boulevard, Pasay City, Metro Manila.

STATEMENT OF FACTS

1. In January 2002, Japanese Prime Minister Junichiro Koizumi visited the Philippines and four (4) other ASEAN countries. During this visit, he proposed the “Initiative for Japan-ASEAN Comprehensive Economic Partnership”.

2. In May 2002, during her visit to Japan, President Gloria Macapagal Arroyo proposed to Prime Minister Koizumi that a working group be set up to study the possibility of establishing an economic partnership agreement between the Philippines and Japan.

3. In June 2002, then DTI Secretary Manuel Roxas III wrote to Japanese Minister Takeo Hiranuma to put in place a mechanism by which bilateral discussions could commence between the Philippines and Japan on the possibility of forging a JPEPA.

4. In August 2002, informal consultations were held in Tokyo to discuss the modalities for proceeding with the bilateral consultations. It was agreed that a Working Group on the JPEPA would be established. The Terms of Reference of such Working Group were agreed upon as well.

5. In October 2002, the Working Group on the JPEPA was officially formed. Consisting of representatives from concerned government agencies of Japan and the Philippines, the Working Group was tasked with studying the possible content, substance, and coverage of a mutually beneficial economic partnership between the two countries, including the possibility of forming a free trade area (FTA).

6. The Working Group created informal consolidated texts on most chapters for reference in any future JPEPA negotiations. The Working Group concluded that all the areas in the proposed JPEPA – which include trade in goods and services, investments, and movement of natural persons – should bring about short-term and long-term economic benefits to both countries.

7. On 28 May 2003, the Philippine Coordinating Committee (“PCC”), which was tasked to study and negotiate the proposed JPEPA, was created under Executive Order No. 213. The PCC would be composed of representatives from eighteen (18) government agencies,³³ and would be co-chaired by the DFA Undersecretary for International Economic Relations and the DTI Undersecretary for International Trade.³⁴ The PCC was tasked to formulate recommended Philippine positions for the meetings and negotiations with the Japanese counterpart, conduct consultations with concerned government and private sector representatives, and draft a proposed framework for the JPEPA and its implementing agreements.³⁵

8. During the 5th Working Group meeting held on June 8-9, 2003, the Working Group indicated that both countries were ready to proceed to the next level of discussions and thus concluded its work. The Joint Coordinating Team (JCT) for JPEPA was then created; it held its inaugural meeting on September 26-27, 2003.

9. In October 2003, ASEAN signed the Framework Agreement for a Comprehensive Economic Partnership (CEP) with Japan. It is envisioned that the ASEAN-Japan CEP will be fully realized by 2012 for the original six (6) ASEAN member countries, including the Philippines.

10. On 11 December 2003, Prime Minister Koizumi and President Arroyo agreed that the Japanese and Philippine governments should start negotiations on JPEPA

³³ These agencies are the Department of Foreign Affairs (DFA), the Department of Trade and Industry (DTI); the Department of Agriculture (DA), the Department of Budget and Management (DBM), the Department of Education, Culture, and Sports (DECS), the Department of Energy (DOE), the Department of Environment and Natural Resources (DENR), the Department of Finance (DOF), the Department of Health (DOH), the Department of Justice (DOJ), the Department of Labor and Employment (DOLE), the Department of Public Works and Highways (DPWH), the Department of Science and Technology (DOST), the Department of Tourism (DOT), the Department of Transportation and Communications (DOTC), the National Economic and Development Authority (NEDA), the Bangko Sentral ng Pilipinas (BSP), and the Securities and Exchange Commission (SEC).

³⁴ Section 1, Executive Order No. 213, 28 May 2003.

in 2004 based upon the discussions and achievements in the Working Group and Joint Coordinating Team for the Agreement during 2002 and 2003, and that the JPEPA should be concluded within a reasonable period of time. They reaffirmed that the JPEPA would develop and enhance the comprehensive partnership between ASEAN and Japan.³⁶

11. Formal JPEPA negotiations commenced in February 2004.

12. In October 2004, it came to the attention of Cong. Mario “Mayong” Aguja, Vice-Chair of the Committee on Agriculture and Food, that a local industry had requested the Department of Trade and Industry for a copy of the full text of the proposed JPEPA but that such request had been denied.

13. In their meeting on November 29, 2004, Prime Minister Koizumi and President Arroyo confirmed that both sides had reached agreements in principle on major elements of the JPEPA, and that they would expeditiously proceed with work to finalize the JPEPA, including negotiations on the text.³⁷

14. In view of the announcements of the Philippine government that negotiations on the text of the JPEPA were already underway, the refusal of the PCC to disclose the status of the negotiations and the contents of the proposed JPEPA, and information that the Philippine government was hoping to sign the JPEPA within the first quarter of 2005, Cong. Lorenzo R. Tanada III and Cong. Aguja jointly filed House Resolution No. 551 on 25 January 2005, calling for an inquiry into the bilateral trade agreements currently being negotiated by the Philippine government, particularly the JPEPA.³⁸

15. On 28 February 2005, the House Special Committee on Globalization (the “Committee”) held its first hearing on House Resolution No. 551. During this hearing, PCC Chairman and DTI Undersecretary Thomas G. Aquino admitted that:

³⁵ Section 2, *supra*.

³⁶ Joint Press Statement dated 29 November 2004. See Annex B.

³⁷ Joint Press Statement, *supra*.

³⁸ House Resolution No. 551 dated 25 January 2005. See Annex C.

- (a) This is the first time that the Philippines is entering into an agreement as comprehensive as this;³⁹
- (b) Under the JPEPA, tariffs on industrial, agricultural, forest, and fishery products will be eliminated or reduced within ten (10) years;⁴⁰ and
- (c) There are costs to entering into the JPEPA, including foregone revenues resulting from tariff reduction.⁴¹

16. Upon being questioned as whether the JPEPA was a treaty or an executive agreement, USec Aquino said that it would “still be decided upon later on by the Department of Foreign Affairs.”⁴²

17. During the hearing, USec Aquino was requested to furnish the Committee a copy of the latest draft of the JPEPA, a list of the people and agencies actually involved

³⁹ “REP. CASINO. The point that I would like to be clarified on is what makes this animal different from the other animals. Mas istrikto ba ang provisions nito in terms of interpretation? Is it wider in scope? Does it cover everything from Trade to investments? Yun, eh. Tapos ano yung ... may sinabi kayong ASEAN framework and also WTO framework, itong mga ito, wala ito doon sa mga dating agreements. In other words, is this an entirely new kind of ... is this a super agreement that we are entering into?

“MR. T.G. AQUINO. This is a new kind of agreement, Sir.

“REP. CASINO. And this is the first time that we are entering into this kind of ... it seems a very, very comprehensive agreement?

“MR. T.G. AQUINO. That’s right, Sir. That’s right.”

⁴⁰ “MR. T.G. AQUINO. x x x Now, let’s go specifically on (sic) trade in goods. Trade in goods refer to tariffs of industrial products, and agricultural, forest and fishery products will be eliminated or reduced within ten years. x x x”

⁴¹ “MR. T.G. AQUINO. x x x There are costs to it. First would be, expect foregone revenues. We’re in the process of computing this and breaking it down. The negotiation is not complete so we don’t know the final reduction of the tariff that are being considered as reasonable for both sides.”

⁴² “REP. TANADA. Now I don’t know if you would be in a position to answer this. Under the Constitution, and this is clear, that no treaty or international agreement shall be valid and effective unless concurred in by, at least, two-thirds of all members of the Senate. How would you consider now the JPEPA? Is it a treaty or international agreement?

“MR. T.G. AQUINO. Sir, as I said earlier, that will still be decided upon later on by the Department of Foreign Affairs.”

in the negotiations, and a copy of the exclusion list.⁴³ However, when more than a month had elapsed with no action from USec Aquino, Cong. Herminio G. Teves, in his capacity as Chairman of the Committee, wrote a letter dated 13 April 2005 to then DTI Secretary Juan Santos, requesting Sec. Santos to remind USec Aquino to furnish the Committee the documents that he had promised.⁴⁴

18. On 03 May 2005, the day before the scheduled hearing of the Committee – and 65 days after the request for JPEPA-related documents and information had been made during the first Committee hearing - USec Aquino transmitted to the Committee a list of trade and investment agreements signed by the Philippines, together with prototypes of said agreements. However, with respect to the JPEPA, only the list of the members of the PCC was transmitted.⁴⁵

19. During the Committee hearing on 04 May 2005, USec Aquino revealed that the PCC was targeting to have the JPEPA negotiations completed by June 2005.⁴⁶ Cong. Aguja asked USec Aquino whether the requested JPEPA-related documents had been submitted by the PCC to the Committee. USec Aquino said that the documents

⁴³ “REP. TANADA. Mr. Chairman, maybe we can ask Undersecretary Aquino to provide us yung exclusion list which Dr. Ofreneo mentioned so that we could study them. I think of the purpose (sic) also of this Committee hearing is to provide transparency, because we want at least the basic sectors to know what’s also happening and not be surprised with whatever will be the final agreement that would be signed in July. It is important for us to know that. x x x

“REP. CASINO. Mr. Chair, just to add to that, may we also have a copy of the latest draft already produced of the agreement and also the list of the people who are actually involved in the negotiations. There are agencies here but we would like to know who they actually are. So, those two other things, if the Undersecretary of the NEDA would provide that to the Committee, it would be appreciated.

“THE CHAIRMAN. Please furnish us that as soon as possible. x x x”

⁴⁴ See Annex D.

⁴⁵ See Annex E.

⁴⁶ “REP. TANADA. x x x Undersecretary Aquino, is there any fixed timetable with regard to this? Is this July really the deadline date or ...

“MR. AQUINO. If I had my way, Sir, I would want to have it finished June. Precisely, because of the reason that you advanced, plus the other countries ... sa Japan, the parliamentary schedule is may summer muna sila and then immediately after they open up the Diet or the parliament. So that’s still on the back of my mind. That’s how the other lead negotiators are also supporting that deadline as well, except na talagang napakarami lang iyong mga small things that come in the way that have to be addressed as well.”

were “coming” and “in fact” “will be officially submitted” “in a short while”.⁴⁷ This assurance was subsequently reiterated in response to the reminder of Cong. Tanada.⁴⁸

20. Despite these promises made, USec Aquino still took no action to act on the requests made by the Committee.

21. On 10 May 2005, Cong. Teves wrote to Executive Secretary Eduardo Ermita, requesting that the Committee be furnished all documents on the JPEPA, including the latest drafts of the agreement, as well as the requests and offers. Cong. Teves also requested for clarification on whether the JPEPA is being treated as an executive agreement or as a treaty.⁴⁹

22. On 31 May 2005, the Tariff Commission (“TC”) conducted a public hearing on the JPEPA, ostensibly to elicit reactions on the proposed tariff reduction schedule contained in the “Philippine offer.” However, only the “Philippine offer” was discussed during said public hearing. In response to questions of various attendees as to whether they would be given an opportunity to comment on the Japanese offer, TC

⁴⁷ “REP. AGUJA. Thank you, Mr. Chair. First, I would like to know whether this committee has been furnished with lists of copies of trade and investment agreements that has been entered. If we go through with the minutes of the previous meeting, Mr. Chair, the Chair asked the DTI to make a submission before the committee. May we know if those had been submitted to the Committee, Mr. Chair?”

“THE CHAIRMAN. So far, it has not been given by the Department of Trade and Industry. We can ask that directly today whether you can submit such documentations that were asked in the last hearing.

“MR. AQUINO. It’s coming. In fact, in a short while, Mr. Chair, it will be officially submitted.”

⁴⁸ “REP. TANADA. Your Honor, Mr. Chairman, I just want to ask if USec Aquino would be submitting the other documents that we’ve been asking for and if it is possible by next week or within the week.”

“MR. AQUINO. Yes, that will be done.”

“REP. TANADA. Thank you.

“THE CHAIRMAN. Let it be recorded by the USec that what we request will be noted.”

⁴⁹ See Annex F.

Chairman Edgardo Abon stated that the Japanese offer is not being made available to the public.⁵⁰

23. In a letter to Cong. Teves dated 23 June 2005, Executive Secretary Eduardo R. Ermita informed him that the DFA would be unable to furnish the Committee all documents on the JPEPA since the proposed Agreement “has been a work in progress for about three years”. Sec. Ermita stated that a copy of the draft JPEPA would be forwarded to the Committee “as soon as the text thereof is settled and complete.” He likewise stated that the Committee would be informed of the nature of the JPEPA “once the legal review of the complete draft text is finished.”⁵¹

24. On 01 July 2005, after almost two (2) months after the second Committee hearing without any action on the part of USec Aquino, Cong. Aguja wrote to NEDA Director-General Romulo Neri and to TC Chairman Abon to request for copies of the latest text of the JPEPA.

25. In a letter dated 12 July 2005, Chairman Abon informed Cong. Aguja that the TC does not have a copy of the documents being requested. Chairman Abon likewise

⁵⁰ Unfortunately, a copy of the transcript of the JPEPA public hearing held on 31 May 2005 was not made available by the Tariff Commission, despite an official request made by Cong. Aguja (See Annex G), and despite Sec. 507 of the Tariff and Customs Code which states that:

“SECTION 507. Reports of the Commission.

“The Commission shall place at the disposal of the President and any member of the Congress of the Philippines or its member thereof all information at its command; shall make such investigation and report as may be required by the President and the Congress of the Philippines and shall report to the President and Congress on the first Monday of December of each year hereafter a statement of methods adopted and a summary of all reports made during the year.”

In explaining its denial of Cong. Aguja’s request for a copy of the transcript of the JPEPA public hearing, the Tariff Commission explained that:

“Stenographic notes are not taken of the proceedings of public hearings/consultations conducted by the Commission pursuant to Section 401 (Flexible Clause) and Section 402 (Promotion of Foreign Trade) of the Tariff and Customs Code of the Philippines (TCCP). This practice/policy applied to the proceedings of the public consultations conducted on the proposed Japan-Philippines Economic Partnership Agreement (JPEPA), ASEAN-China and ASEAN-Korea Free Trade Agreements.” (See Annex H.)

⁵¹ See Annex I.

stated that “the negotiation is still ongoing” and that he was “certain” that USec Aquino would provide Cong. Aguja a copy “once the negotiation is completed.”⁵²

26. In a letter dated 18 July 2005, NEDA Assistant Director-General Margarita R. Songco informed Cong. Aguja that his request for JPEPA-related documents has been forwarded to the office of Usec Aquino, which would be “in the best position to respond” to such request.⁵³

27. On 31 August 2005, the Committee conducted its third hearing on House Resolution No. 551. USec Aquino did not appear at the Committee hearing. Mr. Salvador Benedictos,⁵⁴ the DTI representative who was present at the hearing, was not in a position to discuss the JPEPA since his work assignment pertained to WTO matters and not to the JPEPA.⁵⁵ Later during the hearing, Mr. Raymund Batac of the DTI⁵⁶ arrived

⁵² See Annex J.

⁵³ See Annex K.

⁵⁴ Mr. Benedictos is the Assistant Director of the Bureau of International Trade Relations of the Department of Trade and Industry.

⁵⁵ “THE CHAIRPERSON. x x x This morning I called Secretary Favila if he can send somebody to give us some matters regarding the JPEPA. I understand he was sending somebody. So you are not the one that was informed by the Secretary to come for that matter?”

“MR. BENEDICTOS. I was sent by Senior Undersecretary Thomas Aquino, but I understand that it’s because of WTO Agriculture, Mr. Chair.

“REP. AGUJA. Mr. Chair, is it not the same USec Aquino that promised before this Committee on our second hearing on May 4, 2005, that he will officially submit the full draft of the JPEPA to this Committee, and he mentioned it not only once, Mr. Chair, but twice in our committee hearing. And if I ...

“I am also in receipt here, Mr. Chair, provided in our Committee a letter from no less than from the Secretary of Foreign Affairs and it says, and I quote: “We are pleased to recommend that a copy of the draft JPEPA be forwarded to the Committee as soon as the text thereof is settled and complete. Given the time lines to establish, to conclude the continuing negotiations, we expect the draft JPEPA to be ready in early July.

“We are already August, Mr. Chair, and about to enter September. So may we know why ... whether we have documents already forwarded before this Committee, Mr. Chair? DTI promised that to us, Mr. Chair, and if I have to read well the Foreign Affairs Committee, their document is also very clear.

“THE CHAIRPERSON. You may answer that, please.

“MR. BENEDICTOS. Mr. Chair, I understand that they have sent copies of the listing of the bilateral agreements, as well as the copies, but as I have said, JPEPA, Mr. Chair, I’m afraid, I’m not in-charge; my assignment is WTO. But I will inform the

and read to the Committee excerpts from USec Aquino's letter to Cong. Teves dated 31 August 2005 which reported the status on the most recent developments on the JPEPA negotiations as follows:

"1. *Legal Review of Completed Chapters.* The legal text of the following chapters has been concluded and is subject to legal review led by the Office of the Solicitor General (OSG): Customs Procedures, Paperless Trading, Mutual Recognition Standards and Compliance, Intellectual Property, Government Procurement, Competition Policy, Business Environment, Cooperation, Dispute Avoidance and Settlement.

"2. *Movement of Natural Persons.* GOP is still awaiting GOJ's revised proposal for the text on the framework on the maximum number of nurses and caregivers acceptable to the Philippine side.

"3. *Automotive.* GOP is requesting the GOJ for a comparable set of features arising from the Japan-Thailand agreement in principle."

28. USec Aquino likewise informed Cong. Teves in the same letter that "due to unforeseen circumstances in the economic and political environment, the signing of the JPEPA by both countries has been delayed to a later date." USec. Aquino still did not furnish the Committee with a copy of the text of the JPEPA.⁵⁷

29. In view of this, the Committee resolved to subpoena the records of the DTI with regards to the JPEPA Agreement.⁵⁸ However, House Speaker Jose de Venecia did not want to sign the subpoena as he first wanted to get the consent of the President.⁵⁹

Senior Undersecretary and I will reiterate the request that has been made by the Committee on Globalization."

⁵⁶ Trade Specialist Officer IV of the Department of Trade and Industry

⁵⁷ See Annex L.

⁵⁸ "REP. AGUJA. It seems that the Department of Agriculture is providing us more information as to what is really this JPEPA than the Department of Trade and Industry, Mr. Chair. Does not give us anything, Mr. Chair. It's just a mere update and Congress is not just something you just give a bulleting. You should give us something that we could study and we could scrutinize, Mr. Chair, because this is our obligation to our people as Members of the House of Representatives.

"So, on that note, Mr. Chair, inasmuch as there's nothing really substantive about this, I move that we subpoena the Department of Trade and Industry, Mr. Chair, to give us the most recent draft of the JPEPA. I think there's nothing wrong releasing that to the Committee, Mr. Chair, because I know there is a draft, Mr. Chair, or else, the Department of Agriculture will not be able to give us their bullets. It must have been culled in a document, and anyway, this is still a draft. We recognize that, Mr. Chair. So I move that this Committee, Mr. Chair, issue a subpoena to DTI for

30. On 12 October 2005, the Committee held its fourth hearing on Resolution No. 551. Although USec Aquino was present, he still did not furnish the Committee with a copy of the text of the JPEPA.

31. On 25 October 2005, Cong. Aguja wrote to the individual members of the PCC, reiterating the Committee's request for an update on the status of the JPEPA negotiations, the timetable for the conclusion and signing of the agreement, and a copy of the latest JPEPA working draft.⁶⁰ Cong. Aguja also wrote to the Department Heads of the government agencies that were members of the PCC.⁶¹

32. None of the individual members of the PCC and department heads of the PCC member agencies provided Cong. Aguja with the requested draft of the JPEPA:

32.1. In his letter dated 26 October 2005, DFA USec Custodio informed Cong. Aguja that his request had been referred to USec Aquino, as PCC chairman, for appropriate action. He confirmed Atty. Malou Montero's statement made during the 12 October 2005 hearing of the Committee that the proposed JPEPA "partakes of the nature of a treaty which requires Senate concurrence."⁶²

them to give us a copy of the draft ... current draft ... the most recent draft of the JPEPA. I so move, Mr. Chair.

"REP. TANADA. Second, Mr. Chair.

"THE CHAIRPERSON. It's been moved and seconded that the Committee on Globalization will subpoena the records of the Department of Trade and Industry with regards to the JPEPA Agreement."

⁵⁹ This was revealed by Committee Chairperson Cong. Teves during the 12 October 2005 Committee hearing on Resolution No. 551:

"THE CHAIRPERSON. Now I call on Usec Aquino to furnish us a copy of the draft JPEPA and enunciate to this body the positive as well as the negative impact of said agreement. Is this the draft that the government will sign in December or this will still be subjected to revisions in the run-up to its signing? x x x We requested also to subpoena this but then the Speaker requested me to hold in abeyance because he wanted to get a (sic) consent of the President before we can ... the department can furnish us a copy of this agreement."

⁶⁰ See Annexes M-1 to M-15.

⁶¹ See Annexes N-1 to N-7.

⁶² See Annex O-1.

32.2. In a letter dated 28 October 2005, Director Imperial of the Bureau of Local Employment of the Department of Labor and Employment (DOLE) apprised Cong. Aguja as follows:

“1. The imposition by Japan of a quantitative restriction in granting entry and temporary stay of Filipino nurses and caregivers in Japan is still an outstanding issue causing a deadlock in the negotiation on the Movement of Natural Persons chapter.

“2. Because of said deadlock, we are not sure of the timetable for the conclusion and signing of the agreement.”⁶³

32.3. Dir. Imperial likewise stated that the draft agreement had been submitted to USec Aquino for “review and legal scrubbing” and that the DTI “may have the latest version.”

32.4. On 28 October 2005, DOJ Chief State Counsel Ricardo V. Paras III endorsed Cong. Aguja’s request to the attention of USec Aquino, saying that it was his office which was in the best position to respond to the query.⁶⁴

32.5. In a letter dated 02 November 2005, Atty. Louie Calvario of the Intellectual Property Office informed Cong. Aguja that the Philippine Coordinating Committee “has a copy of the latest working draft of the JPEPA” and that the text “is now under legal review by the Office of the Solicitor General.” He likewise stated that Cong. Aguja’s request was being referred to the Secretariat of the PCC and to the office of USec Aquino for appropriate action.⁶⁵

32.6. In his endorsement dated 02 November 2005, Mr. Elmer H. Dorado, Officer-in-Charge of the Government Procurement Policy Board Technical Support Office, referred Cong. Aguja’s request for JPEPA documents and information to USec Aquino for his consideration.⁶⁶

⁶³ See Annex O-2.

⁶⁴ See Annex O-3.

⁶⁵ See Annex O-4.

32.7. In her letter dated 09 November 2005, Ms. Cirila S. Botor, Caretaker of the Bureau of Product Standards of the DTI, informed Cong. Aguja that the best office to inquire with regarding the JPEPA was the office of USec Aquino.⁶⁷

32.8. In his letter dated 14 November 2005, Finance Undersecretary Roberto B. Tan informed Cong. Aguja that the DTI was designated as chair of the PCC and would serve as the focal agency with regard to any information on the negotiations. He thus advised Cong. Aguja to direct all inquiries to the DTI.⁶⁸

32.9. In his letter dated 02 November 2005, TC Chairman Abon referred Cong. Aguja to USec Aquino for the JPEPA information and draft being requested.⁶⁹

32.10. BOI Director Arcellana, Ms. Echague, BoC Deputy Commissioner Soriano, NEDA Assistant Director-General Songco, BOI Director de Guzman, Atty. Sulit, Atty. Montero, DTI Secretary Favila, DFA Secretary Romulo, NEDA Director-General Santos, DOLE Secretary Sto. Tomas, DOJ Secretary Gonzales, and DBM Secretary Neri did not reply to Cong. Aguja's letter dated 25 October 2005.

33. In his letter dated 02 November 2005, USec Aquino stated that he, together with a representative from the DFA, "apprised the Committee on the latest developments on the status and timetable of the JPEPA negotiations," as well as informed the panel that "the proposed JPEPA partakes of the nature of a treaty which requires Senate concurrence." USec Aquino likewise stated that they shall be able to provide Cong. Aguja a copy of the latest draft legal text of the agreement "once the negotiations are completed and as soon as a thorough legal review of the proposed agreement has been conducted."⁷⁰

⁶⁶ See Annex O-5.

⁶⁷ See Annex O-6.

⁶⁸ See Annex O-7.

⁶⁹ See Annex O-8.

⁷⁰ See Annex P.

34. During the DTI Budget Hearing at the House of Representatives held on 10 November 2005, Cong. Aguja interpellated DTI Secretary Favila and USec Aquino regarding the JPEPA negotiations and the DTI's repeated refusal to furnish Congress a copy of the full text of the JPEPA. USec Aquino refused to divulge the contents of JPEPA, saying that it would be necessary to secure the permission of the President.

35. Cong. Rolando Andaya subsequently informed all those present at the DTI budget hearing that Sen. Manuel Roxas III would be calling for a joint session of the Senate and the House of Representatives to inquire into the JPEPA. However, no date for such joint session has been set as of this writing.

36. As of the date of the filing of this Petition, the PCC has still refused to provide any official documents or information regarding the proposed date of signing for the JPEPA. Based on newspaper reports, however, the Philippine government expects to sign the JPEPA this December 2005.⁷¹

37. In light of the continued refusal of the PCC and its members to provide access to the full text of the JPEPA and pertinent attachments and annexes despite the substantial lapse of time and in the face of repeated requests, Petitioners deem that further recourse to similar administrative remedies will be futile.

ISSUES

I. Do the herein Petitioners have standing to bring this action for mandamus in their capacity as citizens of the Republic, as taxpayers, and as members of Congress?

II. Can this Honorable Court exercise primary jurisdiction over this case and take cognizance of the instant Petition?

III. Are the documents and information being requested in relation to the JPEPA exempted from the general rules on transparency and full public disclosure such that the Philippine government is justified in denying access thereto?

IV. Will the deferral of full public disclosure on the JPEPA to such time that said agreement has been concluded and legal review thereof completed render inutile the right of the people to effective participation in economic decision-making and the power of the Senate to review and concur in treaties?

V. Is the issuance of a temporary restraining order to enjoin the Respondents from concluding the JPEPA negotiations, signing the JPEPA, and transmitting the same to the President warranted under the circumstances?

DISCUSSION

Procedural Issues

I. PETITIONERS HAVE THE REQUISITE STANDING TO INSTITUTE THE PRESENT PETITION.

A. Petitioners are citizens and groups of citizens of the Philippines seeking to enforce constitutional rights.

Petitioners bring this action in their capacity as Filipino citizens and as organizations of Filipino citizens seeking to enforce their constitutional right to information on the JPEPA, under Art. III, Sec. 7 of the Constitution, and their constitutional right to effective and reasonable participation in decision-making under Art. XIII, Sec. 16 of the Constitution. In a line of cases dealing specifically with the constitutional right to information on matters of public concern and the right to file a petition for mandamus, this Honorable Court has held that when a mandamus proceeding involves the assertion of a public right and the object is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and therefore, the requirement of personal interest is satisfied by a showing that the petitioner is a citizen

⁷¹ See Annex A at note 8.

and as such, is interested in the execution of the laws.⁷² Petitioners, therefore, have the requisite standing as citizens of the Republic to institute this Petition.

B. Petitioners are taxpayers.

Be that as it may, Petitioners similarly assert their standing to bring this suit as taxpayers whose interests stand to be substantially damaged due to the continuing and planned expenditure of government funds arising from the actions of the respondents.

C. Petitioners are legislators seeking to uphold their powers and duties under the Constitution.

Petitioners Rosales, Aguja, Hontiveros-Baraquel, Tañada, and Villanueva assert their standing to bring this suit as legislators whose prerogatives to concur in Congressional action relating to the general power of legislation and specifically the power of taxation - as set forth under Article VI, Section 28 of the Constitution - may be substantially impaired by the actions of respondents.

D. Petitioners have the legal standing as organizations of citizens of the Philippines who have personal and substantial interest in the outcome of the case.

Petitioners Akbayan, PKSK, APL, Vicente A. Fabe, Angelito R Mendoza, and Manuel P. Quiambao further assert their standing to bring this suit as parties-in-interest and organizations composed of parties-in-interest whose livelihoods stand to be directly affected by the refusal of the respondents to divulge the contents of a trade agreement that will have tremendous impact on their industries and businesses and the consequent deprivation of their right to participate in the process of finalizing said agreement. Petitioner Rose Beatrix Cruz-Angeles in turn asserts her standing to bring this suit both as a mother and consumer who is personally and substantially interested in how the

⁷² *Severino v. Governor General*, 16 Phil. 366, 378 (1910); *Subido v. Ozaeta*, 80 Phil. 383 (1948); *Tanada v. Tuvera*, G.R. NO. 63915, 24 April 1985; 136 SCRA 27; *Legaspi v. Civil Service Commission*, G.R. No. 72119, 29 May 1987; 150 SCRA 530; *Chavez v. PCGG*, G.R. No. 130716, 9 December 1998, 299 SCRA 744; *Chavez v. PEA-Amari*, G.R. No. 133250, 9 July 2002, 384 SCRA 152.

JPEPA will impact on the Philippine economy and how it will affect the welfare of her children both in the immediate and distant future.

II. THIS HONORABLE COURT HAS JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE.

A. This case involves constitutional issues of transcendental importance.

Even assuming *arguendo* that the herein Petitioners may not meet the traditional requirements for standing, it is respectfully submitted that such procedural technicality may be set aside by this Honorable Court in view of the importance of the issues involved.⁷³ As early as 1949, this Honorable Court has already resolved *locus standi* questions in favor of liberality. In the first **Emergency Powers Cases**, ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were invoking only an indirect and general interest shared in common with the public. The Court dismissed the posturing that they were not proper parties and ruled that the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside technicalities of procedure.⁷⁴

In line with the liberal policy of this Court on *locus standi*, this Honorable Court has allowed ordinary taxpayers, members of Congress, non-profit civic organizations, and even associations of planters to initiate and prosecute actions before this Court to raise questions relating to the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities.⁷⁵

⁷³ This was the ruling in the case of *Kilosbayan v. Guingona* (G.R. No. 113375, 5 May 1994, 232 SCRA 110), wherein petitioners sought to prohibit and restrain the implementation of the contract of lease executed by the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Gaming Management Corporation (PGMC) in connection with the on-line lottery system, also known as "lotto." This was likewise the ruling in *Tatad v. Secretary, Department of Energy* G.R. No. 124360, 5 November 1997, 281 SCRA 330 (and in the companion case *Lagman v. Torres*, G.R. No. 127867) where, because of the far-reaching importance of the validity of RA 8180 deregulating the downstream oil industry, the Supreme Court brushed aside technicalities and took cognizance of the petition.

⁷⁴ *Araneta v. Dinglasan*, G.R. No. L-2044, 26 August 1949, 84 Phil 368 (and its companion cases *Araneta v. Angeles*, G.R. No. L-2756, *Rodriguez v. Tesorero de Filipinas*; G.R. No. L-3054; *Guerrero v. Commissioner of Customs*, G.R. No. L-3055; and *Barredo v. Commission on Elections*, G.R. No. L-3056).

⁷⁵ Among such cases were those assailing the constitutionality of (a) R.A. No. 3836 insofar as it allows retirement gratuity and commutation of vacation and sick leave to Senators and Representatives and to

It cannot be doubted that the present Petition raises issues which are of tremendous importance. The determination of the scope and nature of the rights to information and to meaningful participation asserted by Petitioners involves no less than a delineation of the extent of people's participation in governance. It is a resolution of how firmly and extensively "people power" has been enshrined within the formal, Constitutional framework of government.

Moreover, these rights are being invoked to compel disclosure of information relating to an international trade agreement that will undeniably have intense and far-ranging effects on the economy – from the prices of goods to job security to the viability of industries to the state of the national economy. This Honorable Court has recognized in the case of *Tañada v. Angara* that the entry of the Philippines into international trade agreements such as the GATT/WTO necessarily involves a diminution of national sovereignty.⁷⁶ The entry of the Philippines into the JPEPA, and the refusal of the government to disclose vital information relating thereto, thus raises questions on the extent by which this trade agreement threatens to diminish our already diminished national sovereignty. Clearly, this is a matter of transcendental importance that would justify the waiver of procedural technicalities relating to this Petition.

B. The attendant circumstances constitute an exception to the principle of hierarchy of courts, which justify the exercise of the Supreme Court's primary jurisdiction over the instant Petition.

elective officials of both Houses of Congress (*Philconsa v. Gimenez* G.R. No. L-23326, 18 December 1965, 15 SCRA 479; (b) Executive Order No. 284, issued by President Corazon C. Aquino on 25 July 1987, which allowed members of the cabinet, their undersecretaries, and assistant secretaries to hold other government offices or positions (*Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, 22 February 1991, 194 SCRA 317); (c) the automatic appropriation for debt service in the General Appropriations Act (*Guingona v. Carague*, G.R. No. 94571, 22 April 1991, 196 SCRA 221; (d) R.A. No. 7056 on the holding of desynchronized elections (*Osmeña v. COMELEC*, G.R. No. 100318, 30 July 1991, 199 SCRA 750); (d) R.A. No. 1869 (the charter of the Philippine Amusement and Gaming Corporation) on the ground that it is contrary to morals, public policy, and order (*Basco v. Philippine Gaming and Amusement Corp.* G.R. No. 91649, 14 May 1991, 197 SCRA 52); and (f) R.A. No. 6975, establishing the Philippine National Police (*Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290).

⁷⁶G.R. No. 118295, 02 May 1997, 272 SCRA 18.

Petitioners are well aware of the principle of hierarchy of courts, and that petitions for mandamus could be filed with the Regional Trial Court⁷⁷ or the Court of Appeals,⁷⁸ both of which have concurrent jurisdiction with the Supreme Court with respect to the issuance of writs of mandamus and prohibition.

However, Petitioners respectfully submit that the principle of hierarchy of courts applies only to cases involving factual issues⁷⁹, and the Supreme Court can directly take cognizance of a case where the issues involved are of transcendental importance to the public,⁸⁰ or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of the Supreme Court's primary jurisdiction.⁸¹

The instant Petition involves only questions of law. In particular, it calls for the delimitation of the scope and extent of the rights to information and effective participation invoked by petitioners as against the implied assertion by respondents of the inapplicability of said rights in the process of treaty-making. It does not call for any factual finding as the entire factual foundation rests on official acts and matters of public record.

Apart from the fact that there are no factual issues in this case, this petition involves a case that directly involves the public interest. In a more recent case involving the legality of the PIATCO contract to the build the NAIA III terminal, the Court ruled that a party can go directly to the Supreme Court when there are no factual issues involved and the case concerns public interest:

“Respondents’ corollary contention that this Court violated the **hierarchy of courts** when it entertained the cases at bar must also fail. The rule on hierarchy of courts in cases falling within the concurrent jurisdiction of the trial courts and appellate courts generally applies to cases involving warring factual allegations. x x x.”

“It goes without saying that when cases brought before the appellate courts do not involve factual but **legal questions**, a strict application of the rule of hierarchy of courts is not necessary. As the cases

⁷⁷ R.A. 7691, Section 21 (1).

⁷⁸ R.A. 7902, Section 9 (1).

⁷⁹ Chavez v. PEA-Amari, *supra*.

⁸⁰ *Ibid*.

⁸¹ Santiago v. Vasquez, et. al., G.R. Nos. 99289-90, 27 January 1992, 205 SCRA 162

at bar merely concern the construction of the Constitution, the interpretation of the BOT Law and its Implementing Rules and Regulations on undisputed contractual provisions and government actions, and as the cases concern public interest, this Court resolved to take primary jurisdiction over them. This choice of action follows the consistent stance of this Court to settle any controversy with a high public interest component in a single proceeding and to leave no root or branch that could bear the seeds of future litigation. The suggested remand of the cases at bar to the trial court will stray away from this policy.⁸²

In *Chavez v. PCGG*,⁸³ where the issue was whether the government may, through the Presidential Commission on Good Government (PCGG), be required to reveal the proposed terms of a compromise agreement with the Marcos heirs as regards their alleged ill-gotten wealth, the Honorable Supreme Court ruled in the affirmative and that a petition for mandamus before the Supreme Court may be availed of:

“In *Tañada*⁸⁴ and *Legaspi*⁸⁵, we upheld therein petitioners’ resort to a mandamus proceeding, seeking to enforce a public right as well as to compel performance of a public duty mandated by no less than the fundamental law. Further, Section 5, Article VIII of the Constitution, expressly confers upon the Supreme Court original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto and habeas corpus.”

A similar ruling was also promulgated by the Court in a case involving the agrarian reform law⁸⁶:

“But the Supreme Court has the full discretionary power to take cognizance of the petition filed directly to it if compelling reasons, or the nature and importance of the issues raised, warrant. This has been the judicial policy to be observed and which has been reiterated in subsequent cases, namely: *Uy vs. Contreras, et. al.*⁸⁷, *Torres vs. Arranz*⁸⁸, *Bercero vs. De Guzman*,⁸⁹ and *Advincula vs. Legaspi, et. al.*⁹⁰. As we have further stated in *Cuaresma*⁹¹:

⁸² *Agan, et al. v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, 21 January 2004, 420 SCRA 575, citing *Alger Electric, Inc. v. Court of Appeals*, G.R. No. 34298, 28 February 1985, 135 SCRA 37, 43

⁸³ *Supra*.

⁸⁴ *Tanada v. Tuvera*, G.R. No. 63915, 24 April 1985, 146 SCRA 27, 36-37.

⁸⁵ *Legaspi v. Civil Service Commission*, G.R. No. L-72119, 29 May 1987, 150 SCRA 530, 536.

⁸⁶ *Fortich v. Corona*, G.R. No. 131457, 24 April 1998, 289 SCRA 624.

⁸⁷ G.R. Nos. 111416-17, 26 September 1994, 237 SCRA 167.

⁸⁸ G.R. No. 123352, 07 February 1996.

⁸⁹ G.R. No. 123573, 28 February 1996.

⁹⁰ G.R. No. 125500, 07 August 1996.

⁹¹ *People v. Cuaresma*, G.R. No. 67787, 18 April 1989, 172 SCRA 415, 424.

‘x x x. A direct invocation of the Supreme Court’s original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court’s time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court’s docket.’”

Pursuant to said judicial policy, we resolve to take primary jurisdiction over the present petition in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy which, as correctly observed by petitioners, has sparked national interest because of the magnitude of the problem created by the issuance of the assailed resolution. x x x.”

In *Cuaresma*, the Court highlighted its power to set aside its own rules in the interest of justice:

“That the Court has the power to set aside its own rules in the higher interests of justice is well-entrenched in our jurisprudence. We reiterate what we said in *Piczon vs. Court of Appeals*:

‘Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require. In the instant petition, we forego a lengthy disquisition of the proper procedure that should have been taken by the parties involved and proceed directly to the merits of the case.’”

In the same manner, Petitioners seek to compel Respondents to disclose the full text of the JPEPA and all its related attachments and annexes, inasmuch as the JPEPA involves compelling public interest due to its effects on business, labor, farmers, consumers, and other taxpayers.

C. The Petition poses an actual controversy.

Resort to the Supreme Court and lower courts may be had only when there is an actual case or a justiciable controversy. The Constitution describes judicial power as follows:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”⁹²

A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.⁹³ An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.⁹⁴

In this case, there is an actual case or a justiciable controversy since the Respondents refused and continue to refuse to furnish Petitioners with the documents and information relating to the JPEPA contracts, including the offers of both the Philippine Government and the Japanese Government. As will be discussed in this Petition, this refusal to disclose violates a number of constitutional rights of the Petitioners.

D. The present controversy does not constitute a political question.

Petitioners respectfully submit that the instant suit raises issues that are justiciable and properly cognizable by this Honorable Court. Petitioners anchor their claims on the powers granted to Congress and the rights of citizens enshrined under the Constitution,

⁹² Article VIII, Sec. 1, Philippine Constitution.

⁹³ *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283, citing *Board of Optometry v. Colet*, G.R. No. 122241; 30 July 1996, 260 SCRA 88, 104. See also *Garcia v. Executive Secretary*, G.R. No. 100833; December 2, 1991, 204 SCRA 516, 522, and *San Pablo v. Marina*, G.R. No. 167641, 10 May 2005.

⁹⁴ *Board of Optometry v. Colet*, *supra*.

principally the right to effective and reasonable participation at *all levels* of social, political and economic decision-making and its complementary right to information on matters of public concern.

Petitioners assert these rights in the face of the implied contention by the respondents that the process of negotiating an international trade agreement lies solely within the purview of specific offices within the Executive branch. These conflicting assertions, anchored as they are, at least presumably, on legal and Constitutional grounds, require resolution by this Honorable Court.

This “delimitation of constitutional boundaries” that Petitioners are praying for lies squarely within the jurisdiction of this Honorable Court.⁹⁵

Furthermore, this Honorable Court has already held that “even if we were to assume that the issue presented x x x was political in nature, we would still not be precluded from resolving it under the expanded jurisdiction conferred upon [the Supreme Court] that now covers, in proper cases, even the political question.”⁹⁶

DISCUSSION

Substantive Issues

I. THE CONTINUING REFUSAL OF THE GOVERNMENT TO DISCLOSE THE CONTENTS OF THE JPEPA VIOLATES THE CONSTITUTIONAL PROVISIONS ON TRANSPARENCY AND THE RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN.

The members of the PCC, most notably its Chairman and Chief Delegate DTI USec. Aquino, continue to refuse to disclose the contents of the JPEPA. This deliberate and obstinate refusal to disclose is being done in total disregard of the Constitutional provisions on transparency of all State transactions, and the people’s right to information on matters of public concern, and notwithstanding the fact that the Philippine government is poised to sign the JPEPA within the month.

⁹⁵ Francisco v. HOR, G.R. No. 160261, 10 November 2003, 415 SCRA 44, citing Bengzon v. Blue Ribbon Committee, GR No. 89914, 20 November 1991, 203 SCRA 767, 776.

⁹⁶ *Ibid.*, citing Daza v. Singson, G.R. No. 86344, 21 December 1989, 180 SCRA 496.

A. The public right to information on matters of public concern is a fundamental human right that is enshrined in and guaranteed by the Constitution.

The right of the people to information on matters of public concern is a fundamental, “self-executing”⁹⁷ right that is guaranteed under Article III, Sec. 7 of the Constitution:

“The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

First recognized under the 1973 Constitution and again under the 1987 Constitution, the right to information on matters of public concern was incorporated in the fundamental law of the land in “recognition of the fundamental role of free exchange of information in a democracy.”⁹⁸ Access to information of general interest “aids the people in democratic decision-making by giving them a better perspective of the vital issues confronting the nation.”⁹⁹ As explained by this Honorable Court in the case of *Baldoza v. Dimaano*:

“There can be no realistic perception by the public of the nation’s problems, nor a meaningful democratic decision-making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times. As has been aptly observed: ‘Maintaining the flow of such information depends on protection for both its acquisition and its dissemination since, if either process is interrupted, the flow inevitably ceases.’”¹⁰⁰

This right to information does not exist in a vacuum, but is in fact supported and even strengthened by other provisions of the Constitution. Correlative to this fundamental right is the Constitutional policy of transparency and full public disclosure by the State with respect to transactions involving the public interest:

⁹⁷ *Legaspi v. Civil Service Commission*, *supra* at 534-535.

⁹⁸ *Baldoza v. Dimaano*, A.M. No. 1120-MJ; 05 May 1976; 71 SCRA 14, 19.

⁹⁹ *Legaspi v. Civil Service Commission*, *supra* at 540.

¹⁰⁰ *Supra* at 19.

“Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”¹⁰¹

the recognition of the role of such information in nation-building:

“The State recognizes the vital role of communication and information in nation-building.”¹⁰²

as well as other Constitutional provisions relating to honesty in the public service and public disclosure.¹⁰³ These Constitutional provisions, taken together, are meant to “enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.”¹⁰⁴

As explained during the deliberations of the 1986 Constitutional Commission, the public right to information on matters of public concern is a challenge to the people to be active in seeking for themselves information rather than to simply depend on whatever the State may release to them.¹⁰⁵

Admittedly, the constitutional guarantee to information on matters of public concern is not absolute. As this Honorable Court held in *Legaspi v. Civil Service Commission*,¹⁰⁶ access to a particular public record is available provided that: (a) the information being sought is one of public concern or one that involves public interest, and (b) it is not being exempted by law from the operation of the constitutional guarantee. However, because “the government is in an advantageous position to marshal and interpret arguments against release,”¹⁰⁷ it is the government agency concerned which has the burden of showing that the information requested is not of public concern, or if it

¹⁰¹ Art. II, Sec. 28, Philippine Constitution.

¹⁰² *Art. II, Sec. 24, Philippine Constitution.*

¹⁰³ See, for example, Art. XI, Sec. 17 which provides for the disclosure of the statement of assets and liabilities of the President, Vice-President, members of the Cabinet, Congress, the Supreme Court, the Constitutional Commissions, officers of the armed forces with general or flag rank, and other constitutional officers; Art. VI, Sec. 12 which requires all members of Congress to make a full disclosure of their financial and business interests; Art. VI, Sec. 20 which provides that the records and books of accounts of Congress shall be preserved and be open to the public; Art. XII, Sec. 21 which provides that information on foreign loans obtained or guaranteed by the Government shall be made available to the public; and Art. VII, Sec. 12 which requires the public to be informed of the state of the President’s health in case of his/her serious illness.

¹⁰⁴ *Valmonte v. Belmonte, Jr.*, G.R. No. 74930, 13 February 1989, 170 SCRA 256, 266.

¹⁰⁵ Volume 5, R.C.C. No. 91, 24 September 1986.

¹⁰⁶ *Supra* at 540.

¹⁰⁷ *Ibid.*

is of public concern, that the same has been exempted by law from the operation of the guarantee¹⁰⁸ in cases of denial of access.

Petitioners respectfully submit that the members of the PCC have failed to discharge their burden of justifying their denial of access to herein Petitioners. But more importantly, Petitioners submit that the twin requirements of public interest and non-exemption from the general rule of disclosure are present in the instant case so as to entitle Petitioners to access to information and documents relating to the JPEPA.

B. The JPEPA is a transaction of vital public concern and interest to the entire Filipino nation, inasmuch as it will impact on the country's manufacturing, agricultural, and services sectors, and will inevitably entail changes in Philippine policy and legislation.

There is no rigid test that can be applied to determine whether or not a particular piece of information is of "public concern" or "public interest." Both terms elude exact definition as they "embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen."¹⁰⁹ Thus, it is up to the courts to determine this on a case by case basis.¹¹⁰

However, the jurisprudence laid down by this Honorable Court provides a relatively clear idea of what matters can be deemed public concern. In *Tanada v. Tuvera*,¹¹¹ it was the need for adequate notice to the public of the various laws which are to regulate the actions and conduct of citizens. In *Subido v. Ozaeta*,¹¹² it was the knowledge of real estate transactions involving aliens which were believed to have been registered in violation of the Constitution. In *Legaspi v. Civil Service Commission*,¹¹³ it was the legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles. In *Valmonte v.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, at 541.

¹¹⁰ *Ibid.*

¹¹¹ *Supra.*

¹¹² 80 Phil 383

¹¹³ *Supra.*

Belmonte, Jr.,¹¹⁴ it was the public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers, i.e. Members of the Batasang Pambansa. In *Chavez v. PCGG*,¹¹⁵ it was the recovery of the ill-gotten Marcos wealth and the proposed compromise agreement relating thereto. In *Chavez v. PEA-Amari*,¹¹⁶ it was a large-scale government contract involving the alienation of reclaimed lands in violation of the Constitution.

The JPEPA is clearly a matter of public concern and interest on a scope that is comparable to – and even far greater than – the matters in the cases mentioned above.

As discussed previously, the JPEPA is an important and historic international trade agreement that stands to affect virtually all of the country's domestic and international trade. The JPEPA covers practically all tariff lines in the Tariff and Customs Code, and will thus have a tremendous impact on the country's manufacturing and agricultural sectors, particularly affecting job security, employment, and production capacity in these sectors. The JPEPA's provisions on trade in services and the movement of natural persons will likewise impact on the Philippine services sector, particularly with respect to information technology and health care, and may have ramifications on the Philippine public health system. The JPEPA will also dictate who will be authorized to do business in the Philippines and under what conditions, and may effectively re-write existing laws and Constitutional provisions pertaining to investment and nationality requirements. The JPEPA may likewise entail changes in Philippine policy and legislation with respect to the areas of competition policy, intellectual property, government procurement, cooperation, and improvement of the business environment.

Moreover, the fact that the JPEPA will be a "first" for the Philippines in many respects makes it a precedent-setting case that will set the stage for all future trade engagements of the country. If not negotiated properly, the JPEPA may seriously impair existing trade commitments and even compromise negotiating positions that the Philippine may possibly take in the future.

¹¹⁴ *Supra.*

¹¹⁵ *Supra.*

¹¹⁶ *Supra.*

Clearly then, the JPEPA is necessarily a matter of compelling public concern and interest that falls squarely within the right of the Filipino people to access to information and to transparency and full public disclosure.

C. The PCC has failed to discharge the burden of showing that the Petitioners are not entitled to the information and documents being requested.

As this Honorable Court stated in *Legaspi v. Civil Service Commission*, in case of denial of access to information, it is the government agency concerned which has the burden of showing that the information requested is not of public concern, or if it is of public concern, that the same has been exempted by law from the operation of the guarantee.¹¹⁷

The PCC has failed to discharge this burden. In practically all of the letters written by the members of the PCC in reply to the letters of Cong. Aguja, the reason cited for their inability to furnish him the requested JPEPA-related information and documents was that they were not in possession of such documents. In almost all instances, they endorsed Cong. Aguja's request to USec. Aquino for appropriate action.

PCC Chair and lead negotiator USec Aquino has likewise failed to provide any justifiable reason for refusing to disclose the full text of the JPEPA and the Philippine and Japanese offers. In his various letters to Cong. Teves and Cong. Aguja, USec. Aquino merely states that the PCC will be able to provide a copy once negotiations are completed and as soon as a thorough review of the agreement has been completed.

A closer examination of all the events that have transpired throughout the duration of the Committee inquiry on House Resolution No. 551 from February to November 2005 shows that USec. Aquino's non-disclosure of JPEPA-related information and documents has been attended by bad faith. As discussed earlier, during the Committee hearings held on 28 February 2005 and 04 May 2005, USec Aquino had actually promised to furnish the Committee the full text of the JPEPA and the other JPEPA-related information being requested, even saying "(i)t's coming. In fact, in a short

¹¹⁷ *Supra*.

while, Mr. Chair, it will be officially submitted.”¹¹⁸ Yet USec Aquino never fulfilled this promise despite having been given at least six (6) opportunities by the Committee and/or Cong. Aguja to do so. In fact, even up to the DTI budget hearing held on 10 November 2005, USec Aquino obstinately refused to divulge the contents of the JPEPA.

It thus becomes apparent on hindsight that USec Aquino had no intention whatsoever of disclosing the status of the JPEPA negotiations, much less the full text of the JPEPA, as evinced by his empty promises. The fact that USec Aquino has cited no legal basis whatsoever to justify his refusal to disclose only confirms Petitioners’ suspicions that his actions are wholly arbitrary and in outright disregard for the policies of transparency and full public disclosure of State transactions under the Constitution.

D. The JPEPA information and documents being requested do not fall under the exceptions to the general rule on public disclosure that would justify denial of access thereto.

Admittedly, there are limitations on the right to information. Matters affecting national security,¹¹⁹ trade secrets and confidential, commercial and financial information,¹²⁰ banking transactions,¹²¹ information on investigations of crimes by law enforcement agencies before the prosecution of the accused,¹²² privileged information rooted under the separation of powers,¹²³ and state secrets regarding military, diplomatic, and other national security matters¹²⁴ are recognized as being privileged against public disclosure. The JPEPA does not fall under any of these.

While it is understandable that diplomatic negotiations on the JPEPA are entitled to a reasonable amount of confidentiality so as not to jeopardize the diplomatic process, surely such information cannot and should not be completely exempt from public

¹¹⁸ See note 47.

¹¹⁹ See *Garcia v. Board of Investments*, G.R. No. 88637, 7 September 1989, 177 SCRA 374; *Chavez v. PCGG*, *supra*.

¹²⁰ *Garcia v. Board of Investments*, *supra*.

¹²¹ Pursuant to the Secrecy of Bank Deposits Act, Republic Act No. 1405, as amended

¹²² See *Chavez v. PEA-Amari*, *supra*.

¹²³ These include Presidential conversations, correspondences or discussions during closed-door Cabinet meetings, internal deliberations of the Supreme Court or other collegiate courts, or executive sessions of either house of Congress. See *Chavez v. PEA-Amari*, *supra*.

¹²⁴ *Chavez v. PCGG*, *supra* at 769.

disclosure. As was discussed by the framers of the 1987 Constitution, information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest.¹²⁵ The framers recognized that such information is not inherently privileged or confidential, although regulation of access may be necessary to protect the national interest. Thus, information on diplomatic negotiations may be privileged, but only at certain stages of the negotiating process, after which such information must necessarily be revealed to the public. To refuse to disclose throughout the entire process would be tantamount to a prohibition on access to information that is not exempted from public disclosure by law or by the Constitution.

Yet this is precisely what the members of the PCC, most especially USec. Aquino, are doing. Up to the time of the filing of this Petition, the PCC continues to withhold the full text of the JPEPA and the Japanese offer, despite indications that the Philippine government is aiming to finalize and sign the JPEPA within the month.¹²⁶

Petitioners respectfully submit that the duty of the Philippine government to disclose sufficient public information regarding the specific terms of JPEPA and the Japanese and Philippine offers already vested when the negotiations moved from the formulation and exploratory stage to the firming up of definite propositions or official recommendations. As the Supreme Court held in the case of *Chavez v. PCGG*, citing the records of the 1986 Constitutional Commission, the Constitutional guarantee of access to information includes ongoing negotiations or proposals prior to a final agreement:

“MR. SUAREZ. And when we say ‘transactions’ which should be distinguished from contracts, agreements, or treaties or whatever, does the Gentleman refer to the steps leading to the consummation of the contract, or does he refer to the contract itself?

“MR. OPLE. The ‘transactions’ used here, I suppose is generic and, therefore, it can cover both steps leading to a contract, and already a consummated contract, Mr. Presiding Officer.

“MR. SUAREZ. This contemplates inclusion of negotiations leading to the consummation of the transaction?

¹²⁵ V Record of the Constitutional Commission 25 (1986).

¹²⁶ See Annex A at note 8.

“MR. OPLE. Yes, subject to reasonable safeguards on the national interest.”¹²⁷

It was on this basis that this Honorable Court stated that it was “incumbent upon the PCGG, its officers, and other government representatives to disclose sufficient public information on any proposed settlement” that the government has “decided to take up with the ostensible owners and holders of ill-gotten wealth.”¹²⁸

Moreover, in the case of *Chavez v. PEA-Amari*, which involved a commercial contract that sought to transfer reclaimed lands to a private corporation in violation of the Constitution, this Honorable Court stated that once the bidding or review committee “makes its official recommendation, there arises a ‘definite proposition’ on the part of the government. From this moment, the public’s right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition.”¹²⁹

If the Filipino people have the right to demand information on important domestic contracts and settlements, with all the more reason they have the right to demand that the Philippine government disclose all relevant information relating to an international trade agreement that will have long-term repercussions on the Philippine economy and on all Filipinos who are inextricably linked to that economy.

As can be seen from the sequence of events over the past months,¹³⁰ negotiations on various aspects of the JPEPA had already been completed at various points in the year. As early as the public hearing conducted by the Tariff Commission on 31 May 2005, reference was already being made to a “Philippine offer” and a “Japanese offer” with respect to trade in goods.¹³¹ Moreover, in USec. Aquino’s letter to Cong. Teves dated 31 August 2005, the legal text of the chapters of the JPEPA pertaining to Customs Procedures, Paperless Trading, Mutual Recognition Standards and Compliance,

¹²⁷ *Chavez v. PCGG*, *supra* at 769.

¹²⁸ *Ibid.*, at 770.

¹²⁹ *Chavez v. PEA-Amari*, *supra*.

¹³⁰ Please refer to the Statement of Facts.

¹³¹ As discussed previously, the Tariff Commission stated during the public hearing that the Japanese offer “is not being made available to the public.” It must be pointed out that for any Philippine offer to be properly analyzed and assessed, it must necessarily be compared side-by-side with the Japanese offer. Only then can it be reasonably determined whether the Philippines is getting a fair deal under the JPEPA.

Intellectual Property, Government Procurement, Competition Policy, Business Environment, Cooperation, and Dispute Avoidance and Settlement had already been concluded and was already being subject to legal review.¹³²

Clearly, at those points, there were already “official recommendations”, “definite propositions” and “official offers” on the above-mentioned aspects of the JPEPA which the PCC could publicly disclose. Its continued refusal to do so is an outright contravention of the Constitutional right to information, and a negation of the policy of transparency in State transactions.

II. THE REFUSAL OF THE GOVERNMENT TO DISCLOSE THE CONTENTS OF THE JPEPA, EVEN TO MEMBERS OF CONGRESS, VIOLATES THE CONSTITUTIONAL RIGHT OF THE FILIPINO PEOPLE TO EFFECTIVE AND REASONABLE PARTICIPATION IN ALL LEVELS OF SOCIAL, POLITICAL, AND ECONOMIC DECISION-MAKING.

A. The right to information is necessary for the Filipino people to effectively exercise their constitutional right to participate in social, political, and economic decision-making.

The right to information is meant to give meaning and force to the right of the people to participate meaningfully and effectively in decision-making on matters that affect them. Article XIII, Section 16 of the Constitution provides –

“The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.”

The purpose of the said provision, in the words of Commissioner Edmundo Garcia of the Constitutional Commission, “is for the people on the local level, provincial level, regional level, and national level to be consulted so that there will be an effective

¹³² See Annex K.

mechanism, so that we can check whether the decisions made on all levels are relevant and responsive to people's needs."¹³³

The said provision is likewise a cornerstone of the "pluralistic society" promised by the Constitution, which "assures better opportunities for meaningful participation by the people in the charting of the national destiny,"¹³⁴ as well as a "novel" attempt to "[strengthen] the sinews of the sovereignty of our people."¹³⁵

As such, the provision establishes a right that "cannot be abridged without any ifs and buts."¹³⁶ The right is intended to be construed broadly, to allow the people and their organizations to participate in *all levels* of decision-making.

Intelligent, meaningful, and democratic decision-making by the people can only be possible if they are given sufficient data and information upon which to base such decisions. "Democracy cannot bloom where sovereignty is rooted on the top soil of an ignorant mass"¹³⁷ and "there can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest."¹³⁸ Yet the PCC seeks to keep the Filipino people ignorant and powerless, with its continuing insistence that it shall fully disclose the contents of the JPEPA only upon completion of the negotiations.

B. By deferring disclosure to after completion of the JPEPA negotiations, the PCC will effectively prevent the Filipino people from exercising its Constitutional rights to information and effective participation in economic decision-making because by that time, the JPEPA may very well be a *fait accompli*.

¹³³ Record of the 1986 Constitutional Commission, Vol III, 11 August 1986, RCC No. S3

¹³⁴ Dissenting Opinion of Sarmiento, J., in Taruc v. Ericeta, G.R. No. L-34856, 29 November 1989, 168 SCRA 63

¹³⁵ Dissenting and Concurring Opinion of Puno, J. in Santiago v. COMELEC, G.R. No. 127325, 19 March 1997, 270 SCRA 106

¹³⁶ *Ibid.*

¹³⁷ Puno, J., dissenting in In Re: Emil P. Jurado, AM 93-2-037 SC, 6 April 1995, 243 SCRA 299, at 368.

¹³⁸ Gonzales v. Narvasa, G.R. No. 140835, 14 August 2000, 337 SCRA 733, at 746-747, citing Baldoza v. Dimaano, *supra*.

As previously mentioned, based on newspaper reports, the JPEPA is scheduled to be signed within the month. And yet the PCC still refuses to disclose its contents and furnish the Petitioners with the documents being requested. How then can the Filipino people effectively participate in the decision-making process if the signing of the JPEPA will proceed anyway with or without them? This effectively undermines the fundamental Constitutional rights of the people and makes a mockery out of our democracy.

As the Supreme Court succinctly stated in *Chavez v. Public Estates Authority*:

“ x x x Certainly a consummated contract is not a requirement for the exercise of the right to information. Otherwise the people can never exercise the right if not contract is consummated, and if one is consummated, it may be too late for the public to expose its defects.

“Requiring a consummated contract will keep the public in the dark until the contract, which may be grossly disadvantageous to the government or even illegal, becomes a *fait accompli*. This negates the State policy of full transparency on matters of public concern, a situation which the framers of the Constitution could not have intended. Such a requirement will prevent the citizenry from participating in the public discussion of any *proposed* contract, effectively truncating a basic right enshrined in the Bill of Rights. We can allow neither an emasculation of a constitutional right, nor a retreat by the State of its avowed ‘policy of full disclosure of all its transactions involving public interest.’”¹³⁹

If such a policy applies to government contracts, it must apply to treaties and international agreements, which, after all, have the full force and effect of law, with even greater intensity. For this reason, this Honorable Court must not allow the JPEPA to be consummated without the Filipino people having been duly informed and consulted thereon, and given an opportunity to reasonably and effectively participate in its completion. Should this Honorable Court allow the JPEPA – which may very well turn out to be grossly disadvantageous not just to the government but to the entire Filipino people - to become a *fait accompli*, then it will have repudiated its sworn duty to uphold the Constitution and stand as this country’s last bastion of democracy.

¹³⁹ *Supra*.

C. The disclosure of information relating to the JPEPA is an essential component of the procedure mandated under Section 402(d) of the Tariff and Customs Code which partakes of the nature of a public consultation.

Section 402(d) of the Tariff and Customs Code provides that:

“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 that any interested person may have an opportunity to present his views to the Commission x x x”
(underscoring supplied)

This provision clearly recognizes that the negotiation of trade agreements is a process that requires participation by the public. It mandates that even during the earliest stages of the negotiation process, that is, when the intention to negotiate arises, members of the public must already be informed and given the opportunity to express their views. If during this early phase the public’s right to participate is already enshrined in law, a similar right to participate and express views during subsequent stages of the negotiation process must logically follow.

Necessarily, at this point, the public must likewise be given access to all available information relating to the trade negotiations, to ensure that whatever views that individual citizens express are based on substantial considerations. Absent access to such information, the “public participation” provided for under this Section would be meaningless and illusory, based as it would be on mere supposition and not the hard facts in the hands of the relevant government agencies.

The clear implication therefore, is that as far as the negotiation of trade agreements is concerned, the policy of the law is to require public participation. Consequently, this necessarily indicates that access to information pertinent to the same process should be made available to the public in order to ensure that such participation is effective and meaningful.

The continued refusal of the public respondents to provide that essential information clearly violates the policy laid down in this law.

III. THE INTENTION OF THE PCC TO DISCLOSE THE CONTENTS OF THE JPEPA ONLY AFTER THE AGREEMENT HAS BEEN CONCLUDED SHALL EFFECTIVELY MAKE THE SENATE A MERE RUBBER STAMP OF THE EXECUTIVE, IN VIOLATION OF THE TIME-HONORED PRINCIPLE OF SEPARATION OF POWERS.

A. For the Senate to exercise its power to review treaties and international agreements entered into by the Executive branch, it must have adequate time and information to do so. Otherwise, it becomes a mere rubber stamp of the Executive.

International trade agreements such as the JPEPA are vastly different from ordinary, run-of-the-mill business contracts or commercial transactions that policymakers and legislators encounter in the daily course of their legislative work. As previously mentioned, the JPEPA is highly technical and complicated, and will require a great deal of expertise, and meticulous study and scrutiny. This much was already pointed out by Justice Feliciano and Prof. Sereno during the Committee hearings. Thus, for the Senate to effectively exercise its powers of review and concurrence of treaties and international agreements under Art. VII, Sec. 21 of the Constitution, it must necessarily be given adequate time and information to do so.

However, with the continuing refusal of the PCC to disclose, time is running out for legislators, especially the members of the Senate, to do their homework with respect to the JPEPA. Without sufficient lead time and without adequate information, the members of the Senate may find themselves unable to do a comprehensive and exhaustive review of the JPEPA, and thus unable to address provisions of the agreement that will be detrimental to the country and to the economy, and to add provisions that will be advantageous to our people. The members of the Senate may end up simply giving their assent to the JPEPA without fully understanding the full extent of the agreement and the new trade commitments that the Philippines will be undertaking as a result thereof.

In short, given the current state of affairs, the Senate stands to become a mere rubber stamp of the Executive. This is a manifest violation of the principle of separation

of powers enshrined in our Constitution, and a situation that is grossly disadvantageous to the Filipino people.

B. Under international law, treaties and other international agreements are binding once they have already been entered into, regardless of non-compliance with requirements under Philippine law.

Even if the Senate subsequently decides to repudiate the JPEPA, by then it may be too late to undo its effects since the Philippines may already be bound by the terms of the agreement under international law.

Under the Vienna Convention on the Law of Treaties (the “Vienna Convention”) - which the Philippines is a party to – a treaty enters into force “in such manner and upon such date as it may provide or as the negotiating States may agree.”¹⁴⁰ “Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.”¹⁴¹ Such consent may be established either by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means agreed upon.¹⁴²

Given the lack of transparency with respect to the JPEPA negotiations and the refusal of the PCC to disclose the text of the JPEPA, it is not known how the Philippines shall be giving its consent to the treaty. However, there is the very real possibility that the JPEPA will become binding on the Philippines upon the mere signature of members of the PCC or of the President. This is valid under international law by virtue of the Vienna Convention, even though it breaches Art. VII, Sec. 21 of the Philippine Constitution.

While the Senate may subsequently choose to repudiate the JPEPA, the Philippines will continue to be bound to the terms of the JPEPA under international law in view of Art. 27 of the Vienna Convention, which states that “(a) party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

¹⁴⁰ Article 24 (1), Vienna Convention on the Law of Treaties (1969) (the “Vienna Convention”).

¹⁴¹ Article 24 (2), Vienna Convention.

¹⁴² Articles 11-15, Vienna Convention.

Moreover, the fundamental principle of *pacta sunt servanda* under Art. 26 of the Vienna Convention mandates that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” And even assuming, for the sake of argument, that the Philippines can validly repudiate its commitments under the JPEPA, this would cause tremendous embarrassment and loss of face before the international community, and severely damage our credibility as a nation. Moreover, the resources used in the process of negotiating the agreement would have all gone to waste.

Such scenarios can be prevented if the JPEPA is fully and publicly disclosed now and the negotiations and signing of the JPEPA held in abeyance until such time that the Filipino people, their legislators, and most especially the Senate will have had sufficient time and information to effectively exercise their respective roles in the decision-making process of this transcendently important and historic international trade agreement.

IV. A TEMPORARY RESTRAINING ORDER MUST BE ISSUED TO PREVENT GRAVE AND IRREPARABLE INJURY TO THE FILIPINO PEOPLE.

Unless a temporary restraining order is issued, Petitioners will suffer grievous and irreparable damage, for the reasons discussed above. Moreover, given the upcoming WTO Ministerial Conference which will be held in Hong Kong next week from December 12-16, 2005, there is a very real possibility that the JPEPA will be signed during this period - while the country’s attention is focused on the WTO Ministerial - or immediately thereafter. Given the urgency of the situation, and pending the action of this Honorable Court on this Petition, Petitioners respectfully submit that they are entitled to the issuance of a temporary restraining order enjoining the respondents from completing the JPEPA negotiations, signing the JPEPA with the Government of Japan, and/or completing all preparatory acts that will culminate in the signing of the JPEPA.

PRAYER

In view of all of the foregoing, it is respectfully prayed that:

- 1) Respondents be ordered to provide the Petitioners with the full text of the JPEPA, including the Philippine and Japanese offers and all pertinent attachments and annexes thereto;

2) Respondents be ordered to refrain from concluding the JPEPA negotiations, signing the JPEPA, and transmitting the same to the President until such full disclosure has been made to the Petitioners;

3) A Temporary Restraining Order and/or Writ of Preliminary Injunction be issued enjoining the Respondents from concluding the JPEPA negotiations, signing the JPEPA, and transmitting the same to the President.

Other reliefs as are appropriate, just, and equitable under the circumstances are likewise prayed for.

06 December 2005, Quezon City for City of Manila.

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MANIFESTATION

Pursuant to Rule 13, section 11 of the Rules of Court, Petitioners respectfully manifest that the Respondents were served their copies of this Urgent Petition for Mandamus and Prohibition With Application for a Temporary Restraining Order by means of registered mail because of the lack of messengerial staff to effect personal service, and the considerable distance between the parties' respective offices.

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