SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

NATIONAL FEDERATION OF HOG FARMERS, INC., represented by MR. DANIEL P. JAVELLANA, ABONO PARTY-LIST INC., represented by ROSENDO SO, ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN, INC., represented by CONG. ANGELO B. PALMONES, JR., AGRICULTURAL SECTOR ALLIANCE OF THE PHIL., INC., represented by CONG. NICANOR BRIONES, PORK PRODUCERS FEDERATION OF THE PHILIPPINES, INC., represented by MR. RICO GERON, SOROSORO IBABA DEVELOPMENT COOPERATIVE, represented by DR. ANGELITO D. BAGUI, ASSOCIATION OF PHIL. AQUA FEEDS MILLERS, INC., represented by MR. NAPOLEON G. CO, Petitioners, -versus- **BOARD OF INVESTMENTS, LUCITA P. REYES, FELICITAS AGONCILLO-REYES, EFREN V. LEAÑO, and RAUL V. ANGELES,**	**G.R. No. 205835** Present: PERALTA, *Chief Justice,* PERLAS-BERNABE, LEONEN, CAGUIOA, GESMUNDO, REYES, J., JR., HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, DELOS SANTOS, *and* GAERLAN*, *JJ.*

* On leave.

in their capacity as Executive Directors of the Board of Investments, THE BOARD OF TRUSTEES OF BOI, and CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION,
Respondents.

Promulgated:
June 23, 2020

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DECISION

LEONEN, *J.*:

Nationalism is not a mindless ideal. It should not unreasonably exclude people of a different citizenship from participating in our economy. If it were so, nationalism will not foster social justice; rather, it will sponsor a kind of racism quite like what our ancestors had suffered from in our colonial past.

While the Constitution does not bar foreign investors from setting up shop in the Philippines, neither does it encourage their unbridled entry. Thus, it has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors.

The constitutional line demarcating privileges for our citizens over foreigners is a delicate one. We must adjudicate where such line is drawn only with a grounded consciousness of the facts of an actual case rather than through fiery passions of general advocacy. We will not evade the responsibility to adjudicate when that case comes. Sadly, this is not the case.

This Petition should be dismissed. Not only is it not justiciable, but this Court also does not have original jurisdiction over it. The grounds raised reveal that the invocation of grave abuse of discretion is mere subterfuge to a claimed "irregular or illegal" grant of an application for registration under Book I, Chapter III of Executive Order No. 226, or the Omnibus Investments Code of 1987.

This Court resolves the Petition for Certiorari[1] filed by members of the agribusiness industry, assailing the February 28, 2012, April 24, 2012, and November 6, 2012 Resolutions[2] issued by the Board of Governors of the Board of Investments, which granted the applications for registration filed by Charoen Pokphand Foods Philippines Corporation (Charoen).

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1 *Rollo*, pp. 3–66.
2 Id. at 509–511.

On May 24, 2007, Charoen, a 100% foreign-owned company from Thailand, was registered with the Securities and Exchange Commission.[3]

On three (3) different occasions, Charoen submitted to the Board of Investments its applications for registration as a new producer of different products and services. These all went through a two-step process before they could be published in a newspaper of general circulation and officially filed with the Board of Investments. First, they underwent check-listing; and second, the Resource-Based Industries Department of the Board of Investments assessed if they complied with Executive Order No. 226.[4]

Charoen's first application was submitted on October 6, 2011.[5] It sought registration as a new producer of aqua feeds on a pioneer status with the Board of Investments for check-listing, assessment, and publication.

On December 28, 2011,[6] the Philippine Star, a daily broadsheet of general circulation, published a notice of Charoen's application for registration as a "New Producer of Aqua Feeds with an annual capacity of 84,000 MT – Fish Feeds and 30,000 MT – Shrimp Feeds on a Pioneer Status"[7] with the Board of Investments. The notice stated that any person questioning Charoen's application should file an objection under oath with the Board of Investments within three (3) days of the notice's publication.

On February 2, 2012,[8] Charoen officially filed its application for registration with the Board of Investments by paying the requisite application fees.

On February 28, 2012,[9] the Board of Investments' Board of Governors approved Charoen's application under Board Resolution No. 8-3 S'2012:

> **RESOLVED FURTHER**, That the firm's application for registration under Book I of E.O. 226 of (*sic*) as New Producer of aqua feeds at an annual production capacity of 114,000 MT per year (84,000 MT per year of fish feeds and 30,000 MT per year of shrimp feeds) on a **Pioneer** status (based on magnitude of investments) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "C1"**.[10] (Emphasis in the original)

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3 Id. at 343, BOI Comment.
4 Id. at 1033–1034.
5 Id. at 1039.
6 Id. at 509.
7 Id.
8 Id. at 1040.
9 Id. at 321.
10 Id. at 321.

On October 14, 2011,[11] Charoen submitted its second application for registration as a new producer of hog parent stocks and slaughter hogs.

On January 5, 2012,[12] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Hogs . . . on a Pioneer Status[.]"[13] It contained a similar instruction for people with objections to file a statement under oath with the Board of Investments within three (3) days of the notice's publication.

On March 28, 2012,[14] Charoen paid the application fees. Later, on April 24, 2012, the Board of Governors approved Charoen's second application under Board Resolution No. 13-6 S'2012:

> **RESOLVED**, That the application for registration under Book I of E.O. 226 of **CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION** as New Producer of the following hog products:
>
> | | Annual Capacities |
> |---|---|
> | Breeder Hogs | 25,453 heads |
> | Slaughter Hogs | 3,647 MT |
>
> be **APPROVED**, as it is hereby **APPROVED** on a **Pioneer** (with non-pioneer incentives), subject to the specific terms and conditions attached as **Annex "E1".**[15] (Emphasis in the original)

On October 11, 2012,[16] Charoen submitted its third application for registration for its Integrated Broiler Project with the Board of Investments. On October 23, 2012,[17] it filed the corresponding application fees.

On October 24, 2012,[18] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Live Chickens at a capacity of 21,847 MT/year on a Pioneer Status."[19] Again, the notice contained a directive for oppositors to file their objection under oath with the Board of Investments.

On November 6, 2012, the Board of Governors approved Charoen's application for registration under Board Resolution No. 35-10 S'2012:

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11 Id. at 1040.
12 Id. at 510.
13 Id.
14 Id. at 1040.
15 Id. at 322.
16 Id. at 1040.
17 Id.
18 Id. at 511.
19 Id.

> **RESOLVED,** That the application for registration of **CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION** as New Producer of Chickens (Integrated Broiler Project) at a capacity of 21,847 MT per year on a Pioneer status (based on magnitude of investment) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "I1"** and to the usual general terms and conditions.[20] (Emphasis in the original)

On November 20, 2012,[21] the counsel for some "members of the local swine, poultry and aquaculture industries"[22] wrote the Board of Investments to ask for copies of the documents Charoen submitted in support of its three (3) applications for registration.

On December 17, 2012,[23] the Board of Investments denied the request for the documents, noting that these were confidential.

Thus, on March 7, 2013, the National Federation of Hog Farmers, Abono Party-list, Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya Para sa Mamamayan, Inc., Agricultural Sector Alliance of the Philippines, Inc., Pork Producers Federation of the Philippines, Inc., Sorosoro Ibaba Development Cooperative, and Association of Philippine Aqua Feeds Millers, Inc., jointly filed before this Court a Petition for Certiorari[24] with prayer for a temporary restraining order. They mainly claim that the three (3) Board Resolutions of public respondent Board of Investments, which granted private respondent Charoen's applications for registration, were issued with grave abuse of discretion.

Petitioners allege that the assailed Board Resolutions violated their constitutional right to be protected against unfair foreign competition and trade practices.[25] They accuse public respondent of deliberately depriving them of the chance to appeal by refusing to provide them with copies of the pertinent resolutions.[26]

Petitioners maintain that the assailed Board Resolutions were issued without prior consultation with the Department of Agriculture, as required by Executive Order No. 226,[27] and were contrary to public policy.[28]

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20 Id. at 323.
21 Id. at 67.
22 Id.
23 Id. at 68–69.
24 Id. at 3–66.
25 Id. at 14.
26 Id. at 41–42.
27 Id. at 26–32.
28 Id. at 36–41.

Petitioners also assert that public respondent wrongly classified private respondent as a new producer when it had been operating in the Philippines as early as 2009, raising shrimps and hogs.[29]

Finally, petitioners stress that they will sustain injury as they do not enjoy incentives similar to what the issued Board Resolutions have provided. Private respondent was allegedly given preferential treatment and incentives, which gave it undue advantage to significantly lower its prices.[30]

On April 10, 2013,[31] this Court directed respondents to comment on the Petition. Additionally, petitioners were instructed to provide copies of the assailed Board Resolutions.

In its Comment,[32] public respondent argues that the Petition is dismissible for petitioners' failure to exhaust all administrative remedies before going to this Court. It points out that they should have first appealed to the Office of the President, which is the available remedy from its decisions on applications for registration under Article 36 of Executive Order No. 226.[33] It further faults petitioners for filing the Petition directly before this Court, instead of the Court of Appeals, as required under Rules 43 and 65 of the Rules of Civil Procedure.[34]

Public respondent also claims that petitioners were not properly authorized to file the Petition, as the special powers of attorney issued to them did not include filing an original action before this Court.[35] Additionally, it contends that its Executive Directors Lucita P. Reyes, Felicitas Agoncilio-Reyes, Efren V. Leaño, and Raul V. Angeles are not proper parties in interest as they were not members of the Board of Governors who signed the assailed Board Resolutions.[36]

Public respondent then denies petitioners' claim that it withheld copies of the assailed Board Resolutions. It avers that petitioners only asked for copies of the supporting documents of private respondent's applications and not the copies of the resolutions.[37]

Public respondent emphasizes that it issued the assailed Board Resolutions within its powers under Executive Order No. 226 and the Investment Priorities Plan then in effect,[38] which was formulated through a

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29 Id. at 35–36.
30 Id. at 43–50.
31 Id. at 299.
32 Id. at 339–406.
33 Id. at 348–351.
34 Id. at 351–354.
35 Id. at 359–362.
36 Id. at 362–363.
37 Id. at 350–351.
38 Id. at 369–377.

series of consultations with the Department of Agriculture and other stakeholders.[39] It stresses that private respondent's applications for registration were approved to bridge the gap between local production and local demand for aqua feeds, pork, and poultry.[40]

Public respondent then belies petitioners' claim that private respondent was mistakenly classified as a "New Project" under the Investment Priorities Plan. It explains that registration is made per project; thus, even if a company is already existing, its new projects can qualify for registration if its activity is included in the current Investment Priorities Plan. Hence, the projects of private respondent, which had only begun its commercial operations in aqua feeds, breeder and slaughter hogs, and integrated broiler chickens, qualified as New Projects.[41]

Public respondent underscores that the Constitution does not bestow "an automatic mantle of protection"[42] against foreign competition. It asserts that agribusiness is not one of the areas of investments that require at least a 60% Filipino capitalization. It points out that 100% foreign equity participation is allowed in agribusiness.[43]

Finally, public respondent asserts that petitioners failed to show a clear and unmistakable right, or that they would suffer undue injury, that would merit an injunctive writ against the assailed Board Resolutions.[44]

In its Comment,[45] private respondent asserts that while the Constitution is guided by economic nationalism, "Filipino monopoly of the economy is proscribed"[46] and foreign investments are encouraged to boost the Philippine economy,[47] as evidenced by the numerous laws[48] enacted to attract foreign investments. Private respondent likewise points out that this Court has repeatedly declared as constitutional the various statutes that liberalized entry of foreign investors.[49]

Similar to public respondent, private respondent also adverts to petitioners' procedural mistakes in, among others, filing an original petition before this Court instead of an appeal to the Office of the President[50] and

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39 Id. at 378–381.
40 Id. at 375–376.
41 Id. at 381–383.
42 Id. at 387.
43 Id. at 387–388.
44 Id. at 391–400.
45 Id. at 558–608.
46 Id. at 559.
47 Id.
48 Id. at 560–564.
49 Id. at 564–569.
50 Id. at 577–582.

failing to exhaust the available administrative remedies.[51] It also maintains that the assailed Board Resolutions have long attained finality.[52]

Private respondent posits that public respondent did not gravely abuse its discretion in approving the applications for registration. It maintains that public respondent carefully assessed that these applications adhered to existing rules and regulations.[53]

Finally, private respondent avers that the findings of fact of public respondent, as a "specialized government agency tasked with the preparation and formulation of the annual Investment Priorities Plan as well as the registration of pioneer new products[,]"[54] should be respected.[55]

In their Reply,[56] petitioners reiterate that public respondent thwarted their chance at an appeal before the Office of the President when it failed to provide copies of the Board Resolutions despite their request for "Letters/Orders informing [private respondent] of [public respondent]'s action on its application."[57] Furthermore, petitioners point out that public respondent's delay in responding to their request made a timely appeal to the Office of the President impossible.[58]

Nonetheless, petitioners insist that this Petition for Certiorari is the appropriate remedy to void the assailed Board Resolutions, which were allegedly issued by public respondent with grave abuse of discretion.[59]

Petitioners claim that public respondent gravely abused its discretion in granting private respondent's applications for registration despite the latter's violation of law. According to them, private respondent went against Rule III, Section 4 of Executive Order No. 226's Implementing Rules and Regulations because the date of publication preceded public respondent's official acceptance of private respondent's application.[60]

Petitioners likewise point out that private respondent committed misrepresentations in its applications. They point out how the company alleged that it spent ₱2,330,892,000.00 for construction works in its three (3) new projects for 2011, yet its financial statement that year showed that the value of its property and equipment only amounted to ₱334,014,644.00.

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51 Id. at 582–585.
52 Id. at 589–594.
53 Id. at 596–600.
54 Id. at 601.
55 Id. at 601–603.
56 Id. at 626–672.
57 Id. at 631.
58 Id. at 631–635.
59 Id. at 639–640.
60 Id. at 641–642.

They argue that public respondent turned a blind eye to these glaring misrepresentations and approved the applications for registration.[61]

Further, petitioners maintain that private respondent's swine and chicken projects were not new projects, as its audited financial statements reveal that it had been selling such products even before it applied for registration.[62]

Moreover, contrary to public respondent's stand that inter-agency consultation is only needed in formulating the Investment Priorities Plan, petitioners insist that it must be made for every application for registration.[63] They then assert that public respondent had no technical knowledge or expertise over the agricultural industry; hence, it should have consulted with the Department of Agriculture before granting the applications.[64]

On this point, petitioners stress that the Department of Agriculture opined that private respondent's entry will have a negative impact on the agribusiness industry, as echoed by academic experts.[65]

Finally, petitioners contend that because public respondent gravely abused its discretion, the assailed Board Resolutions are void, making this case an exception to the general rule of immutability of judgment.[66]

On October 1, 2013,[67] this Court gave due course to the Petition and directed the parties to file their respective memoranda.

In their Memorandum,[68] petitioners reiterate their right to be protected against unfair competition and trade practices.[69] They emphasize that the local players in the agricultural industry already satisfy local demand; thus, there is no need for private respondent's entry. Additionally, they warn that private respondent, a Thai company, had already killed the local poultry industry in Vietnam.[70]

In its Memorandum,[71] public respondent repeats that petitioners never requested copies of the assailed Board Resolutions.[72] Additionally, it stresses that petitioners have known of the resolutions as early as December

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61 Id. at 642–645.
62 Id. at 646–649.
63 Id. at 649–651.
64 Id. at 655–657.
65 Id. at 653–654.
66 Id. at 659–662.
67 Id. at 889–890.
68 Id. at 926–1002.
69 Id. at 927–928.
70 Id. at 929–930.
71 Id. at 1010–1101.
72 Id. at 1012–1013.

4, 2012, and could have appealed by then. It discusses that during the Joint Congressional Hearings attended by petitioners Angelo Palmones (Palmones) and Nicanor Briones, as members of the House of Representatives, public respondent Lucita P. Reyes informed the House Committee about the assailed Board Resolutions and their dates of issuance.[73]

In the alternative, public respondent posits that the Petition was belatedly filed. It claims that the 60-day period for filing a petition for certiorari should be counted from December 4, 2012, which meant petitioners only had until February 2, 2013 to do so.[74]

Public respondent likewise repeats that there is no "automatic mantle of protection"[75] afforded to local businesses or industries against foreign competition. It maintains that the Constitution recognizes the contribution of the private sector and private enterprises to economic growth, hence the grant of incentives to drive investments towards sectors that need them.[76]

Public respondent asserts that the applications for registration underwent the usual process,[77] and that it used "an array of criteria"[78] to evaluate the applications. It likewise denies that it did not have the expertise over the agricultural industry, noting that it had a pool of experts from both public and private sectors which it could readily consult.[79]

Public respondent points out the benefits that private respondent will bring to the economy on several areas: technology acquisition, employment generation, lesser importation of feeds, increase in chicken meat supply that will lead to a price decrease, and the potential to import chicken meat.[80]

Finally, public respondent emphasizes that private respondent's entry into the local market will not threaten the local industry; rather, it will stir competition, create efficiency, and stabilize market prices for chicken, pork, and feeds.[81]

In its Memorandum,[82] private respondent notes how the government has historically neglected the swine, poultry, and aqua feeds industries,

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73 Id. at 1067–1068.
74 Id. at 1069.
75 Id. at 1022.
76 Id. at 1023.
77 Id. at 1033–1042.
78 Id. at 1041.
79 Id. at 1045.
80 Id. at 1090–1092.
81 Id. at 1094.
82 Id. at 1286–1344.

giving little support to the industry players since most of its attention was focused on the rice industry.[83]

Private respondent then refutes petitioners' dire prediction that its entry into the local market will doom the local players. It cites statistics showing an overall improvement in the poultry subsector during the first semester of 2013.[84]

Finally, private respondent echoes public respondent's claim that petitioners only had themselves to blame for failing to timely appeal to the Office of the President. It adds that on November 28, 2012, petitioner Palmones filed House Resolution No. 2921[85] which called for an investigation of the fiscal incentives public respondent granted to private respondent. Moreover, Representative Agapito Guanlao (Representative Guanlao), in his privilege speech delivered on the same date, urged for an inquiry into the grant of incentives. These events, private respondent stresses, show that petitioners had known of the assailed Board Resolutions, and should have moved for their reconsideration or appealed them to the Office of the President, exhausting the administrative remedies instead of directly filing the Petition before this Court.[86]

The two (2) issues for this Court's resolution are:

First, whether or not the Petition for Certiorari filed directly before this Court is the correct remedy; and

Second, whether or not public respondent Board of Investments committed grave abuse of discretion when it approved the applications for registration of private respondent Charoen Pokphand Foods Philippines Corporation.

I

This Court's power of judicial review finds basis in Article VIII, Section 1 of the Constitution:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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83 Id. at 1286–1289.

84 Id. at 1290–1291.

85 Id. at 609–610. A Resolution Requesting the Committee on Food Security of the House of Representatives to Conduct an Investigation on the Reported Grant of Incentives to a Foreign Corporation, How This Affects Local Agricultural Producers, and its Impact to Domestic Food Production.

86 Id. at 1292–1299.

> 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.

On the other hand, jurisdiction over a subject matter, or the power to hear and determine cases, is conferred by law, which may either be the Constitution or by statute.[87] This Court's original and appellate jurisdiction, as part of its constitutionally mandated powers, is provided in Article VIII, Section 5(1) and (2):

> SECTION 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any lower court is in issue.
>
> (d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
>
> (e) All cases in which only an error or question of law is involved.

Meanwhile, the lower courts derive their jurisdiction from Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, and other statutes.

Also deriving jurisdiction from statutes are the administrative agencies, which were created in recognition of the need for special technical expertise, in light of "the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws[.]"[88]

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87 *Magno v. People*, 662 Phil. 726, 735 (2011) [Per J. Brion, Third Division] citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per J. Brion, Second Division].

88 *Pangasinan Transportation v. Public Service Commission*, 70 Phil. 221, 229 (1940) [Per J. Laurel, First Division].

Though executive in nature, administrative agencies can exercise either quasi-legislative or quasi-judicial powers, or both, depending on the express and implied powers provided in their granting statute.[89]

Quasi-legislative power is a delegated power that enables the administrative agency to promulgate rules and regulations germane and consistent with its granting statute. Meanwhile, quasi-judicial power is the authority to hear and decide factual issues in accordance with the standards imposed by the law being administered.[90] *Smart Communications, Inc. v. National Telecommunications Commission*[91] explains further:

> The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[92] (Citation omitted)

It is necessary to identify whether the type of administrative action under review is quasi-legislative or quasi-judicial. This is to determine "when judicial remedies may be properly availed of."[93]

As part of its judicial power, a court may take cognizance of the rules issued in the exercise of an administrative agency's quasi-legislative power. The court then possesses jurisdiction to determine "whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution[.]"[94]

However, in cases involving an administrative agency's quasi-judicial power, Congress may empower certain administrative agencies that have the relevant technical expertise to first take cognizance of the case before judicial remedies are resorted to.[95] This is known as the doctrine of primary administrative jurisdiction, which is anchored on Article VIII, Section 1 of the Constitution.

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89 *Makati Stock Exchange, Inc. v. Securities and Exchange Commission*, 121 Phil. 1412 (1965) [Per J. Bengzon, En Banc].

90 *Smart Communications, Inc. v. National Telecommunications Commission,* 456 Phil. 145, 155–156 (2203) [Per J. Ynares-Santiago, First Division].

91 456 Phil. 145 (2203) [Per J. Ynares-Santiago, First Division].

92 Id. at 156–157.

93 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 87 [Per J. Leonen, En Banc].

94 *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 158–159 (2003) [Per J. Ynares-Santiago, First Division].

95 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

Katon v. Palanca[96] explains that when a court is faced with a case that should have been under an administrative agency's exclusive jurisdiction, the court is behooved to dismiss it for lack of jurisdiction.[97] Otherwise, any action it renders on a subject matter over which it has no jurisdiction will be void.[98]

The doctrine of primary administrative jurisdiction is often interchanged with the doctrine of exhaustion of administrative remedies, as both doctrines capitalize on an administrative agency's acknowledged expertise over its field of specialization.

However, the doctrine of exhaustion of administrative remedies is a form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case.[99] This doctrine assumes that the matter is within the court's jurisdiction, or the court exercises concurrent jurisdiction with the administrative agency; however, in its discretion, the court deems the case not justiciable or declines to exercise jurisdiction.

Meanwhile, under the doctrine of primary administrative jurisdiction, jurisdiction lies exclusively with the administrative agency to act on a quasi-judicial matter. Hence, the court has no alternative but to dismiss a case for lack of jurisdiction.

The justiciability of an issue also determines whether a court can take cognizance of a case. A controversy is deemed justiciable if the following requisites are present: (1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*.[100]

A conflict must be justiciable for this Court to take cognizance of it. Otherwise, our decision will be nothing more than an advisory opinion on a legislative or executive action, which "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."[101]

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96 481 Phil. 168 (2004) [Per J. Panganiban, Third Division].
97 Id. at 183.
98 *Villagracia v. Fifth Shari'a District Court*, 734 Phil. 239 (2014) [Per J. Leonen, Third Division].
99 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].
100 *Macasiano v. National Housing Authority*, 296 Phil. 56, 63–64 (1993) [Per C.J. Davide, Jr., En Banc].
101 J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per J. Perlas-Bernabe, En Banc].

II

Executive Order No. 226, or the Omnibus Investments Code of 1987, took effect on July 16, 1987, when President Corazon C. Aquino exercised legislative powers under the Freedom Constitution. It established the powers and duties of the Board of Investments in its dual role as a policy-making body and a regulatory agency tasked with encouraging investments in the country and facilitating their growth.[102]

Executive Order No. 226 provides various remedies from an action or decision of the Board of Investments, in response to the different issues that may arise from its implementation:

> **Preliminary Title**
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> . . . .
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> **Chapter II**
> **Board of Investments**
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> . . . .
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> ARTICLE 7. Powers and Duties of the Board. The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:
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> . . . .
>
> (4) After due hearing, decide controversies concerning the implementation of the relevant books of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: Provided, *That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President;*[103]
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> . . . .
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> **Book I**
> **Investments with Incentives**
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> **Title I – Preferred Areas of Investment**

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[102] *Phillips Seafood (Philippines) Corp. v. The Board of Investments,* 597 Phil. 650 (2009) [Per J. Tinga, Second Division].

[103] Executive Order No. 226 (1987), art. 7(4).

. . . .

Chapter III – Registration of Enterprises

. . . .

ARTICLE 36. Appeal from Board's Decision. Any order or decision of the Board shall be final and executory after thirty (30) days from its promulgation. Within the said period of thirty (30) days, *said order or decision may be appealed to the Office of the President.* Where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.[104]

. . . .

Book II[105]
Foreign Investments Without Incentives

Title I

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Chapter III
License to Do Business

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ARTICLE 50. Cause for Cancellation of Certificate of Authority or Payment of Fine. A violation of any of the requirements set forth in Article 49 or of the terms and conditions which the Board may impose shall be sufficient cause to cancel the certificate of authority issued pursuant to this Book and/or subject firms to the payment of fines in accordance with the rules and regulations issued by the Board: Provided, however, That aliens or foreign firms, associations, partnerships, corporations or other forms of business organization not organized or existing under the laws of the Philippines which may have been lawfully licensed to do business in the Philippines prior to the effectivity of R.A. 5455, shall, with respect to the activities for which they were licensed and actually engaged in prior to the effectivity of said Act, not be subject to the provisions of Article 48 and 49 but shall be subject to the reporting requirements prescribed by the Board: Provided, further, That *where the issuance of said license has been irregular or contrary to law, any person adversely affected thereby may file an action with the Regional Trial Court where said alien or foreign business organization resides or has its principal office to cancel the said license.* In such cases, no injunction shall issue without notice and hearing; and appeals and other proceedings for review shall be filed directly with the Supreme Court.[106]

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104 Executive Order No. 226 (1987), art. 36.

105 The entire Book II of Executive Order No. 226, comprising Articles 44 to 56, was repealed by Section 16 of Republic Act No. 7042 or the Foreign Investments Act of 1991. Section 16 provides:

SECTION 16. Repealing Clause. — Articles forty-four (44) to fifty-six (56) of Book II of Executive Order No. 226 are hereby repealed.

All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

106 Executive Order No. 226 (1987), art. 50. Article 50 was repealed by Section 16 of Republic Act No. 7042.

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Final Provisions

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ARTICLE 82. Judicial Relief. All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision: Provided, *That all appeals shall be filed directly with the Supreme Court within thirty (30) days from receipt of the order or decision.*[107] (Emphasis supplied)

Phillips Seafood (Philippines) Corporation v. The Board of Investments[108] summarizes the remedies under Executive Order No. 226:

> E.O. No. 226 apparently allows two avenues of appeal from an action or decision of the BOI, depending on the nature of the controversy. One mode is to elevate an appeal to the Office of the President when the action or decision pertains to either of these two instances: first, in the decisions of the BOI over controversies concerning the implementation of the relevant provisions of E.O No. 226 that may arise between registered enterprises or investors and government agencies under Article 7; and second, in an action of the BOI over applications for registration under the investment priorities plan under Article 36.
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> Another mode of review is to elevate the matter directly to judicial tribunals. For instance, under Article 50, E.O. No. 226, a party adversely affected by the issuance of a license to do business in favor of an alien or a foreign firm may file with the proper Regional Trial Court an action to cancel said license. Then, there is Article 82, E.O. No. 226, which, in its broad phraseology, authorizes the direct appeal to the Supreme Court from any order or decision of respondent BOI "involving the provisions of E.O. No. 226."[109] (Citations omitted)

Thus, under Article 36 of Executive Order No. 226, actions made by the Board of Investments over applications for registration under the Investment Priorities Plan are appealable to the Office of the President.

Executive Order No. 226 empowers the Board of Governors of the Board of Investments to, among others, process and approve applications for registration, as seen in Article 7(3):

> ARTICLE 7. Powers and Duties of the Board. The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4)

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107 Executive Order No. 226 (1987), art. 82.
108 597 Phil. 650 (2009) [Per J. Tinga, Second Division].
109 Id. at 659–660.

> governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:
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> . . . .
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> (3) Process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code, including refund of incentives when appropriate, restricting availment of certain incentives not needed by the project in the determination of the Board, requiring performance bonds and other guarantees, and payment of application, registration, publication and other necessary fees and when warranted may limit the availment of the tax holiday incentive to the extent that the investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines[.]

The quasi-judicial power to assess and approve applications for registration was bestowed exclusively on the Board of Governors, owing to its expertise over which industries need the added boost of investments[110] and its in-depth knowledge on the requirements for registration. After all, it drafted[111] the rules and regulations implementing Executive Order No. 226.

Thus, under the doctrine of primary administrative jurisdiction, jurisdiction over the approval of applications for registration lies exclusively with the Board of Investments, subject to appeal to the Office of the President. Hence, this Court is precluded from taking cognizance of the present Petition.

III

This case is also not justiciable as petitioners failed to prove their legal standing to file the suit. Standing to sue or *locus standi* is defined as:

> . . . a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[112] (Citations omitted)

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110 Executive Order No. 226 (1987), art. 7(1).

111 Executive Order No. 226 (1987), art. 7(2).

112 *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618, 632–633 (2000) [Per J. Kapunan, En Banc].

Petitioners claim that their standing arises from their personalities as stakeholders in the agriculture industry who would be competing with private respondent.

Petitioners are mistaken.

For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties:

> [F]irst, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."[113]

Organizations may possess standing to sue on behalf of their members if they sufficiently show that "the results of the case will affect their vital interests"[114] and that their members have suffered or will stand to suffer from the application of the assailed governmental acts. The petition must likewise show that a hindrance exists, preventing the members from personally filing the complaint.

In *White Light Corporation v. City of Manila*,[115] hotel and motel operators protested the implementation of the City of Manila's Ordinance No. 7774, which prohibited short-time admission, or the admittance of guests for less than 12 hours in motels, inns, hotels, and similar establishments within the city.[116] The petitioners argued, among others, that the Ordinance violated their clients' right to privacy,[117] freedom of movement,[118] and equal protection of the laws.[119]

In *White Light*, the petitioners were allowed to represent their clients based on third-party standing. This Court noted the close relationship between hotel and motel operators and their clients, as the former "rely on the patronage of their customers for their continued viability."[120] On the requirement of hindrance, this Court stated that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as

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113 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment,* G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per J. Leonen, En Banc] citing *White Light Corp. v. City of Manila,* 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

114 *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health,* 561 Phil. 386, 396 (2007) [Per J. Austria-Martinez, En Banc].

115 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

116 *White Light Corp. v. City of Manila,* 596 Phil. 444, 451 (2009) [Per J. Tinga, En Banc].

117 Id. at 454.

118 Id.

119 Id. at 455.

120 Id. at 456.

the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[121]

Here, petitioners-organizations failed to show that they suffered or stood to suffer from private respondent's registration as a new producer. They likewise failed to show that their members were hindered from personally asserting their own interests. Thus, petitioners have no third-party standing to rightfully represent their members in a suit.

IV

Petitioners further argue that private respondent's presence in the market as a new producer would drive them "out of the market due to cut-throat competition."[122] This claim, however, requires a definition of the relevant market involved.

Goods or services are said to be in the same relevant market if both factors are present: (1) a reasonable interchangeability of the offerings to consumers; and (2) a significant cross-elasticity of demand, such that a price change in one party's goods or services will lead to a price change in the other party's goods or services.[123] Thus, petitioners' alleged injury, purportedly caused by the entry of new players in the relevant market, still requires a factual finding. The Petition, therefore, is ultimately premature.

The claim of unfair competition is primarily factual in nature. In a separate opinion concurring with the well-expounded *ponencia* of Justice Alexander Gesmundo in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*,[124] it was explained:

> There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion. In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes, where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level of satisfaction" is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which superficially appear unrelated, may be proved related if evidence is

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[121] Id. at 456–467 citing Kelsey McCowan Heilman, THE RIGHTS OF OTHERS: PROTECTION AND ADVOCACY ORGANIZATIONS ASSOCIATIONAL STANDING TO SUE, 157 U. PA. L. REV. 237.

[122] *Rollo*, p. 14.

[123] J. Leonen, Concurring Opinion in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per J. Gesmundo, Third Division] citing David Besanko and Ronald Braeutigam, MICRECONOMICS, 92–93 (4th ed., 2010).

[124] *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365–66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per J. Gesmundo, Third Division].

presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services. Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different.

While not binding on this Court, jurisprudence from the United States of America on the determination of related goods or services provide clues to this approach. In *Worthington Foods, Inc. v. Kellogg Co.*, both "reasonable interchangeability" of goods and consumer response through cross-elasticity were factors in the court's assessment on whether the goods were in the same relevant market:

> One analogous body of law sheds light on the issue of direct competition between goods, namely market definition under section 2 of the Sherman Anti-Trust Act, 15 U.S.C. § 2 (1982). Professor McCarthy, in his seminal trademark treatise, states that products which are "competitive" for purposes of trademark analysis are "goods which are reasonably interchangeable by buyers for the same purposes." Determining whether products are "reasonably interchangeable" is the analysis which the Court must undertake when defining the relevant product market in an action under section 2 of the Sherman Act. The Court holds that the same analysis is helpful for determining whether the parties' goods are "directly competing" for purposes of assessing palming off liability.
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> A relevant product market includes all products that are either identical or available substitutes for each other. To determine whether products are "available substitutes" or "reasonably interchangeable," the Court must first scrutinize the uses of the product. It must assess whether the products can perform the same function. The second factor to weigh is consumer response, or more specifically, cross-elasticity. That is, the Court must assess to what extent consumers will choose substitutes for the parties' goods in response to price increases.
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> . . . .
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> The second market factor to be considered is consumer response or cross-elasticity. Unfortunately, the parties did not present evidence concerning any tendency or lack of tendency of consumers to switch from the plaintiff's products to the defendant's if Worthington were to raise its prices or vice versa. Therefore, the Court cannot conclude that the plaintiff has demonstrated cross-elasticity of the parties' products indicating that their goods are in the same relevant market.
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> In short, on an examination of the current record, the Court, finds that Worthington's goods are not in the same relevant market as Kellogg's cereal. The parties' products have different uses or functions. Also, the Court has no evidence of any degree of cross-elasticity between the plaintiff's foods and the defendant's cereal. . . .

The lack of evidence that the parties directly competed in the same marketplace led to a finding that no likelihood of confusion would ensue in *Exxon Corporation v. Exxene Corporation.* In *Amstar Corp. v. Domino's Pizza, Inc.*, among the factors used to determine that the parties' goods were unrelated were: (1) the distribution channels by which their goods were sold; and (2) the demographics of the predominant purchasers of the goods. In *AMF, Inc. v Sleekcraft Boats*, competition between the parties' lines of boats was found negligible despite the potential market overlap, since the respective lines catered to different kinds of activities. Similarly, in *Thompson Tank Mfg. Co., Inc. v. Thompson*, the contested goods represented only one percent (1%) of complainant's business, while ninety percent (90%) of the defendant's business were in fields that complainant did not engage in. This also disproves the claim of likelihood of confusion.

We can build on past jurisprudence of this Court. In *Shell Co. of the Philippines, Ltd. v. In[s]. Petroleum Refining Co., Ltd. and CA*, this Court did not give credence to a complainant's claim that the entry into the market of the defendant's products, which were allegedly sold in complainant's drums, caused a decrease in complainant's sales. Thus, no unfair competition could be imputed to the defendant:

> Petitioner contends that there had been a marked decrease in the volume of sales of low-grade oil of the company, for which reason it argues that the sale of respondent's low-grade oil in Shell containers was the cause. We are reluctant to share the logic of the argument. We are more inclined to believe that several factors contributed to the decrease of such sales. But let us assume, for purposes of argument, that the presence of respondent's low-grade oil in the market contributed to such decrease. May such eventuality make respondent liable for unfair competition? There is no prohibition for respondent to sell its goods, even in places where the goods of petitioner had long been sold or extensively advertised. Respondent should not be blamed if some of petitioner's dealers buy Insoil oil, as long as respondent does not deceive said dealers. If petitioner's dealers pass off Insoil oil as Shell oil, that is their responsibility. If there was any such effort to deceive the public, the dealers to whom the defendant (respondent) sold its products and not the latter, were legally responsible for such deception. The passing of said oil, therefore, as product of Shell was not performed by the respondent or its agent, but petitioner's dealers, which act respondent had no control whatsoever.

These cases illustrate the many ways by which specialized agencies and courts may objectively evaluate the relatedness of allegedly competing goods and services. An analysis that ends in a mere finding of confusing similarity in the general appearance of the goods should not suffice.

After determining the relevant market, the purpose of prosecuting unfair competition is to prohibit and restrict deception of the consuming public whenever persons or firms attempt to pass off their goods or services for another's. Underlying the prohibition against unfair competition is that business competitors cannot do acts which deceive, or

which are designed to deceive the public into buying their goods or availing their services instead.

Even if products are found to be in the same market, in all cases of unfair competition, competition should be presumed. Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. In *Alhambra Cigar, etc., Co. v. Mojica*:

> Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.

Thus, complainants bear the burden of objectively proving that the deception or fraud has actually or has probably taken place, or that the defendant had the actual or probable intent to deceive the public. This will require, in a future case, measurable standards to show that: (1) the goods or services belong to the same market; and (2) the likelihood of confusion or doubt is adequately and empirically demonstrated, not merely left to the subjective judgment of an administrative body or this Court.[125] (Citations omitted)

Then, in *Gios-Samar, Inc. v. Department of Transportation*,[126] even claims of monopolization or abuse of dominant positions in competition law were not treated as fact, and had to be substantiated. In a separate opinion:

> Indeed, the claims made by petitioner GIOS-SAMAR, Inc. require a more contextual appreciation of the evidence that it may present to support its claims. The nature of its various allegations requires the presentation of evidence and inferences, which should, at first instance, be done by a trial court.
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> Monopolization should not be lightly inferred especially since efficient business organizations are rewarded by the market with growth. Due to the high barriers to economic entry and long gestation periods, it is reasonable for the government to bundle infrastructure projects. There is, indeed, a difference between abuse of dominant position in a relevant market and combinations in restraint of trade. The Petition seems to have confused these two (2) competition law concepts and it has not made clear which concept it wished to apply.
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> Further, broad allegations amounting to a generalization that certain corporations allow themselves to serve as dummies for cartels or

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[125] J. Leonen, Separate Concurring Opinion. *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365–66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per J. Gesmundo, Third Division].

[126] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

> foreigners cannot hold ground in this Court. These constitute criminal acts. The Constitution requires that judicial action proceed carefully and always from a presumption of innocence. Tall tales of conspiratorial actions — though they may be salacious, make for interesting fiction, and are fodder for social media — do not deserve any judicial action. Broad generalizations of facts without corresponding evidence border on the contemptuous.[127] (Citations omitted)

To reiterate, petitioners' alleged injury, which was purportedly caused by unfair competition and the entry of new players in the market, still requires a factual finding. This makes the Petition ultimately premature.

V

Under Article 36 of the Omnibus Investments Code, an order or decision of the Board of Governors over applications for registration under the investment priorities plan can be appealed to the Office of the President within 30 days from its promulgation.

Unlike an appeal to the Office of the President under Article 7(4), which may only be availed by the investor or registered enterprise, an appeal under Article 36 does not contain a similar limitation. It may be availed even by one not a party to a case, so long as legal interest may be proven.[128]

Here, petitioners bemoan that they were unable to appeal to the Office of the President because public respondent refused to provide them with copies of the assailed Board Resolutions.

This Court is not convinced.

Prior to the promulgation of the assailed Board Resolutions, notices of the applications for registration had been published in the Philippine Star on December 28, 2011,[129] January 5, 2012,[130] and October 24, 2012,[131] respectively. The notices served as warning to the public and directed that anyone opposed to the applications should file an objection under oath with the Board of Investments within three (3) days of the notice's publication.

Right at this juncture, petitioners could have already objected to private respondent's applications. Registering their opposition would have

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[127] J. Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

[128] *Garcia v. Board of Investments*, 258 Phil. 157 (1989) [Per J. Griño-Aquino, En Banc].

[129] *Rollo*, p. 509.

[130] Id. at 510.

[131] Id. at 511.

entitled them to a copy of the assailed Board Resolutions upon their promulgation, and they could have timely appealed them to the Office of the President under Article 36. Yet, not only did petitioners fail to do so, but they even failed to explain their inaction.

The assailed Board Resolutions were issued on February 28, 2012,[132] April 24, 2012,[133] and November 6, 2012,[134] respectively. Meanwhile, petitioners only requested the supporting documents private respondent submitted and the "Letters/Orders informing [private respondent] of [public respondent]'s action on its application"[135] on November 20, 2012. Clearly, the 30-day period of appeal to the Office of the President had already lapsed for the first two (2) Board Resolutions, while petitioners only had until December 6, 2012 to appeal the November 6, 2012 Board Resolution.

Further, filing a petition for certiorari under Rule 65 of the Rules of Civil Procedure was not the correct remedy, as petitioners could have availed of a "plain, speedy, and adequate remedy"[136]—that is, an appeal to the Office of the President.

Even if a petition for certiorari were the correct remedy, the Petition still fails. Under Rule 65, Section 4 of the Rules of Court, a petition for certiorari should be filed within 60 days of notice of the assailed order or resolution:

> SECTION 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

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132 Id. at 321.
133 Id. at 322.
134 Id. at 323.
135 Id. at 67.
136 RULES OF COURT, Rule 65, sec. 1 provides:
SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

Here, the records show that on November 28, 2012, petitioner Palmones filed House Resolution No. 2921,[137] calling for an investigation of public respondent's grant of income tax holiday and exemption on taxes and duties to private respondent. On the same day, Representative Guanlao delivered a privileged speech[138] in support of House Resolution No. 2921, directly adverting to the grant of incentives to private respondent. A few days after, on December 4, 2012, public respondent informed the Joint Congressional Hearing, which petitioner Palmones attended, when the assailed Board Resolutions were promulgated.[139]

Evidently, petitioners had been notified of the assailed Board Resolutions by November 28, 2012 and had learned of their exact dates of promulgation by December 4, 2012. Yet, they only filed their Petition for Certiorari on March 7, 2013, 99 days after they first had notice of the assailed Board Resolutions.

As it was filed well beyond the 60-day reglementary period, this Petition must be dismissed.

VI

On the substantive issue, this Court likewise sees no reason to grant the Petition.

While the Constitution mandates that the State should develop a self-reliant economy,[140] it does not proscribe the entry of foreign investments in the local market. In fact, it recognizes the need to develop Filipino labor, domestic materials, and locally produced goods to become competitive.[141]

Article II, Section 20 of the 1987 Constitution acknowledges the private sector's importance in our society:

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137 *Rollo*, pp. 609–610.
138 Id. at 611–617.
139 Id. at 1067–1069.
140 CONST., art. II, sec. 19 provides:
SECTION 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.
141 CONST., art. XII, sec. 12 provides:
SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

> SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise and provides incentives to needed investments.

In relation, Article XII, Section 13 tasks the State to implement a trade policy that employs all forms and arrangements of exchange:

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

In view of these, Article XII, Section 1 implies that foreign investments may participate in the local market. However, it also tasks the State to shield domestic ventures from unfair foreign competition:

> The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. *However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.*[142] (Emphasis supplied)

A reading of these constitutional provisions shows that the fundamental law allows the participation of foreign enterprises in the Philippine market. Such latitude is not without restrictions, however, as the Constitution likewise limits the extent of their participation.

The third paragraph of Article XII, Section 10 of the Constitution mandates the State to oversee matters regarding foreign investments within its jurisdiction:

> SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
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> In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.
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> The State *shall regulate and exercise authority over foreign investments within its national jurisdiction* and in accordance with its national goals and priorities. (Emphasis supplied)

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[142] CONST., art. XII, sec. 1, par. 2.

As such, the State imposes certain conditions and restrictions on foreign investments operating within the Philippine jurisdiction. For instance, no foreign enterprise is allowed to venture into the mass media industry.[143] This absolute restriction also extends to the use of natural resources found in the archipelagic waters, territorial sea, and exclusive economic zone of the Philippines.[144] Further, the practice of all professions in the Philippines is reserved for Filipino citizens, save for statutory exceptions.[145]

While foreign participation is absolutely prohibited in some industries, the Constitution allows foreign participation in certain industries, such as advertising,[146] public utilities,[147] educational institutions,[148]

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[143] CONST., art. XVI, sec. 11(1) provides:

SECTION 11. The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

[144] CONST., art. XII, sec. 2(2) provides:

. . . .

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

[145] CONST., art. XII, sec. 14 provides:

SECTION 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[146] CONST., art. XVI, sec. 11 provides:

SECTION 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

[147] CONST., art. XII, sec. 11 provides:

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

[148] CONST., art. XIV, sec. 4 provides:

SECTION 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

ownership of private lands,[149] and the exploration, development, and utilization of natural resources.[150]

Despite these constitutional restrictions, it is not far-fetched to consider that the Philippines adopts a liberal approach in allowing foreign investments to enter the country. What the Constitution only restricted from foreign investors were enterprises imbued with public interest, such as public utilities, mass media, and use of natural resources. These restrictions are necessary to protect the welfare of Filipino citizens by removing the possibility of exploitation by foreign investors, who are not fully within the jurisdiction of Philippine laws.

In *Tañada v. Angara*,[151] the petitioners assailed the validity of the World Trade Organization Agreement ratified by then President Fidel V. Ramos and concurred in by the Senate. They claimed that it ran counter to the constitutional mandate of developing "a self-reliant and independent national economy effectively controlled by Filipinos . . . (to) give preference

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No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.

(4) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax.

149 CONST., art. XII, sec. 7 provides:

SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

150 CONST., art. XII, sec. 2 provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

151 338 Phil. 546 (1997) [Per J. Panganiban, En Banc].

to qualified Filipinos (and to) promote the preferential use of Filipino labor, domestic materials and locally produced goods."[152]

Tañada sustained the validity of the World Trade Organization Agreement. Addressing the petitioners' argument, this Court ruled that Article II, Section 19 of the Constitution, which embodied the policy of economic independence, is not a self-executing provision. Thus, noncompliance with Article II, Section 19 does not give rise to a cause of action and is not judicially enforceable.[153]

Further, this Court rejected the petitioners' contention that the World Trade Organization Agreement violated Article XII, Section 10 of the Constitution, which mandated the State to give preference to qualified Filipinos with regard to the grant of rights, privileges, and concessions covering the national economy and patrimony; and Article XII, Section 12, which tasked the State to promote the preferential use of Filipino labor, domestic materials, and locally produced goods.[154]

Rather, this Court declared that Sections 10 and 12 of Article XII should be read in connection with other provisions of Article XII, such as Section 13, which provided that "[t]he State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity."[155] This Court ruled:

> All told, while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair.[156] (Citation omitted)

This Court also ruled that foreign competition was not proscribed under the Constitution:

> [T]he constitutional policy of a "self-reliant and independent national economy" does not necessarily rule out the entry of foreign investments,

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[152] Id. at 561.
[153] Id. at 580–582.
[154] Id. at 583–585.
[155] Id. at 583.
[156] Id. at 585.

goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community."[157] (Citation omitted)

Ultimately, this Court dismissed the petition in *Tañada*, finding that the Senate did not gravely abuse its discretion by concurring in the ratification of the World Trade Organization Agreement.[158]

Nonetheless, it must be highlighted that the statements in *Tañada*, regarding the hortatory nature of provisions regarding Filipino First policies, were abstractly made, without the participation of real parties in interest and without showing how foreign investments affect Filipino enterprises. *Tañada* should thus be revisited in a proper case, where a justiciable controversy exists for this Court's resolution.

VII

Created[159] by Republic Act No. 5186, or the Investment Incentives Act, the Board of Investments is the administrative agency tasked to carry out the State's policy of encouraging both local and foreign investments in the agriculture, mining, and manufacturing industries and promote greater economic stability by increasing national income and exports.[160] It is also mandated with implementing the provisions of Executive Order No. 226.[161]

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157 Id. at 588.

158 Id. at 604–606.

159 Republic Act No. 5186 (1967), sec. 13 provides:

SECTION 13. *Board of Investments.* To carry out the purposes of this Act, there is hereby created a Board of Investments which shall be organized within sixty days after the approval of this Act, composed of five full-time members to be appointed by the President of the Philippines with the consent of the Commission on Appointments, from a list of nominees submitted by the Chamber of Commerce of the Philippines, the Chamber of Industries, Base Metals Producers Association, Gold Producers Association, Chamber of Agriculture and Natural Resources of the Philippines, the Bankers Association of the Philippines and other similar business organizations as well as from duly organized and existing labor confederations, federations and other organizations of national standing in the Philippines from which the President may request nominees: Provided, That each association shall submit a list of not less than three (3) but not more than five (5) nominees and that no association shall have more than one member in the Board at any particular time: And Provided, further, That the President may appoint as members of the Board qualified persons who have not been so nominated. The Board shall elect a Chairman from among themselves. The tenure of office of each member shall be six, (6) years: Provided, however, That the members of the Board first appointed shall hold office for two (2) years, three (3) years, four (4) years, five (5) years and six (6) years as fixed in their respective appointments: Provided, further, That upon the expiration of his term, a member shall serve as such until his successor shall have been appointed and qualified: Provided, finally, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a member of the Board in an acting capacity, but all appointments shall be ad interim or permanent.

For administrative purposes, the Board shall be under the Office of the President of the Philippines.

160 Republic Act No. 5186 (1967), sec. 2 provides:

SECTION 2. *Declaration of Policy.* To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism, and in pursuance of a planned, economically feasible and practicable dispersal of industries, under conditions which will encourage competition and discourage monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people, and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are

The Board of Investments exercises both quasi-legislative (or rule-making) powers and quasi-judicial (or administrative adjudicatory) functions. Its quasi-legislative functions include, among others, preparing an annual investment priorities plan that lists the activities that can qualify for incentives,[162] and promulgating rules and regulations[163] to give life to the provisions of Executive Order No. 226. On the other hand, its quasi-judicial functions include, among others, processing and approving applications for registration,[164] deciding controversies arising from the implementation of Executive Order No. 226,[165] and canceling registrations or suspending entitlement to incentives of registered enterprises.[166]

Republic Act No. 7042, or the Foreign Investments Act of 1991, declares that as much as 100% foreign ownership in domestic enterprises may be allowed, except for areas or industries included in the negative list.[167] *Espina v. Zamora, Jr.*[168] expounds that the Constitution does not bar foreign investors from setting up shop in the Philippines, though neither does it encourage their unbridled entry. Thus, the Constitution has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors:

> [T]he 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the

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capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

161 Executive Order No. 226 (1987), art. 3.

162 Executive Order No. 226 (1987), art. 7(1).

163 Executive Order No. 226 (1987), art. 7(2).

164 Executive Order No. 226 (1987), art. 7(3).

165 Executive Order No. 226 (1987), art. 7(4).

166 Executive Order No. 226 (1987), art. 7(8).

167 Republic Act No. 7042 (1991), sec. 2 provides:

SECTION 2. *Declaration of Policy.* — It is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to national industrialization and socioeconomic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws. Foreign investments shall be encouraged in enterprises that significantly expand livelihood and employment opportunities for Filipinos; enhance economic value of farm products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; and/or transfer relevant technologies in agriculture, industry and support services. Foreign investments shall be welcome as a supplement to Filipino capital and technology in those enterprises serving mainly the domestic market.

As a general rule, there are no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the negative list. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their businesses by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.

168 645 Phil. 269 (2010) [Per J. Abad, En Banc].

> world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.
>
> More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.[169] (Citation omitted)

Notably, "agriculture/agribusiness and fishery" was included in the Board of Investments' 2010[170] Investment Priorities Plan. The Department of Agriculture[171] likewise recommended its continued inclusion in the 2011 Investment Priorities Plan and lobbied for the retention of feeds in the list:

> On Feeds
>
> The DA deems that the absence of firms registering to BOI for feeds investments is not a sufficient reason for dropping it from the list. Feeds remains to be expensive and has been a major cost driver in the livestock and fisheries production. For instance, feeds for aquaculture constitutes 60% of the production costs. Hence[,] the DA recommends the retention of feeds in the IPP list to promote the development of the feeds industry.[172]

Likewise, the 2011 Investment Priorities Plan[173] listed agriculture/agribusiness and fishery as one of the 13 "priority investment areas that were identified to support the current priority programs of the government[.]"[174] Agriculture/agribusiness and fishery covered:

> [C]ommercial production and commercial processing of agricultural and fishery products (including their by-products and wastes). This also covers agriculture- and fishery-related activities such as irrigation, post harvest, cold storage, blast freezing, and production of fertilizers.[175]

Agriculture/agribusiness and fishery was also included in the 2012 Investment Priorities Plan.[176]

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169 Id. at 280.
170 *Rollo*, p. 529.
171 Id. at 528–533.
172 Id. at 529.
173 Board of Investments' 2011 Investment Priorities Plan, <https://www.tesda.gov.ph/uploads/File/LMIR2011/dec/The%202011%20Investment%20Priorities%20Plan.pdf> (last accessed on June 7, 2019).
174 Id. at 2.
175 Id. at 3.
176 Board of Investments' 2012 Investment Priorities Plan, <https://www.officialgazette.gov.ph/2012/06/13/investment-priorities-plan-2012/> (last accessed on June 7, 2019).

Moreover, agriculture and agribusiness were not included in the Eighth Regular Foreign Investment Negative List[177] issued on February 5, 2010, or even in the Ninth Regular Foreign Investment Negative List[178] issued on October 29, 2012. Incidentally, they are still not included in the Eleventh Regular Foreign Investment Negative List,[179] the latest list issued on October 29, 2018.

Clearly, agribusiness was, and still is, not a nationalized or partly nationalized industry. Hence, in this case, private respondent's status as a 100% foreign-owned corporation would not cause the denial of its applications for registration with public respondent.

Further, private respondent's applications for registration went through the required process listed down in Executive Order No. 226.[180] Public respondent, in turn, evaluated the applications based on the following criteria: "compliance with the provisions of the IPP, Net Value-added (NVA), Job generation, Multiplier Effect, and Measured Capacity."[181] It considered the data on the discrepancy between local production and local demand, which it factored into its decision to approve private respondent's applications for registration:

Project	Measured Capacity
Aqua Feeds	The local production of aqua feeds is not sufficient to meet local demand. Actual Production – 340,000 MT Demand – 801,000 MT Collectively, the aqua feed demand in 2009 as estimated by BAS [Bureau of Agricultural Statistics] and the proponent's projections showed that there is [a] demand of about 869,000 MT while the supply is only about 358,000 MT. The resulting deficit of 511,000 MT was supplied mostly by importations.
New Producer of Hog Parent Stocks and Slaughter Hogs Project	The local production of pork is estimated to be about 1.92 million MT in 2010 while the demand is about 2.106 million MT. The resulting deficit of about 164,000 MT is supplied by importation.

[177] Executive Order No. 858, Eighth Regular Foreign Investment Negative List, <http://www.officialgazette.gov.ph/downloads/2010/02feb/20100205-EO-0858-GMA.pdf> <last accessed on June 7, 2019).

[178] Ninth Regular Foreign Invesment Negative List, <http://www.officialgazette.gov.ph/downloads/2012/10oct/20121029-EO-0098-ANNEX-BSA.pdf> (last accessed on June 7, 2019).

[179] Executive Order No. 65, Eleventh Regular Foreign Investment Negative List, <http://www.officialgazette.gov.ph/downloads/2018/10oct/20181029-EO-65-RRD.pdf> (last accessed on June 7, 2019).

[180] *Rollo*, pp. 1033–1046.

[181] Id. at 1042.

	2. As shown in Exhibit 2a, the proposed project will have [an] annual share of about 10% to the country's pork production in 2013 onward. (Source: Bureau of Agricultural Statistics and proponent's projections)
Integrated Broiler Project	The country has been a net importer of poultry meat. In 2009, the local production of dressed chicken reached 826,677 MT while the apparent demand [i]s about 883,573 MT. The resulting deficit of 56.896 MT was supplied by imports[.] The gap between the demand and the local production can be addressed by new investments in the poultry industry. This proposed project is estimated to increase the country's total broiler chicken (live) production by 250,000 heads per year. This is roughly equivalent to only around 250 MT of dressed chicken, which is less tha[n] 1% of the volume production deficit in 2009.[182]

It is well established that an administrative agency's findings of fact are entitled to respect and deference. As the recognized specialist in the field assigned to it, the administrative agency can resolve issues in its field "with more expertise and dispatch than can be expected from the legislature or the courts of justice."[183] With that in mind, this Court has consistently deferred to their factual findings.[184]

Here, considering that the issuance of the assailed Board Resolutions was amply supported by substantial evidence, there is no weight to petitioners' claim that they were issued with grave abuse of discretion.

Finally, this Court repeats a statement made in *Gios-Samar*:

> Critically, the nuances of the cases we find justiciable signal our philosophy of adjudication. Even as we try to filter out and dispose of the cases pending in our docket, this Court's role is not simply to settle disputes. This Court also performs the important public function of clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities.
>
> As this Court finds ways to dispose of its cases, it should be sensitive to the quality of the doctrines it emphasizes and the choice of cases on which it decides. Both of these will facilitate the vibrant democracy and achievement of social justice envisioned by our Constitution.
>
> Every case filed before this Court has the potential of undoing the act of a majority in one (1) of the political and co-equal departments of our

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182 Id. at 1037–1038, public respondent's Memorandum.

183 *Solid Homes v. Payawal,* 257 Phil. 914, 921 (1989) [Per J. Cruz, First Division].

184 *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10–11 (2002) [Per J. Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per J. Quisumbing, Second Division]; and *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per J. Chico-Nazario, First Division].

> government. Our Constitution allows that its congealed and just values be used by a reasonable minority to convince this Court to undo the majority's action. In doing so, this Court is required to make its reasons precise, transparent, and responsive to the arguments pleaded by the parties. The trend, therefore, should be to clarify broad doctrines laid down in the past. The concept of a case with transcendental importance is one (1) of them.
>
> Our democracy, after all, is a reasoned democracy: one with a commitment not only to the majority's rule, but also to fundamental and social rights.
>
> Even as we recall the canonical doctrines that inform the structure of our Constitution, we should never lose sight of the innovations that our fundamental law has introduced. We have envisioned a more engaged citizenry and political forums that welcome formerly marginalized communities and identities. Hence, we have encoded the concepts of social justice, acknowledged social and human rights, and expanded the provisions in our Bill of Rights.
>
> We should always be careful that in our desire to achieve judicial efficiency, we do not filter cases that bring out these values.
>
> This Court, therefore, has a duty to realize this vision. The more guarded but active part of judicial review pertains to situations where there may have been a deficit in democratic participation, especially where the hegemony or patriarchy ensures the inability of discrete and insular minorities to participate fully. While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities.[185]

Sadly, this case, with its fiery but empty rhetoric, fell short of these noble expectations.

WHEREFORE, the Petition is **DISMISSED**. The assailed February 28, 2012, April 24, 2012, and November 6, 2012 Board Resolutions issued by the Board of Governors of public respondent Board of Investments, which approved private respondent Charoen Pokphand Foods Philippines Corporation's applications for registration, are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[185] J. Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
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JOSE C. REYES, JR.
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RAMON PAUL L. HERNANDO
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AMY C. LAZARO-JAVIER
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HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

On leave
SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

DIOSDADO M. PERALTA
Chief Justice