

EN BANC

[G.R. No. 170516, July 16, 2008]

AKBAYAN CITIZENS ACTION PARTY ("AKBAYAN"), PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN ("PKSK"), ALLIANCE OF PROGRESSIVE LABOR ("APL"), VICENTE A. FABE, ANGELITO R. MENDOZA, MANUEL P. QUIAMBAO, ROSE BEATRIX CRUZ-ANGELES, CONG. LORENZO R. TANADA III, CONG. MARIO JOYO AGUJA, CONG. LORETA ANN P. ROSALES, CONG. ANA THERESIA HONTIVEROS-BARAQUEL, AND CONG. EMMANUEL JOEL J. VILLANUEVA, PETITIONERS, VS. THOMAS G. AQUINO, IN HIS CAPACITY AS UNDERSECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY (DTI) AND CHAIRMAN AND CHIEF DELEGATE OF THE PHILIPPINE COORDINATING COMMITTEE (PCC) FOR THE JAPAN-PHILIPPINES ECONOMIC PARTNERSHIP AGREEMENT, ESEL T. CUSTODIO, IN HIS CAPACITY AS UNDERSECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS (DFA) AND CO-CHAIR OF THE PCC FOR THE JPEPA, EDGARDO ABON, IN HIS CAPACITY AS CHAIRMAN OF THE TARIFF COMMISSION AND LEAD NEGOTIATOR FOR COMPETITION POLICY AND EMERGENCY MEASURES OF THE JPEPA, MARGARITA SONGCO, IN HER CAPACITY AS ASSISTANT DIRECTOR-GENERAL OF THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY (NEDA) AND LEAD NEGOTIATOR FOR TRADE IN SERVICES AND COOPERATION OF THE JPEPA, MALOU MONTERO, IN HER CAPACITY AS FOREIGN SERVICE OFFICER I, OFFICE OF THE UNDERSECRETARY FOR INTERNATIONAL ECONOMIC RELATIONS OF THE DFA AND LEAD NEGOTIATOR FOR THE GENERAL AND FINAL PROVISIONS OF THE JPEPA, ERLINDA ARCELLANA, IN HER CAPACITY AS DIRECTOR OF THE BOARD OF INVESTMENTS AND LEAD NEGOTIATOR FOR TRADE IN GOODS (GENERAL RULES) OF THE JPEPA, RAQUEL ECHAGUE, IN HER CAPACITY AS LEAD NEGOTIATOR FOR RULES OF ORIGIN OF THE JPEPA, GALLANT SORIANO, IN HIS OFFICIAL CAPACITY AS DEPUTY COMMISSIONER OF THE BUREAU OF CUSTOMS AND LEAD NEGOTIATOR FOR CUSTOMS PROCEDURES AND PAPERLESS TRADING OF THE JPEPA, MA. LUISA GIGETTE IMPERIAL, IN HER CAPACITY AS DIRECTOR OF THE BUREAU OF LOCAL EMPLOYMENT OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND LEAD NEGOTIATOR FOR MOVEMENT OF NATURAL PERSONS OF THE JPEPA, PASCUAL DE GUZMAN, IN HIS CAPACITY AS DIRECTOR OF THE BOARD OF INVESTMENTS AND LEAD NEGOTIATOR FOR INVESTMENT OF THE JPEPA, JESUS MOTOOMULL, IN HIS CAPACITY AS DIRECTOR FOR THE BUREAU OF PRODUCT STANDARDS OF THE DTI AND LEAD NEGOTIATOR FOR MUTUAL RECOGNITION OF THE JPEPA, LOUIE CALVARIO, IN HIS CAPACITY AS LEAD NEGOTIATOR FOR INTELLECTUAL

PROPERTY OF THE JPEPA, ELMER H. DORADO, IN HIS CAPACITY AS OFFICER-IN-CHARGE OF THE GOVERNMENT PROCUREMENT POLICY BOARD TECHNICAL SUPPORT OFFICE, THE GOVERNMENT AGENCY THAT IS LEADING THE NEGOTIATIONS ON GOVERNMENT PROCUREMENT OF THE JPEPA, RICARDO V. PARAS, IN HIS CAPACITY AS CHIEF STATE COUNSEL OF THE DEPARTMENT OF JUSTICE (DOJ) AND LEAD NEGOTIATOR FOR DISPUTE AVOIDANCE AND SETTLEMENT OF THE JPEPA, ADONIS SULIT, IN HIS CAPACITY AS LEAD NEGOTIATOR FOR THE GENERAL AND FINAL PROVISIONS OF THE JPEPA, EDUARDO R. ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, AND ALBERTO ROMULO, IN HIS CAPACITY AS SECRETARY OF THE DFA,* RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Petitioners – non-government organizations, Congresspersons, citizens and taxpayers – seek via the present petition for mandamus and prohibition to obtain from respondents the full text of the Japan-Philippines Economic Partnership Agreement (JPEPA) including the Philippine and Japanese offers submitted during the negotiation process and all pertinent attachments and annexes thereto.

Petitioners Congressmen Lorenzo R. Tañada III and Mario Joyo Aguja filed on January 25, 2005 House Resolution No. 551 calling for an inquiry into the bilateral trade agreements then being negotiated by the Philippine government, particularly the JPEPA. The Resolution became the basis of an inquiry subsequently conducted by the House Special Committee on Globalization (the House Committee) into the negotiations of the JPEPA.

In the course of its inquiry, the House Committee requested herein respondent Undersecretary Tomas Aquino (Usec. Aquino), Chairman of the Philippine Coordinating Committee created under Executive Order No. 213 ("Creation of A Philippine Coordinating Committee to Study the Feasibility of the Japan-Philippines Economic Partnership Agreement")^[1] to study and negotiate the proposed JPEPA, and to furnish the Committee with a copy of the latest draft of the JPEPA. Usec. Aquino did not heed the request, however.

Congressman Aguja later requested for the same document, but Usec. Aquino, by letter of November 2, 2005, replied that the Congressman shall be provided with a copy thereof "once the negotiations are completed and as soon as a thorough legal review of the proposed agreement has been conducted."

In a separate move, the House Committee, through Congressman Herminio G. Teves, requested Executive Secretary Eduardo Ermita to furnish it with "all documents on the subject including the latest draft of the proposed agreement, the requests and offers etc."^[2] Acting on the request, Secretary Ermita, by letter of June 23, 2005, wrote Congressman Teves as follows:

In its letter dated 15 June 2005 (copy enclosed), [the] D[epartment of] F[oreign] A[ffairs] explains that **the Committee's request to be**

furnished all documents on the JPEPA may be difficult to accomplish at this time, since the proposed Agreement has been a work in progress for about three years. A copy of the draft JPEPA will however be forwarded to the Committee as soon as the text thereof is settled and complete. (Emphasis supplied)

Congressman Aguja also requested NEDA Director-General Romulo Neri and Tariff Commission Chairman Edgardo Abon, by letter of July 1, 2005, for copies of the latest text of the JPEPA.

Chairman Abon replied, however, by letter of July 12, 2005 that the Tariff Commission does not have a copy of the documents being requested, albeit he was certain that Usec. Aquino would provide the Congressman with a copy "once the negotiation is completed." And by letter of July 18, 2005, NEDA Assistant Director-General Margarita R. Songco informed the Congressman that his request addressed to Director-General Neri had been forwarded to Usec. Aquino who would be "in the best position to respond" to the request.

In its third hearing conducted on August 31, 2005, the House Committee resolved to issue a subpoena for the most recent draft of the JPEPA, but the same was not pursued because by Committee Chairman Congressman Teves' information, then House Speaker Jose de Venecia had requested him to hold in abeyance the issuance of the subpoena until the President gives her consent to the disclosure of the documents.^[3]

Amid speculations that the JPEPA might be signed by the Philippine government within December 2005, the present petition was filed on December 9, 2005.^[4] The agreement was to be later signed on September 9, 2006 by President Gloria Macapagal-Arroyo and Japanese Prime Minister Junichiro Koizumi in Helsinki, Finland, following which the President endorsed it to the Senate for its concurrence pursuant to Article VII, Section 21 of the Constitution. To date, the JPEPA is still being deliberated upon by the Senate.

The JPEPA, which will be the first **bilateral** free trade agreement to be entered into by the Philippines with another country in the event the Senate grants its consent to it, covers a broad range of topics which respondents enumerate as follows: trade in goods, rules of origin, customs procedures, paperless trading, trade in services, investment, intellectual property rights, government procurement, movement of natural persons, cooperation, competition policy, mutual recognition, dispute avoidance and settlement, improvement of the business environment, and general and final provisions.^[5]

While the final text of the JPEPA has now been made accessible to the public since September 11, 2006,^[6] respondents do not dispute that, at the time the petition was filed up to the filing of petitioners' Reply - when the JPEPA was still being negotiated - the initial drafts thereof were kept from public view.

Before delving on the substantive grounds relied upon by petitioners in support of the petition, the Court finds it necessary to first resolve some material procedural issues.

Standing

For a petition for mandamus such as the one at bar to be given due course, it must be instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right.^[7] Respondents deny that petitioners have such standing to sue. "[I]n the interest of a speedy and definitive resolution of the substantive issues raised," however, respondents consider it sufficient to cite a portion of the ruling in *Pimentel v. Office of Executive Secretary*^[8] which emphasizes the need for a "personal stake in the outcome of the controversy" on questions of standing.

In a petition anchored upon the right of the people to information on matters of public concern, which is a public right by its very nature, petitioners need not show that they have any legal or special interest in the result, it being sufficient to show that they are citizens and, therefore, part of the general public which possesses the right.^[9] As the present petition is anchored on the right to information and petitioners are all suing in their capacity as citizens and groups of citizens including petitioners-members of the House of Representatives who additionally are suing in their capacity as such, the standing of petitioners to file the present suit is grounded in jurisprudence.

Mootness

Considering, however, that "[t]he principal relief petitioners are praying for is the disclosure of the contents of the JPEPA prior to its finalization between the two States parties,"^[10] public disclosure of the text of the JPEPA after its signing by the President, during the pendency of the present petition, has been largely rendered moot and academic.

With the Senate deliberations on the JPEPA still pending, the agreement as it now stands cannot yet be considered as final and binding between the two States. Article 164 of the JPEPA itself provides that the agreement does not take effect immediately upon the signing thereof. For it must still go through the procedures required by the laws of each country for its entry into force, viz:

Article 164 Entry into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other **that their respective legal procedures necessary for entry into force of this Agreement have been completed.** It shall remain in force unless terminated as provided for in Article 165.^[11] (Emphasis supplied)

President Arroyo's endorsement of the JPEPA to the Senate for concurrence is part of the legal procedures which must be met prior to the agreement's entry into force.

The text of the JPEPA having then been made accessible to the public, the petition has become moot and academic to the extent that it seeks the disclosure of the "full text" thereof.

The petition is not entirely moot, however, because petitioners seek to obtain, not merely the text of the JPEPA, but also the Philippine and Japanese offers in the course of the negotiations.^[12]

A discussion of the substantive issues, insofar as they impinge on petitioners' demand for access to the Philippine and Japanese offers, is thus in order.

Grounds relied upon by petitioners

Petitioners assert, *first*, that the refusal of the government to disclose the documents bearing on the JPEPA negotiations violates their right to information on matters of public concern^[13] and contravenes other constitutional provisions on transparency, such as that on the policy of full public disclosure of all transactions involving public interest.^[14] *Second*, they contend that non-disclosure of the same documents undermines their right to effective and reasonable participation in all levels of social, political, and economic decision-making.^[15] *Lastly*, they proffer that divulging the contents of the JPEPA only after the agreement has been concluded will effectively make the Senate into a mere rubber stamp of the Executive, in violation of the principle of separation of powers.

Significantly, the grounds relied upon by petitioners for the disclosure of the **latest text** of the JPEPA are, except for the last, the same as those cited for the disclosure of the Philippine and Japanese **offers**.

The first two grounds relied upon by petitioners which bear on the merits of respondents' claim of privilege shall be discussed. The last, being purely speculative given that the Senate is still deliberating on the JPEPA, shall not.

The JPEPA is a matter of public concern

To be covered by the right to information, the information sought must meet the threshold requirement that it be a matter of public concern. *Apropos* is the teaching of *Legaspi v. Civil Service Commission*:

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. `Public concern' like `public interest' is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.^[16] (Underscoring supplied)

From the nature of the JPEPA as an international trade agreement, it is evident that the Philippine and Japanese offers submitted during the negotiations towards its execution are matters of public concern. This, respondents do not dispute. They only claim that diplomatic negotiations are covered by the doctrine of **executive privilege**, thus constituting an exception to the right to information and the policy of full public disclosure.