

Formal Investigation Report

Ceramic Tiles Industry: Safeguard Action Against Imports (SG Investigation No. 01 - 02)

(Public Version)

26 March 2002

1 TERMS OF REFERENCE

1.1 The Application for General Safeguard Measure

On 22 May 2001, the Department of Trade and Industry (DTI) accepted from the Philippine ceramic tile industry an application for the imposition of safeguard measures on the importation of ceramic tiles, pursuant to Republic Act 8800 (R.A. 8800), otherwise known as the "Safeguard Measures Act".

The Ceramic Tile Manufacturers, Association (CTMA), represented by Mariwasa Siam Ceramics, Inc. (Mariwasa) and Lepanto (Guoco) Ceramics, Inc. (Lepanto), alleged that imported ceramic tiles started to injure the domestic industry beginning 1998 up to 2000. Mariwasa and Lepanto, the largest domestic producers of the product, accounting for 70% of actual production capacity in 2000, alleged that the industry had suffered losses for the past two years and their shares in the domestic market have been eroded by the influx of imported ceramic tiles.

1.2 The Preliminary Investigation

The Bureau of Import Services (BIS) of DTI initiated its preliminary investigation on 27 June 2001 with the publication of a Notice of Initiation in the *Philippine Star* and the *Manila Standard*. The investigation determined that critical circumstances exist which justified the imposition of provisional measures to prevent further injury to the local industry.

Recognizing the concerns raised by various sectors on the impact on the interest of the general public of the imposition of a provisional safeguard measure on ceramic wall and floor tiles, a provisional measure equivalent to ₱5.40 per kilogram was deemed sufficient by DTI to remedy the serious injury arising from increased imports. The provisional measure was derived by comparing the landed cost computed from available import documents from the Bureau of Customs (BOC) for year 2000 *vis-à-vis* the average cost of production of the two (2) firms for the same year.

In its Order dated 26 November 2001, DTI further provided that the provisional measure shall be imposed for a period not exceeding 200 days from the date of issuance by the BOC of the relevant Customs Memorandum Order (CMO). CMO No. 4-2002, dated 04 January 2002, directed that all importations of ceramic floor and wall tiles, unglazed and glazed, classified under HS Codes 6907.90 00 and 6908.90 00 from all countries, shall be imposed, in addition to taxes and duties and other charges, a cash bond amounting to ₱5.40 per kilogram. Exempted from the imposition were imports from Thailand, India, Sri Lanka and Iran which had been found to be less than 3% of total Philippine imports of subject articles during the period of investigation. The Order took

effect on 09 January 2002 and will remain in force for the next 200 days or until 28 August 2002.

On 03 December 2001, the Tariff Commission received the request from the Secretary of Trade and Industry for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure on imports of ceramic tiles pursuant to Section 9 of R.A. 8800 and its Implementing Rules and Regulations (IRRs).

2 SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION

2.1 The Safeguard Measures Act of 2000

On 19 July 2000, R.A. 8800 (An Act Protecting Local Industries By Providing Safeguard Measures to be Undertaken In Response to Increased Imports and Providing Penalties for Violation Thereof) was signed into law and took effect on 09 August 2000, i.e., fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Its IRRs (Joint Administrative Order No.03) took effect on 11 October 2000, i.e., seven (7) days after their publication.

The Act provides for:

- general safeguard measures to afford relief to domestic industries suffering from serious injury or the threat thereof as a result of increased imports, and
- special safeguard measures (i.e., additional duty not exceeding 1/3 of the existing rate of duty) on agricultural products marked “SSG” in Schedule LXXV-Philippines, when the import volume exceeds its trigger level or when the actual CIF import price falls below a trigger price level.

Under the Safeguard Measures Act, a general safeguard investigation has four (4) stages:

Prima Facie Determination

Upon acceptance of a properly documented petition, the DTI, in the case of industrial products, or the Department of Agriculture (DA), for agricultural products, has five (5) calendar days to decide whether a *prima facie* case exists to merit the initiation of a preliminary investigation. In its determination, the DTI or DA undertakes an in-depth evaluation of the data submitted or provided, together with information obtained independently.

If no *prima facie* case exists, the application is denied.

Preliminary Determination

Once a *prima facie* case has been established, DTI or DA initiates the preliminary determination.

Within two (2) calendar days after the decision to initiate the preliminary investigation is made, DTI or DA notifies all known interested parties and the government of the exporting country about the initiation of the investigation and sends a pro forma respondent's questionnaire to all interested parties (e.g., importers, domestic manufacturers and exporters).

Not later than thirty (30) calendar days from receipt of the properly documented petition, the DTI or DA Secretary, on the basis of the petition, the answers of the respondents and the supporting documents or information, makes a preliminary determination that increased imports of the product under consideration are a substantial cause of, or threaten to substantially cause, serious injury to the domestic industry.

In case of preliminary affirmative findings, the DTI or DA Secretary advises, within three (3) calendar days from making a decision, the Secretary of Finance to instruct the BOC to impose the provisional safeguard measure.

The preliminary affirmative findings by the DTI or DA, together with the records of the case, shall be transmitted to the Tariff Commission for its immediate formal investigation of the case within three (3) calendar days from adopting the decision.

If the preliminary findings are negative, the DTI or DA Secretary shall terminate the investigation.

Formal Investigation

The Tariff Commission shall conduct the formal investigation to determine:

- a. if the domestic product is a like product or a product directly competitive to the imported product under consideration;
- b. if the product is being imported into the Philippines in increased quantities (whether absolute or relative to domestic production);
- c. the presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product; and
- d. the existence of a causal relationship between the increased imports of the product under consideration and the serious injury or threat thereof to the affected domestic industry.

The Commission shall conclude its formal investigation and submit a report of its findings and conclusions to the DTI or DA Secretary within one hundred and twenty (120) calendar days from receipt of the request from the Secretary, except when the Secretary certifies the same as urgent, in which case the Commission shall complete the investigation and submit the report within sixty (60) calendar days.

Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive general safeguard measure. Thereafter, the Commission shall undertake the following post-formal investigation activities:

- monitoring of the domestic industry's progress and specific efforts to bring about a positive adjustment to import competition;
- conduct of investigation on the request for extension and re-application of safeguard measures;
- conduct of investigation on request for reduction, modification and termination of safeguard action; and
- after the termination of the safeguard measure, evaluation of the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition.

Decision

Within fifteen (15) calendar days from receipt of the final report of the Commission, the DTI or DA Secretary shall make a decision, taking into consideration the general safeguard measures recommended by the Commission.

If the determination is affirmative, the Secretary shall issue, within two (2) calendar days after making his decision, a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure as determined by him.

In case of a negative final determination or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional safeguard measure within ten (10) days from the date the final decision had been made.

2.2 The World Trade Organization Agreement on Safeguards

Article XIX (Emergency Action on Imports of Particular Products) of the General Agreement on Tariffs and Trade (GATT) 1994 provides that: *"If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive*

products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.”

The Uruguay Round of Multilateral Trade Negotiations resulted in a new Agreement on Safeguards which interprets and elaborates Article XIX.

Article 2 of the Agreement provides that: *“A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”*

Safeguard measures, if imposed, must be liberalized progressively. In order that a substantially equivalent level of World Trade Organization (WTO) concessions and other obligations to affected WTO Members is maintained, a country imposing safeguard measures may offer “adequate means of trade compensation” to affected exporting countries. If agreement is not reached on such compensation, said exporting countries are given an opportunity to suspend “substantially equivalent” concessions or obligations under GATT 1994 after the measures have been in place three (3) years, or immediately if safeguard action is taken against imports which have not increased in absolute terms and the measure does not conform to the provisions of the Agreement on Safeguards.

Disputes arising from the application of safeguard measures are subject to WTO dispute settlement procedures.

Article XIX of GATT 1994 stipulates that an emergency action is permissible only where the increase in imports (and the consequent serious injury or threat thereof) is due to *unforeseen developments and the effect of GATT-WTO obligations, including tariff concessions*. The Agreement on Safeguards, when it provides for the conditions for the application of safeguard measures (i.e., increased importation, serious injury or threat thereof, and causal link) is, however, silent on the circumstances prescribed by Article XIX.

The WTO Appellate Body in *Argentina – Footwear and Korea – Certain Dairy Products* established that safeguard measures may be applied only when the prerequisites of Article XIX of GATT 1994 and the conditions of the Agreement on Safeguards (both Multilateral Trade Agreements and as such are integral parts of the WTO Agreement) are clearly demonstrated.

As a WTO Member, the Philippines is bound by Article XIX of GATT 1994 and the Safeguards Agreement. The applicant domestic industry must therefore allege and prove that unforeseen developments and the effect of obligations of the Philippines under the WTO Agreement, including tariff concessions, have

led to the increase in importation as well as the presence of the resulting serious injury or threat thereof.

In relation to the current inquiry, however, the circumstances provided in Article XIX of GATT 1994 need not be demonstrated for the reason that the product under consideration (ceramic floor and wall tiles) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.

2.3 Articles 6 and 8 of the ASEAN Agreement on the Common Effective Preferential Tariff (CEPT) Scheme

Article 6 of the Agreement on the CEPT Scheme for the ASEAN Free Trade Area (AFTA) provides Emergency Measures in cases of increased importation which injures or threatens to injure an industry in the importing Member States. Said provision reads as follows:

“Article 6. Emergency Measures

1. If, as a result of the implementation of this Agreement, import of a particular product eligible under the CEPT Scheme is increasing in such a manner as to cause or threaten to cause serious injury to sectors producing like or directly competitive products in the importing Member States, the importing Member States may, to the extent and for such time as may be necessary to prevent or to remedy such injury, suspend preferences provisionally and without discrimination, subject to Article 6(3) of this Agreement. Such suspension of preferences shall be consistent with GATT.”

Article 8, on the other hand, provides for the consultation requirement.

“Article 8. Consultations

1. Member States shall accord adequate opportunity for consultations regarding any representations made by other Member States with respect to any matter affecting the implementation of this Agreement. The Council referred to in Article 7 of this Agreement, may seek guidance from the AEM in respect of any matter for which it has not been possible to find a satisfactory solution during previous consultations.

2. Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullification or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the manner, make representations or proposals to the other Member States concerned, which shall give due consideration to the representations or proposals made to it.”

3 THE COMMISSION'S INQUIRY

Section 9 of R.A. 8800 provides that:

“Within five (5) working days from receipt of the request from the Secretary, the Commission shall publish the notice of the commencement of the investigation, and public hearings which shall afford interested parties and consumers an opportunity to be present, or to present evidence, to respond to the presentation of other parties and consumers and otherwise be heard. Evidence and positions with respect to the importation of the subject article shall be submitted to the Commission within fifteen (15) days after the initiation of the investigation by the Commission.

The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) calendar days from receipt of the referral by the Secretary, except when the Secretary certifies that the same is urgent, in which case the Commission shall complete the investigation and submit the report to the Secretary within sixty (60) days.”

3.1 Notifications

In compliance with the public notice requirements of the IRRs of R.A. 8800, the Commission made the following notifications during the course of its inquiry.

3.1.1 Commencement of Formal Investigation

The formal investigation of the Commission commenced with the publication of the Notice of Formal Investigation in the Manila Times and the Philippine Star both on 04 December 2001 (*Annexes A-1 and A-2*). The Commission sent individual notices from 04 to 07 December 2001 to the following:

- Rivera, Santos & Maranan Law Offices, counsel for the applicant domestic ceramic tile industry
- Atty. Albert C. Santillan, counsel for the oppositor Philippine Ceramic Products Importers Association (PCPIA)
- Mariwasa
- Lepanto
- Napoleon Co, representative of Cebu Oversea Hardware Co., Inc. and president of PCPIA
- 33 importers and 74 exporters identified in the DTI Preliminary Report
- Non-governmental organizations
- Concerned government agencies and other parties who made manifestations at the preliminary investigation at the BIS

Likewise, the embassies of Indonesia; Malaysia; People's Republic of China (PROC) / Hong Kong; Portugal; United Arab Emirates (UAE); Spain; Italy; Republic of Singapore; United States of America (USA); United Kingdom; Saudi Arabia; Australia; Federal Republic of Germany; Republic of Korea; Brazil; Japan and Swiss Confederation were furnished copies of the said notice. The Office of the Delegation of the European Commission in the Philippines; Taipei Economic and Cultural Office in the Philippines; and the Korean Trade Office in the Philippines (KOTRA) were also furnished copies of the notice. The Philippine Commercial Attaches based in countries with exporters identified in the Preliminary Report were also notified.

3.1.2 Schedule of Public Consultation

The schedule of public consultation was published in the Manila Times and Philippine Star both on 14 January 2002 (*Annexes B-1 and B-2*). Individual notices were sent to the concerned parties from 17-22 January 2002.

3.2 Preliminary Conference

On 11 December 2001, the preliminary conference was held at the Tariff Commission for the purpose of discussing the schedule and procedure of public consultation; the nature of administrative and fact finding proceedings; the non-applicability of the technical rules of procedures in the Rules of court; the submission of parties' evidence and position papers; the non-availability of confidential information; the timeframe of formal investigation; and other related matters necessary for the speedy disposition of the case.

In attendance were Atty. Xerxes D. Adzuara from the Rivera Santos & Maranan Law Offices as alternate counsel for the domestic ceramic tile industry and Atty. Albert C. Santillan as counsel for the PCPIA. Representatives from Mariwasa, Lepanto and PCPIA were also present.

Other private parties who registered their appearances were CHKP Enterprises; QSR Corporation; Felpert International Marketing; Centro Ceramica; and Philippine Institute of Interior Designers (PIID).

The embassies of Singapore, Portugal, Spain, Indonesia, and Malaysia were also represented.

Government representatives from the Bureau of Import Services (BIS) - DTI, Construction Industry Authority of the Philippines (CIAP) - DTI, Bureau of Customs, and the House of Representatives - Committee on Trade and Industry also attended. (*Annex C*)

The agreements reached during the preliminary conference were the following: the timetable of investigation; entry of appearance of interested parties; names of lead/alternate/collaborating counsels; sufficient notice; accessibility of documents in the public file; treatment of documents marked confidential; submission of position papers; additional data required by the

Commission; and verification thereof, including submission of adjustment plans by the domestic industry/those in support of the application; conduct of ocular inspection/plant visits; and schedule of public consultations.

These agreements were contained in Commission Order dated 12 December 2001 and sent on 13 to 20 December 2001 to the following parties: counsels for both the applicant - domestic ceramic tile industry and the oppositor – PCPIA; 24 importers and 72 exporters identified in the Preliminary Report; non-governmental organizations; concerned government agencies, and the concerned embassies and foreign offices.

3.3 Staff Report

The Commission issued a Staff Report on 31 January 2002. The report contained the Commission's findings on the issues of product comparability and increased volume of imports. Also provided in the report were data to determine the presence of serious injury.

Copies of the Staff Report were sent to the concerned parties on 01 to 04 February 2002.

3.4 Public Consultation

Public consultations were held on 11, 12 and 14 February 2002 at the Commission (*Annex D*). The consultations allowed interested parties opportunity to be heard and to present evidence, elaborate on their submissions, and respond and seek clarifications on the presentations and submissions of the other parties.

3.5 Plant Visits/Verification of Data

Before the public consultation, visits to the facilities of two (2) applicant firms and other domestic manufacturers, as well as offices of trader/importers and one professional organization were conducted from 04 to 22 January 2002.

After the public consultation, ocular visits were conducted of the facilities of Formosa Ceramic Tiles Mfg. Corp. (formerly Grand Ceasar Ceramic Tiles Corp.) and Italfil Porcelain Ceramic Tiles, Inc. on 22 February 2002 and 28 February 2002, respectively. The technical staff verified the books of a major importer, Cebu Oversea Hardware Co., Inc., in Cebu City on 05 to 07 February 2002. (*Annex E* lists the visits made).

Among the information determined/verified during the plant/verification visits were the following: production process, production lines, machinery/equipment, quality test results, plant capacities, importations, production levels, production cost, sales, selling prices, loans, employment, inventory levels, company ownership, and plant shutdowns/mothballing.

4 PARTICIPANTS' VIEWS

4.1 Submissions Received

The DTI endorsed the entire records of the safeguard measure application to the Commission on 03 December 2002. Interested parties were given fifteen (15) working days from receipt of Notice of Formal Investigation to submit their respective preliminary/supplemental position papers, affidavits of witnesses, documentary evidence and other information in support of their position (*Annex F* for the list of submissions).

The Commission received the first position paper of the applicant, through counsel, on 15 January 2002. On the other hand, the position papers opposing the application were received from the Delegation of European Commission in the Philippines, the Cebu Chamber of Commerce and Industry (CCCI)/Cebu Contractor Association (CCA), Cebu Oversea Hardware Co., Inc., RAK Ceramics (UAE), and Cathay Builder's Center, Inc.

The Commission received the adjustment plans of Mariwasa and Lepanto on 10 January 2002 and on 23 January 2002, respectively.

The public records from DTI and non-confidential submissions, including non-confidential portions of confidential submissions, were made publicly available at the Commission for viewing or reproduction.

4.2 The Domestic Industry's Case

4.2.1 Applicant

The applicant, CTMA, submitted its amended position paper on 22 February 2002. The position paper makes its allegations on the following subjects: product comparability; increased importation; serious injury; other economic factors in the determination of injury; threat of serious injury; and causal linkage.

Product Comparability

Both local and imported ceramic tiles are manufactured using the same process, have the same applications, are physically interchangeable, are commercially substitutable and sold through the same channels of distribution. The quality of locally produced ceramic tiles is comparable with imported ceramic tiles and even of better quality in terms of design, finish and porosity.

Increased Importation

Ceramic tiles are being imported into the Philippines in such quantities both in absolute terms and relative to domestic production as to cause or threaten serious injury to the industry.

Serious Injury to the Domestic Industry

The surge in importations caused serious injury to the domestic industry as indicated by the following :

- the loss in market share resulting in decline in sales volume and revenue coincided with the period of increased importation;
- it was forced to adopt a policy of import price parity in an attempt to protect market share. The domestic industry incurred serious losses as it was forced to sell at a price lower than its cost to produce and sell;
- the above factors resulted in decreasing profitability to the Philippine ceramic industry;
- actual production and utilization of plant capacities of the domestic industry declined as firms were forced to scale down operations to avert further losses as a result of increased importation and its effect on the market;
- finished goods inventory substantially increased in 2000 due to continuing losses of market share and pressure of price undercutting;
- the industry was forced to reduce its workforce from 1998 to the present;
- profitability declined as the industry suffered both losses from operations and net loss as a result of the serious deterioration in its competitive position; and
- the surge of cheap imported ceramic tiles and the over-capacity of Indonesia and China brought about by their shrinking domestic and foreign markets forced these countries to pursue an aggressive export policy. These are the unforeseen developments that caused serious injury to the local industry.

Need for Government Intervention

Government intervention is necessary for the survival of the Philippine ceramic tile manufacturers. Equalizing the price of imported

ceramic tiles with the price of Philippine manufactured ceramic tiles that takes into consideration the cost of sales and a reasonable return on investment would achieve the objectives of R.A. 8800.

Adjustment Plan

Rule 4.1(a) of the IRRs of R.A. 8800 defines “*Adjustment Plan*” as “*an action which a domestic industry is required to submit that describes a set of quantified goals, specific plans, and timetables that a concerned industry commits to undertake in order to facilitate positive adjustment of the industry to import competition.*”

The adjustment plans submitted by the applicants contain the following:

Mariwasa

- Provide better products through introduction of new product series every year;
- Provide wider coverage by improving distribution network;
- Work on producing at higher efficiencies by reducing power, energy and labor costs; and
- Work for the reduction of tariffs on inputs not locally produced.

Lepanto

- Increase in production volume;
- To become cost competitive through improvement of yield, reduction in fuel and energy costs, organizational restructuring and efficient management of working capital;
- Improve product quality and service by means of offering a complete product range; and
- Develop a well-managed local and export distribution network.

4.2.2 Other Submissions in Support of the Application

- *PIID*

Local tiles are competitive to the imported ones in terms of quality, durability, wide range of colors, textures and designs. Locally manufactured tiles are preferred because of availability of stock and after-sales service. However, the local tile manufacturers have to make adjustments in their production if they want to be competitive. Instead of penalizing importers, government should grant incentives to the local manufacturers.

- *Architect Villarosa, PIA*

Mr. Rogelio Villarosa, a member of the Philippine Institute of Architects (PIA), executed an affidavit stating that imported and locally produced tiles are similar in quality, appearance and durability.

- *Various Religious Groups*

The Commission received letters from Rogationist Fathers (Cavite); Carmel of the Immaculate Heart of Mary; Cenacle Phils. (Marikina City); Mary Help of Christian School (Pampanga); Good Shepherd Convent, Cebu; Assumption Antipolo; Cenacle Phils. (Cebu City); Monasterio de Sta. Clara; Cenacle Phils. (Quezon City); Cenacle Philippines/Singapore Region; St. Thomas de Villanova Parish (Alcantara, Romblon); Dominican Missionaries of the Immaculate Mother (Pangasinan); Carmelite Monastery of the Holy Trinity and Our Lady of Mt. Carmel; and Sister Handmaids of Charity. These groups attest to the quality and durability of locally manufactured tiles used in their building projects for various purposes.

4.3 The Opposing Case

4.3.1 PCPIA

PCPIA, through counsel, submitted its amended position paper on 28 February 2002 on the following issues:

Like Product

- The application for safeguard measures is against imported ceramic tiles, glazed or unglazed, classified under HS Codes 6907.90 00 and 6908.90 00. The subheadings, however, also cover products other than ceramic tiles. Moreover, porcelain or homogeneous tiles, which are not even produced by the biggest local manufacturer, Mariwasa, were also included in the coverage of the safeguard application. Products other than ceramic tiles should not be included in the coverage of the safeguard investigation.
- The choice of ceramic tiles is largely a matter of consumer taste and preference. Domestic manufacturers can only produce a limited number of designs and sizes.
- Some building projects require specially high quality materials to meet specifications of international standards imposed by foreign-based architects and engineers. Italian and Spanish ceramic tiles readily meet these requirements.

Increased Importation

- There was an increasing trend in demand in ceramic tiles which gradually replaced the use of marble, wood parquets, vinyl and mosaic tiles.
- The surge in import was not meant to directly compete with the locals. Rather, it was meant to satisfy the growing demand for ceramic tiles. While the local industries' relative share may have declined, this was due to preference for imported ceramic tiles as they are available in variety of designs, shapes, textures and quality. The local industry should adapt to these growing changes.

Serious Injury to the Domestic Industry

- There seems to be no indication that its sales volume was going down. The increase in the total market size was triggered by the influx of imported tiles preferred by the consuming public.
- Based on the amended position paper of the domestic industry, there was no trend that Mariwasa's sales revenue is going down. Eurotiles consistently increased its sales revenue while Lepanto only experienced reduced sales revenue in 2000 and 2001 but this was largely attributable to internal problems.

Reduced Domestic Sales

- In the six-year period covered by the investigation, reduced sales occurred only in 1999 and 2001 and there is no trend that its sales revenue is going down. Eurotiles, another local manufacturer, has consistently increased its sales revenue since 1996 to 2000.
- Lepanto registered continuing increase in sales revenue in 1996 – 1999. It experienced reduced sales revenue for 2000 and 2001 only but this is attributable to internal problems independent of import surge.

Decline in Profitability

- The declining profitability is caused by high cost of production and losses incurred because of the high financial charges brought about by heavy borrowings to finance huge expansion programs.
- The expansion programs embarked on by the applicants were way beyond the capacity of the whole market and it is inevitable that they will have high inefficiency and low capacity utilization rates. It is worthwhile to note that Eurotiles continued to enjoy profitability over the past five years. The declining rate of utilization was brought about

by continuing expansion programs at a time when there was already an excess capacity.

Employment

- With modernization, the need for manpower is likewise reduced. Though there was a statement of reduction of work force, there was no explanation on the cause of layoff. Neither was there an attempt to link the import surge to the alleged layoff of workers.

Reduction in Production and Plant Utilization

- The declining rate of plant utilization was brought about by the continuing expansion programs adopted by applicants way above the rate the market size is increasing when there were already excess plant capacities.

Price Undercutting

- There was no price undercutting observed except for 2001 as shown in Table 10 of the Staff Report.

Causal Link

- While there may be reduced sales, reduced profitability, declining plant utilization, employment lay-off, they miserably failed to show the causal link between the alleged serious injury and import surge of ceramic tiles.

4.3.2 Cebu Oversea Hardware Co., Inc.

- The local ceramic tiles industry was unable to increase its total production despite the import surge due to customers' choice of sizes and design.
- The reduction of workers in the local industry could be caused by the upgrading of their plant facilities or due to automation.
- The increase of imported tiles especially in 2000 and 2001 in the market could be explained by comparing the quality and prices of imported tiles vis-à-vis local tiles.
- Injury to the local ceramic industry could be the result of losses in their direct operation or due to huge financial obligations.
- The local industry's total volume of production had gone up despite the import surge because most residential and even commercial buildings are already using ceramic tiles for their floors, interior walls and to some extent, exterior walls.

- The occasional very high unit prices of over ₱ 40/kilo were due to high unit prices of decorative border tiles. These prices of decorative tiles should be excluded as they do not provide a fair comparison.

4.3.3 Indonesia

a. *Ministry of Trade and Industry*

- Citing Article XIX of GATT, the application for safeguard measures is not justified and should be terminated immediately as the tariff concessions (Schedule LXXV) submitted by the Philippines to the WTO do not include ceramic tiles.
- The Staff Report contains only verified figures from the applicants minus the figures from other companies within the industry, thus seriously hampering Indonesia's interest in the proceeding.
- There should be disclosure of essential facts before the Commission submits its final recommendations to the DTI.
- On the issue of overcapacity, attention is drawn to Tables 1 and 4 of the DTI Evaluation Report of 28 May 2001. It emphasizes the importance of this issue in the proceeding when imports are not causing price undercutting, price suppression and depression.
- The domestic industry in the Philippines has a chronic overcapacity which does not allow the industry to operate at efficient levels.
- The restructuring plan submitted by the domestic industry does not include capacity reductions

b. *Indonesian Ceramic Industry Association (Asosiasi Aneka Industri Keramik Indonesia, ASAKI)*

- The local industry has a natural protection in the form of freight and port charges equal to 25% of the value of the imported ceramic tile.
- The local ceramics industry is beset by natural barriers: design; color; usage; and technological innovation and process.
- The lower-end market that consumes more than 70% of local production is very price-sensitive. It is unfair and illogical that these consumers have to subsidize the high prices of ailing industries.
- One of the major costs of the ceramic industry is the transportation cost due to the weight of the tiles. Since the majority of the Philippine ceramic tile manufacturers are concentrated in the northern territory, it

is difficult to cover the southern territory without incurring additional costs.

4.3.4 Italian Trade Commission

- The cheap ceramic tiles from Asian countries, notably Indonesia and China, are in no way similar to those being imported from European countries, specially Italian tiles.
- Italy represented less than four percent (4%) of the total value of Philippine imports of ceramic floor and wall tiles in 2000 and 2001. These imports are representative of high-end products, which normally retail in the Philippine market for about US\$6-8 per square meter. A further imposition of safeguard measures on these products would be excessive and would subject consumers to higher-priced products.
- Indiscriminate imposition of safeguard measures against all products covering a particular category will only result in penalizing consumers. Measures should focus only on low-end products.
- Ceramic floor and wall tile products priced at least US\$6.00 per square meter should be excluded from the imposition of safeguard measures.

4.3.5 European Commission

- The industry position paper attributing the overcapacity of Indonesia and Chinese plants is an admission that injury to the Philippine industry is caused by Indonesian and Chinese imports. It would be clearly unacceptable if European imports were asked to pay for injury caused by imports from Indonesia and China.
- Article 4.2(b) of the Agreement on Safeguards establishes two distinct legal requirements for authorities in the application of such measure: existence of the causal link and injury caused by other factors other than increased imports must not be attributed to increased imports. Other factors are overcapacity and very high production costs of the domestic industry.
- In its position paper on 11 January 2002, the Delegation considers the preliminary determination and provisional safeguard measures as contrary to WTO rules.
- Should the Philippines decide to proceed to a remedy phase, Article 5 of the Safeguards Agreement provides that any remedy can be tailored to address the real source of injury. This option should be pursued as most of the increase in imports comes from one country.

- Recent panels have ruled that safeguard action is only justified if the serious injury was a result of unforeseen developments. A reading of the Preliminary Determination Report shows that this factor has not been addressed. An increase in imports is not sufficient to satisfy the “unforeseen” requirement.

4.3.6 White Horse Ceramic (Phil.) Inc.

- There is a considerable difference between a homogeneous or porcelain tile and a ceramic tile which would not make one in direct competition with the other. Ceramic floor tiles has lower degree of vitrification which forms a higher porosity (higher moisture absorption rate) body. The hardness and resistance to abrasion is also less in ceramic tiles compared with homogeneous tiles. Thus, ceramic tiles are not suitable for further processing activities like cutting or polishing.
- Homogeneous tiles require higher firing temperature of approximately. 1,220 degrees Celsius while ceramic tiles command an average firing temperature of 1,180 degrees Celsius. The body of ceramic tiles is mono color thus, the powder mix does not require a strict control parameter for coloring while homogeneous bodies are pressed from powder mixed from a combination of different colors.
- Imposing any safeguard measures on homogeneous tiles would result in higher cost for consumers, eliminating any net benefit that the safeguard measure may bring the local tile producers.

4.3.7 Robinsons Land Corporation

- Without the inflow of imported ceramic tiles, locally manufactured tiles would be very costly.
- With imported ceramic tiles priced reasonably at good quality and various designs, constructors awarded infrastructure contracts are relieved of their worries on supply.
- Monopoly in the ceramic business should be discouraged.
- The construction industry would suffer huge losses and bankruptcy to the detriment of the country’s economy.
- The low-income group would be adversely affected if imported tiles are not readily available.

4.3.8 Other Submissions

- CCC/CCA reiterated in their letter of 14 January 2002 their opposition against any move to increase the tariff or impose a punitive duty on tiles.
- *RAK Ceramics (UAE)*, submitted on 22 January 2002 a list of its shipments to the Philippines, photocopies of export documents (via DHL), names of importers, pricing policy and production cost. It requested to be excluded from the imposition of safeguard measures.
- *Cathay Builder's Center, Inc.* submitted on 28 January 2002 two sets of import documents. It claims that the ₱5.40/kg bond is punitive, arbitrary and self-serving for the local manufacturers.

5 THE DOMESTIC INDUSTRY AND MARKET

5.1 The Domestic Product

The domestic industry produces unglazed and glazed ceramic floor and wall tiles including homogeneous tiles. Ceramic tiles are used as outdoor and indoor floor and wall coverings in private dwellings, commercial and industrial buildings, urban facilities, etc. The more common sizes in the local market for floor tiles are 30 x 30 cm and 40 x 40 cm. In the case of wall tiles, the more common sizes are 20 x 20 cm and 20 x 25 cm. The production of Mariwasa and Lepanto is now geared toward these sizes. In the domestic industry, first class tiles are called commercial and those with slight glaze and body defects are labeled Grade B. Tiles with very visible defects are tagged rejects.

The major raw materials used to form the tile body are ball clay and felspar which are locally available. Silica sand may also be used. Glazing materials used for glazed ceramic tiles are all imported, mostly from Europe and China.

The domestic industry utilizes the dry pressing (dust pressing) method. The single-firing process is used for floor tiles while the double-firing process is used for wall tiles, using machinery imported mainly from Italy.

5.2 Tariff Rates on Ceramic Tiles

Table 1. Tariff Schedule

HS Code		Rate of Duty (%)									
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
6907.90 00	MFN	30*	30	30	25**	20	15	10***	7	5	5
	CEPT				20 ⁺	20	5 ⁺⁺⁺	5	5	5	5
6908.90 00	MFN	30*	30	30	25**	20	15	15***	10	7	5
	CEPT					20 ⁺⁺	15	10	10	5	5

Source : Tariff and Customs Code of the Philippines, as amended

Note: MFN - Most Favoured Nation

Amending Executive Order (E.O.):

* E.O. 264, dated 22 July 1995
 ** E.O. 465, dated 13 January 1998
 *** E.O. 334, dated 03 January 2001

+ E.O. 487, dated 11 June 1998
 ++ E.O. 71, dated 15 January 1999
 +++ E.O. 254, dated 12 June 2000

Prior to the period of investigation (POI), the tariff on ceramic tiles was pegged at 30% *ad valorem*. With the opening of the domestic market under a regime of trade liberalization, E.O. 465 gradually reduced the tariff on ceramic tiles beginning 1998 until it reached 15% in 2000. Under E.O. 334, the duty on ceramic tiles was reduced further to 10% (unglazed) and 15% (glazed) in 2001.

The reduction is staged to reach a final rate of 5% in line with the Tariff Reform Program of the Government that envisions a tariff range of 0-5% by 2004.

5.3 Market Participants

5.3.1 Domestic Producers

Table 2. Domestic Producers

	COMPANY	LOCATION	Installed Capacity ('000 sq. m.)	PRODUCT
1	Mariwasa Siam Ceramics, Inc. *	Sto. Tomas, Batangas	17,191**	Glazed ceramic floor and wall tiles
2	Lepanto Ceramics, Inc.	Km. 54, Makiling, Calamba, Laguna	13,020**	Glazed ceramic floor and wall tiles; unglazed homogeneous floor tiles
3	Eurotiles Industrial Corporation	Silang, Cavite	3,000	Glazed ceramic floor tiles (8 x 8" and 12 x 12")
4	Filcera Manufacturing, Inc.***	San Vicente, San Pedro, Laguna	2,277	Glazed wall tiles (4 x 4" and 8 x 8")
5	Italfil Porcelain Ceramics Tiles, Inc.****	AIP-SEZ, Calibutbut, Bacolor, Pampanga	1,250	Unglazed homogeneous floor tiles
6	Formosa Ceramic Tiles Mfg. Corp. (formerly Grand Ceasar Ceramic Tiles Corp.)***	San Simon, Pampanga	2,500	Glazed floor tiles (30 x 30 cm, 40 x 40 cm)
7	Pioneer Ceramic, Inc. (Tri-Little Dragon)*****	Mandaluyong City	–	Glazed floor tiles

Source: CTMA

- Notes:
- * Subsidiary of Mariwasa Manufacturing Inc. (MMI), located in Pasig which stopped operation in July 2001.
 - ** Based on kiln capacities in 2001 for Mariwasa and Lepanto.
 - *** On and off operations. Filcera had stopped production since December 2001 due to high inventories. Formosa resumed operations only on 01 April 2001 after 10 months of labor strike.
 - **** Started production intended for the export market in August 2000 but suspended production in May 2001. Only activity is polishing of remaining inventory.
 - ***** Based on information gathered, Pioneer had shut down.

Treatment of Eurotiles Industrial Corporation

Eurotiles Industrial Corporation (Eurotiles), a manufacturer-importer of ceramic tiles and a member of the CTMA, was not a party to the original application for safeguard measure filed before the DTI. However, during the public consultation at the Commission, said company expressed support for the application and participated therein as a member of the domestic industry. It likewise submitted several financial data which included, among others, sales volume and value, output, and profit and loss statement on imported articles and locally produced articles.

For purposes of the industry performance evaluation, only data submitted by Mariwasa and Lepanto were evaluated as verified. Submissions of Eurotiles were excluded as the investigators could not fully verify all their submissions. Not all supporting documents required were made available to enable the Commission to validate the company's submissions as required by law.

Even with the exclusion of Eurotiles, the domestic industry requirement of Section 4 of R.A. 8800 was still fully satisfied.

5.3.2 Kiln Capacities

Table 3. Rated Capacity of Applicant Companies: 1996 – 2001

Yearend	Installed Kilns	Moth-balled Kilns ¹	No. of Operating Kilns	Rated Capacity ('000 sq.m.)	
				All Kilns ²	Operating Kilns
1996	13	-	13	11,793	11,793
1997	18	-	18	18,414	18,414
1998	22	3	19	24,880	18,381
1999	22	3	19	26,561	19,305
2000	23	5	18	28,172	18,054
2001	23	5	18	28,496	17,702

Source: Mariwasa and Lepanto

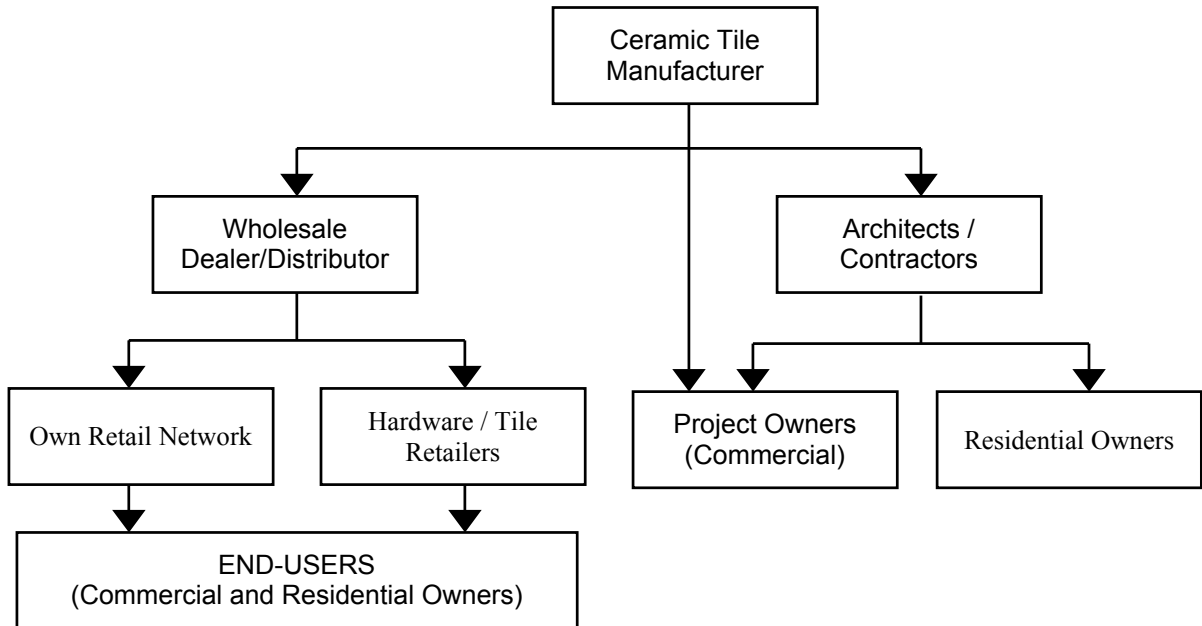
Notes: ¹ Includes 2 kilns of Lepanto not commissioned.

² All kilns does not include mothballed kilns.

5.3.3 Distribution Channels

The finished products are distributed either to wholesalers/distributors or directly to architects and/or contractors. From the wholesalers or through the company's own retail network, these are then channeled to hardware and tile retailers where end-users can source their tiles. Mariwasa and Lepanto also maintain their own exclusive distributors.

Fig.1 Distribution Network Flow Chart*



* Source: Lepanto

5.3.4 Importers

The importers as identified in the BIS Preliminary Report are the following:

- | | |
|-----------------------------------|-------------------------------------|
| 1. Adventure Import Export | 18. Home Studio |
| 2. Apollo Interior Supplies, Inc. | 19. Implas Philippines |
| 3. Cathay Builder's Corp. | 20. Italia Tile Center |
| 4. Cebu Oversea Hardware Co. | 21. Ital Contract Phils., Inc. |
| 5. Centro Ceramica Corp. | 22. Jardine Davies Inc. |
| 6. Cermiche Bella Casa | 23. Ley Roc Steel Corporation |
| 7. Centro Ceramica, Inc. | 24. MMI |
| 8. C H K P Enterprises | 25. Maxilite Merchandising |
| 9. Decimal Merchandising Inc. | 26. Nazo Building Materials |
| 10. Dexterton Industrial Corp. | 27. PEM International Inc. |
| 11. Empire Marketing | 28. Q.S.R. Corporation |
| 12. Eurotiles | 29. Robinsons Land Corporation |
| 13. Felport International Mktg. | 30. SDK Prestige Tile Center |
| 14. Five Star Marketing | 31. Sta. Lucia Realty and Dev. Inc. |
| 15. Golden Edition Int. Trading | 32. R.S.W. Trading |
| 16. Grand Ceasar Ceramica Tiles | 33. Wilcon Builders Supply |
| 17. Harlequin Home Furnishing | |

Based on a sampling of import entries on file with the Commission, the top importers for 1999 to 2001 of ceramic tiles were the following:

Table 4. Major Importers of Ceramic Tiles

Year	Importer	Quantity* ('000 MT)	Main Source Country
2001	Cebu Oversea Hardware Co. Inc.	21.7	Indonesia
	One-World Multi-Inds. Corp.	15.8	China, Indonesia
	Harlequin Home Furnishing	13	Indonesia, China, Malaysia, Spain
	Deco Arts Mktg. Inc.	5.7	Indonesia
	Westpoint Industrial Sales Co.	3.6	China, Indonesia
2000	Cebu Oversea Hardware Co., Inc.	13	Indonesia
	Eurotiles	9	Indonesia, Malaysia
	Deco Arts Mktg. Inc.	6	Indonesia
	Harlequin Home Furnishing	5.6	Indonesia, Malaysia
	Wilcon Builders	5	Indonesia, Malaysia and Spain
	RAK Ceramic Phils.	4	UAE, Hong Kong
1999	Deco Arts Mktg., Inc.	7	Indonesia
	Empire Marketing	6	UAE
	Wilcon	4	Indonesia, Malaysia & Spain
	Cathay Builder's Corp.	3	Various

Source: Import Entries

*Sampling of Import Entries

5.3.5 Users

The major users of ceramic tiles are construction companies engaged in both private and public housing and infrastructure projects as well as direct purchasers at the retail level. Local contractors also utilize ceramic tiles in condominiums and shopping malls.

6 DETERMINATION OF LIKE PRODUCT

Rule 9.4 (a) of the IRRs of R.A. 8800 provides that the Commission shall determine *“if the domestic product is a like or directly competitive product to the imported product under consideration”*. Section 4 (e) thereof defines *“directly competitive products”* as *“domestically-produced substitutable products.”*

Section 4(h) of the same IRRs defines *“like product”* as a *“domestic product which is identical, i.e., alike in all respects to the imported product under consideration, or in the absence of such a product, another domestic product which, although not alike in all respects, has characteristics closely resembling those of the imported product under consideration.”*

6.1 Product Under Consideration

The application for safeguard measure is directed against imported ceramic tiles, unglazed or glazed, classified under Harmonized System (HS) Codes 6907.90 00 and 6908.90 00 of the Tariff and Customs Code, respectively. These subheadings include all unglazed and glazed ceramic flags and paving, hearth or wall tiles. The products under consideration, however, are limited only to unglazed and glazed ceramic floor and wall tiles, whether or not rectangular, the surface area of which is not capable of being enclosed in a square the side of which is less than 7 cm. The ceramic floor and wall tiles covered in this investigation are relatively thin in relation to facial area. The nominal thickness is in the 4mm to 10mm range.

Glazed tiles are ceramic tiles with an opaque or transparent coating that has been fused to the tile body by firing in a kiln, creating a smooth, impermeable surface that may also be highly decorated.

On the other hand, unglazed tiles are ceramic tiles which, because of their particular properties, may be left untreated after firing. These are generally highly durable, semi or fully vitrified (homogeneous) tiles retaining their natural color or colored by means of oxides dispersed throughout the body.

Homogeneous ceramic tiles, also known as fully-vitrified porcelain tiles or impervious stoneware tiles or porcelain-granite tiles have a higher felspar composition than glazed ceramic tiles. The production process is similar to that of ceramic glazed tiles. The color may be solid or grainy (to give the tiles the appearance of granite). Having a water absorption rating of less than 0.5%, these tiles are very dense, almost completely water-proof and frost-proof, and are available with a glazed or unglazed surface finish. Although more expensive than glazed ceramic tiles, homogeneous tiles have the same application as ceramic floor tiles.

6.2 Characteristics

6.2.1 Material Composition

Ceramic tiles are flat, thin items made of clay, silica, fluxes, coloring and other raw materials. The clay used to make the slab may be for red firing or white firing. Both the floor tiles and the wall tiles are impermeable ceramic tiles that are normally made using a clay slab and vitreous coating of ceramic glaze (refer to *Annex G*).

6.2.2 Physical Characteristics

Based on the import documents, the more common sizes for floor tiles are 30 x 30 cm and 40 x 40 cm. In the case of wall tiles, the more common sizes are 20 x 20 cm and 20 x 25 cm. Imported tiles come in various finishes and designs.

6.2.3 Manufacturing Methods and Technology

The production process has gradually been automated and methods have been standardized considerably, with dry pressing being the most common. This method allows the product to be manufactured either by double firing or single firing process. In Italy, about 95% of tiles produced are dry-pressed.

6.2.4 Uses

Ceramic tiles are used for floors and facing (walls).

Floor Tiles:

- Interior house floors
- Exterior paving (terraces)
- Floors of public buildings (hospitals, schools, etc.)
- Different floors (swimming pools, factory floors, etc.)

Facing (Wall Tiles):

- Interior facing of houses (kitchens, bathrooms, etc.)
- Exterior facing (terraces)
- Different facing

6.2.5 Tariff Classification

The products under consideration are classified under HS subheading No. 6907.90 00 for unglazed ceramic tiles and HS subheading No. 6908.90 00 for glazed ceramic tiles. The imported homogeneous ceramic tiles, being unglazed, are properly classified in HS subheading No. 6907.90 00.

6.2.6 Product Standards on Ceramic Tiles

In the United States, standards are established by the American National Standards Institute (ANSI). In Europe, the Comité Européen de Normalisation (CEN) standards are used. International Standards Organization (ISO) standards have now been approved by member organizations to unify standards worldwide. In essence, the tile industry has adopted the European standards (EN) introduced in 1984 with some modifications.

On the other hand, the standard followed by the domestic industry is the Philippine National Standard (PNS) 154:1992 (Ceramic Floor and Wall Tiles - Specification). This is based on the American standard ANSI 137.1-1980 and the European standards, EN 159-1984, EN 177-1984 and EN 178:1984.

Table 5. Comparison of PNS 154:1992 with American and European Standards

WALL TILES		ANSI 137-1980	EN 177-1984	PNS 154-1992
1.	Water Absorption (%)	20.0 max.	10.0 ave.	18.0 max.
2.	Modulus of Rupture	90 lbs. min.	153 kg/sq. cm. min.	102 kg/sq. cm. min.
3.	Scratch Hardness	None	3.0 Moh	None
4.	Thermal Shock Resistance	ASTM C484 resistant	EN 104-1982 resistant	ASTM 484-1981 resistant
5.	Crazing Test	150 PSI (10.20 bars) resistant (1 cycle)	(500 +/- 20 KPA) resistant	700 KPA (10 kgf/sq. cm.) resistant

FLOOR TILES		ANSI 137-1980	EN 177-1984	PNS 154-1992
1.	Water Absorption (%)	7.0 max.	3.0 – 6.0 ave.	7.0 max.
2.	Modulus of Rupture	250 lbs. min.	204 kg/sq. cm. min.	306 kg/sq. cm. min.
3.	Scratch Hardness	None	5.0 Moh	None
4.	Thermal Shock Resistance	ASTM C484 resistant	EN 104-1982 resistant	ASTM 484-1981 resistant
5.	Crazing Test	150 PSI (10.20 bars) resistant (1 cycle)	(500 +/- 20 KPA) resistant	1,000 KPA (10 kgf/sq. cm.) resistant

Source: Mariwasa

Note: 1 Bar = 14.70 pounds per square inch (PSI)
 ASTM – American Society for Testing and Materials
 KPA – Kilo Pascals
 Moh - Unit of hardness
 Kgf – Kilogram-force

6.3 Findings

6.3.1 Manufacturing Method

The locally produced tiles use the dry pressed (dust-press) method which is the widely used method in the tile industry. Floor tiles are fired once (single-firing process) while wall tiles are generally fired again after glazing (double-firing process). It is possible to produce good tiles using any of the firing methods. Homogeneous tiles are manufactured using the same method.

6.3.2 Material Composition

In terms of composition of the raw materials for the tile body, both local and imported ceramic tiles essentially make use of the same materials. All domestic tile manufacturers import their glazing materials, mostly from Europe and Asia.

6.3.3 Appearance

In terms of physical appearance, local and imported ceramic tiles have comparable finish. The designs of locally produced tiles approximate those of the imported tiles. The finish and the design vary in accordance with consumer preference.

6.3.4 Quality

Both local and imported ceramic tiles are manufactured using the same technology, have the same raw materials and adhere to comparable product standards.

6.3.5 Size

Commercial sizes of both local and imported ceramic tiles range from 10 x 10 cm to 60 x 60 cm.

6.3.6 End Use

Both local and imported ceramic tiles have the same end-use or application.

6.4 Conclusion

The Commission, in accordance with R.A. 8800, finds that locally produced ceramic tile is a like product to imported ceramic tile. The locally produced and imported ceramic tiles are made from the same raw materials, use the same process and technology, conform to recognized product standards, fall under the same tariff classification, and have the same end-use.

7 DETERMINATION OF INCREASED VOLUME OF IMPORTS

Rule 9.4.b of the IRRs of R.A. 8800 provides that the Commission shall determine *“if the product (under consideration) is being imported into the Philippines in increased quantities whether absolute or relative to domestic production.”*

7.1 Period of Investigation

In its preliminary investigation, DTI determined the POI to be the five-year interval from 1996 to 2000. DTI followed Rule 7.2.a of the IRRs of R.A. 8800 which provides that import data covering the last five (5) years preceding an application for safeguard measure should be evaluated for purposes of substantiating claims of a surge in imports.

For purposes of the Commission’s formal investigation, the POI was extended up to the most recent past period, i.e., the whole year of 2001, for which data are available. This is in accordance with the requirement in the WTO Agreement on Safeguards that the investigating authorities should examine recent data on imports and not simply data for the past five (5) years.

7.2 Increase in Volume of Imports In Absolute Terms

The total volume of imports taken from the Foreign Trade Statistics of the National Statistics Office (NSO) is expressed in gross kilogram (GK). The value GK was converted into net kilogram (NK) to get the actual weight of the tiles. Based on import documents with information on both gross weight and net weight, the conversion factor of 0.9522¹ was derived.

The relevant data submitted by the domestic industry are expressed in square meters. For purposes of comparability, import volume in net kilograms was converted to square meters using the average weight of 16 kilograms per square meter of tile. This conversion factor was based on the average weights of imports using entries where both sizes and weights were indicated. It may be mentioned that import entries from Indonesia and China covering various sizes were used in determining the average weight per kilogram.²

¹ Conversion Factor =
$$\frac{\text{Total Volume in Net Kilograms (1996-2001)}}{\text{Total Volume in Gross Kilograms (1996-2001)}}$$

² ASAKI, in its position paper, used a factor of 17 kg per square meter to convert their exports to the Philippines. PCPIA, on the other hand, arrived at a factor of 15.94 kg per square meter.

Table 6. Import Volume *, Growth Rates and Country Shares

COUNTRY	1996	1997	1998	1999	2000	2001
TOTAL	1,914	3,591	2,531	4,288	7,086	8,945
Growth Rates (%)		88	(30)	69	65	26
CHINA	219	326	251	594	650	2,898
<i>Growth Rates (%)</i>		49	(23)	136	9	346
<i>Share to Total Imports (%)</i>	11	9	10	14	9	32
HONG KONG	22	34	19	19	347	655
<i>Growth Rates (%)</i>		53	(43)	1	1,689	89
<i>Share to Total Imports (%)</i>	1	1	1	0	5	7
INDIA	**	**	**	1	19	2
<i>Growth Rates (%)</i>		0	0	0	1,275	(87)
<i>Share to Total Imports (%)</i>	0	0	0	0	0	0
INDONESIA	**	9	200	884	2,769	3,392
<i>Growth Rates (%)</i>		0	2,058	343	213	22
<i>Share to Total Imports (%)</i>	0	0	8	21	39	38
ITALY	309	532	183	257	244	231
<i>Growth Rates (%)</i>		72	(65)	40	(5)	(5)
<i>Share to Total Imports (%)</i>	16	15	7	6	3	3
MALAYSIA	43	121	136	398	544	342
<i>Growth Rates (%)</i>		179	12	193	37	(37)
<i>Share to Total Imports (%)</i>	2	3	5	9	8	4
SINGAPORE	11	66	65	22	24	43
<i>Growth Rates (%)</i>		512	(1)	(66)	9	79
<i>Share to Total Imports (%)</i>	1	2	3	1	0	0
SPAIN	783	1,327	729	766	1,213	818
<i>Growth Rates (%)</i>		70	(45)	5	58	(33)
<i>Share to Total Imports (%)</i>	41	37	29	18	17	9
TAIWAN	338	820	654	790	721	293
<i>Growth Rates (%)</i>		143	(20)	21	(9)	(59)
<i>Share to Total Imports (%)</i>	18	23	26	18	10	3
THAILAND	124	282	66	57	96	56
<i>Growth Rates (%)</i>		128	(77)	(14)	69	(42)
<i>Share to Total Imports (%)</i>	6	8	3	1	1	1
UNITED ARAB EMIRATES	**	29	172	402	368	113
<i>Growth Rates (%)</i>		0	498	134	(9)	(69)
<i>Share to Total Imports (%)</i>	0	1	7	9	5	1
Other Countries	66	45	56	98	92	101
<i>Growth Rates (%)</i>		(31)	23	76	(6)	10
<i>Share to Total Imports (%)</i>	3	1	2	2	1	1

Source: NSO Foreign Trade Statistics

Notes: * Volume in thousand square meters (16 kg = 1 sq. m.)

** Less than 1,000 sq. m.

As may be seen in Table 6, imports of ceramic tiles significantly increased by more than 360% from 1.9M sq. m. in 1996 to 8.9M sq. m. in 2001. An 88% growth was recorded from 1996 to 1997 with imports sourced mainly from Spain, Italy, Taiwan and China. Spain accounted for almost half of total imports. In 1998, volume of imports dropped by 30% from the previous year's level of 3.6M sq. m.

Imports recovered and rose to almost 4.3M sq. m. in 1999 representing a 69% increase from the preceding year. This could still be considered normal importation for it approximated the highest importation of 3.6M sq. m. prior to the Asian financial crisis. In 2000, imports exceeded the 1999 level by 65% or 2.8M sq. m. During this period, because of its relatively low-priced tiles, Indonesia emerged to be the top exporter of ceramic tiles to the Philippines. Indonesia's shares to total imports in 1999 and 2000 were 21% and 39%, respectively. Imports from Indonesia in 1999 grew by 343% or 0.7M sq. m. from the preceding year's level. This figure increased further by 213% or 1.9M sq. m. in 2000.

In 2001, imports of subject articles had already exceeded the total volume imported in 2000 by almost 1.8M sq. m. Indonesia remained to be a principal supplier of ceramic tiles in the country. Volume of imports from Indonesia further increased by 22% with the application of the preference granted to ASEAN exports under the CEPT Scheme. China followed closely with 32% while Spain accounted for only 9% share of total imports. The volume of imports from China grew by more than four times or 2.2M sq. m. higher than the previous year level of 650,000 sq. m. largely due to its low selling price. Consolidated imports from China and Hong Kong (since there is no known manufacturer of ceramic tiles in Hong Kong) in year 2001 accounted for 39% of total imports, thus displacing Indonesia (with 38% of imports) as the top exporter of ceramic tiles to the country. The cheapest source of ceramic tiles, China, now supplies the bulk of total imports.

A closer look at the sources of increase in imports by country of origin, revealed an alarming rate and amount of increase of imports coming from China, Indonesia and Hong Kong. Imports from these three (3) major foreign suppliers of ceramic tiles alone accounted for 77% of total imports for 2001.

7.3 Relative to Domestic Production

Table 7. Share of Imports to Domestic Production

Year	Imports		Domestic Production*		Share of Imports to Total Production (%)
	Volume ('000 sq. m.)	Growth Rates (%)	Volume ('000 sq. m.)	Growth Rates (%)	
1996	1,914		11,275		17
1997	3,591	88	11,988	6	30
1998	2,531	(30)	12,217	2	21
1999	4,288	69	12,048	(1)	36
2000	7,086	65	13,819	15	51
2001	8,945	26	13,211	(4)	68

*Based on production data of Mariwasa, Lepanto, Eurotiles, Filcera and Formosa

As shown in Table 7, during the POI, domestic production increased gradually as imports significantly increased except in 1998.

Imports of ceramic tiles represented 17% of total domestic production in 1996. This share increased to 30% in 1997 before it dropped to 21% in 1998. In 1999, the decrease in the share of imports relative to domestic production increased to 36%.

From 2000 onwards, the share of imports relative to domestic production continuously increased.

7.4 Findings

The surge in imports commenced in 2000 with imports having significantly exceeded the annual import levels from 1996 to 1999. Volume of imports increased markedly in 2000 and 2001 by 2.8M and 1.9M sq.m., respectively.

During the period of import surge, the growth in the rate and volume of imports from China, Indonesia and Hong Kong reached an alarming level affecting not only the domestic industry but also the shares of imports from other countries. Indonesia which had not even exported to the Philippines as late as 1997 accounted for 38% of the market. China which averaged only 10% of total imports until year 2000 now accounted for 32% of total imports. Consolidated imports from China and Hong Kong (since there is no known manufacturer of ceramic tiles in Hong Kong) in year 2001 accounted for 39% of total imports, thus displacing Indonesia (with 38% of imports) as the top exporter of ceramic tiles to the country.

From 2000 onwards, share of imports relative to domestic production continuously increased.

7.5 Conclusion

The Commission, in accordance with R.A. 8800, finds that ceramic tiles are being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The said increase is recent, sharp and significant.

7.6 *De Minimis* Import Volume

Rule 13.1.d of the IRRs to R.A. 8800 provides that: “a general safeguard measure shall not be applied to a product originating from a developing country if its share to total Philippine imports of the said product is less than three percent (3%): Provided, however, that developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of the total Philippine imports of the product concerned.”

The volume of imports of the following developing countries were found to be *de minimis*:

Table 8. Developing Countries with *De Minimis* Import Volume

Exporting Country	Year 2001 Import Volume (‘000 sq.m.)	Share to Total Imports (%)
Sri Lanka	*	0.00
Vietnam	*	0.00
India	2	0.02
Brazil	3	0.03
South Africa	10	0.11
South Korea	21	0.23
Singapore	43	0.48
Thailand	56	0.63
Subtotal	135	1.51
Grand Total	8,945	

*less than 1,000 sq.m.

The composition of developing countries based on *de minimis* volume of imports will change depending on the most recent annual data available.

7.7 Unforeseen Developments Resulting In the Surge in Imports

The Philippine construction industry enjoyed a period of growth in 1994-1995 fuelled by an improved economy, increase in both foreign and local investments and accessibility of financing at attractive rates. Anticipating an expanding ceramic tile market because of the shift in consumer preference from traditional wall and floor coverings to ceramic tiles, the domestic ceramic tile industry embarked on an expansion program beginning 1997 to install additional capacity in preparation for the expected growth in the tile market.

However, the Asian financial crisis struck in July 1997 just when the new capacities were put on stream. The global economy slowed down; sources of investments/financing dried up; construction activity slumped as credits became tight and interest rates soared; and demand for construction materials including ceramic tiles declined.

The economic slowdown impacted negatively on the construction industry. As vertical construction activity virtually ground to a halt and demand for construction materials in home countries and traditional export markets contracted, ceramic tile manufacturers in the Asian region suddenly had excess capacities to dispose of even at low margins. Cheap imports from low-priced suppliers started to flood the Philippine market beginning 1999 and surged to their highest level in 2001 of 8.9M sq. m. from 4.3M sq. m.

These two (2) mutually reinforcing developments, the Asian financial crisis, on the one hand, and the entry of cheap imports from low-priced suppliers of ceramic tiles in the region, on the other, were totally unforeseen.

8 DETERMINATION OF SERIOUS INJURY

Rule 9.4(c) of the IRRs of R.A. 8800 states that the Commission shall determine “*the presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product.*”

Section 4(o) of R.A. 8800 defines “serious injury” as “*a significant impairment in the position of a domestic industry after evaluation by competent authorities of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry concerned, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in levels of sales, production, productivity, capacity utilization, profits and losses, and employment.*”

8.1 Domestic Industry Requirement

The two (2) applicant companies accounted for between 66% to 83% of total domestic production of ceramic tiles from 1996 to 2001. This satisfies Section 4(f) of R.A. 8800 which, for purposes of determining serious injury or the threat thereof, defines “domestic industry” as “*the domestic producers, as a whole, of like or directly competitive products manufactured or produced in the Philippines or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products.*”

Table 9. Production of Ceramic Tiles: 1996 - 2001

Year	Actual Production (in '000 sqm.)			Share To Total Production (%)	
	Applicant Companies ¹	Other Local Manufacturers ²	Total	Applicant Companies ¹	Other Local Manufacturers
1996	9,134	2,141	11,275	81.01	18.99
1997	9,969	2,019	11,988	83.16	16.84
1998	9,908	2,309	12,217	81.10	18.90
1999	7,992	4,056	12,048	66.33	33.67
2000	9,423	4,396	13,819	68.19	31.81
2001	9,298	3,913	13,211	70.38	29.62

Source: Philippine ceramic tile manufacturers

¹ Mariwasa and Lepanto

² Eurotiles, Filcera and Formosa

Notes: Data for Formosa refer to actual sales
Formosa started commercial operation in 1999

8.2 Serious Injury Factors

8.2.1 Market Share

A growing preference for ceramic tiles over conventional floor and wall covering materials, such as vinyl, marble and wood parquet, resulted in an expanding ceramic tile market. Consumers shifted to the use of ceramic tiles over the traditional materials for wall and floor applications since the former are considered more durable, cheaper, and are practically maintenance-free.

Table 10. Apparent Domestic Consumption of Ceramic Tiles and Market Shares: 1996 - 2001

Year	Domestic Sales ¹ (‘000 sq. m.)			Imports ² (‘000 sq. m.)	Apparent Domestic Consumption (‘000 sq. m.)	% Share to Total Apparent Consumption			
	Applicants	Non-Applicants	Total Mftrs			Applicants	Non-Applicants	Total Mftrs	Imports
1996	8,785	1,496	10,281	1,914	12,195	72	12	84	16
1997	9,126	1,828	10,954	3,591	14,545	63	13	75	25
1998	9,299	2,203	11,502	2,531	14,033	66	16	82	18
1999	9,645	2,898	12,543	4,288	16,831	57	17	75	25
2000	8,996	3,074	12,070	7,086	19,156	47	16	63	37
2001	8,911	2,932	11,843	8,945	20,788	43	14	57	43

Sources: ¹ Mariwasa, Lepanto, Eurotiles, Filcera and Formosa; calendar year (January to December 31)

² NSO Foreign Trade Statistics

Non-Applicants: Eurotiles, Filcera & Formosa

The local ceramic tile industry projected that the domestic market would grow from 9.5M sq. m. in 1996 to 26.7M sq. m. in 2001, or an average growth of 23% annually.³ The Asian financial crisis that struck in July 1997 dampened demand, however.

Over the POI, total apparent consumption increased by an average of only 12% yearly, from 12.2M sq. m. in 1996 to 20.8M sq. m. in 2001. The increment in consumption from 1996 to 2001 amounted to 8.6M sq. m.

The Philippine ceramic tile market was predominantly supplied by the local industry for the first four years of the POI. The industry enjoyed an average market share of 79% while the remaining 21% was held by imports.

In 1999, prior to the surge in imports, the domestic industry supplied 75% of the total Philippine ceramic tile market. This share dropped alarmingly to 63% in 2000, when imports started to surge. In 2001, this share further declined to 57%. Thus, from an 84% share of the market in 1996, the industry's share shrank drastically to 57% in 2001.

³ Industry Study on Market Projections based on Per Capita Tile Consumption (1994)

As the market share of the local industry deteriorated during the period of import surge, imports took a firmer grip of the domestic market. From a low 16% share in 1996, imports captured 37% of the market in 2000. In 2001, this share grew further to 43%.

Domestic demand grew by an average of 12% during the POI while imports grew at a faster rate of 44% over the same period. During the period of import surge, demand increased by an average annual rate of 11% but the growth in imports was far higher at 46%.

The decline in the market share of the domestic industry is rapid, sharp and significant beginning 2000, the year when the surge in imports commenced. In 2000, the domestic industry's share of the domestic market declined by 16% compared with the previous year. A further decline of 10% was experienced in 2001.

The decline in the market share of the domestic industry and the erosion of its competitive position constitute serious impairment of its overall market condition.

8.2.2 Production, Sales and Ending Inventory

In the evaluation of production, the Commission considers production as constituting total output regardless of market. Thus, the Commission did not distinguish between production for the domestic market and production for export sales.

From 1996 to 2001, volume of production of ceramic tiles by the applicant companies was relatively constant in spite of the increase in installed capacities which began in 1997 and the robust growth in demand (Table 11). In 1999, when imports had not surged, the industry reduced production levels to dispose of growing inventory after the onset of the financial crisis in 1997. Subsequently, during the period of import surge, production returned to the 9M sq. m. level, albeit lower than the levels reached in 1997 and 1998. The production trend clearly shows that despite the growth in the market during the period of import surge, production lagged behind indicating that imports fully captured the increased demand.

Table 11. Production, Sales and Ending Inventory of Applicant Companies: 1996 – 2001

Year	Production Volume ('000 sq. m.)		Sales Volume ('000 sq. m.)				Ending Inventory ('000 sq. m.)	
	Total	% Change	Domestic	Exports	Total	% Change	Total	% Change
1996	9,134	---	8786	176	8,962	---	1,342	
1997	9,969	9	9122	63	9,185	2	2,126	58
1998	9,908	(1)	9619	48	9,667	5	2,367	11
1999	7,992	(19)	9145	126	9,271	(4)	1,088	(54)
2000	9,423	18	8996	321	9,317	Nil	1,194	10
2001	9,298	(1)	8937	89	9,026	(3)	1,466	23

Source: Mariwasa and Lepanto

In the evaluation of industry sales, the Commission considers both domestic sales and exports. Mariwasa and Lepanto engaged in exports during the POI. However, export sales were minimal compared to total sales volume, accounting for an average of 1.5% of total sales over the period.

Similar to production, the volume of sales of ceramic tiles was relatively constant from 1996 through 2001, except in 1999 when sales declined by 4% compared with the previous year's level. Sales did not expand proportionately with the growth in demand during the period of import surge.

Inventory piled up during the first half of the POI due to the Asian crisis. In 1999, the applicant-companies reduced production levels to dispose of growing inventory. When production returned to normal levels in 2000 and 2001, inventory rose by 10% then 23%, due to flat sales. These inventory levels were manageable, however, and are generally lower than the inventory levels reached during the first half of the POI. This is indicative of the companies' ability to effectively control inventory.

Despite the significant growth in domestic demand for ceramic tiles during the period of import surge, production and sales of the local industry remained relatively constant. In absolute terms, there was no significant adverse trend in the production and sales of the domestic industry. Relative to demand, however, industry production and sales considerably lagged behind as to indicate serious impairment.

The increasing inventory levels during the period of import surge do not constitute serious impairment of the domestic industry's overall condition since these were at manageable levels and were well within the levels reached during the POI.

8.2.3 Employment

Prior to the import surge in 2000, employees directly connected to the manufacture of ceramic tiles increased by 44%, from 1,189 in 1996 to 1,712 in 1997. This was due to the expansion program of Mariwasa which raised the number of its kilns to 15.

Table 12. Employment of Applicant Companies: 1996 – 2001

Year	Total Employees	% Change
1996	1,189	---
1997	1,712	44
1998	1,287	(25)
1999	1,217	(5)
2000	833	(32)
2001	697	(16)

Source: Mariwasa and Lepanto

Employment declined by 25% the following year, however. This was the year when Lepanto installed automated machines and Mariwasa shut down one (1) kiln.

The declining trend in employment continued through 2001. In 2000, when imports started to surge, employment contracted by 32% as another kiln was mothballed. A further decrease of 16% was observed in 2001.

The decrease in employment during the period of import surge is significant as to constitute serious impairment.

8.2.4 Capacity Utilization

Table 13. Annual Rated Capacity, Actual Production and Capacity Utilization of Applicant Companies: 1996-2001

Yearend	Rated Capacity ('000 sq. m.)		Ceramic Tile Production ('000 sq. m.)	Capacity Utilization (%)	
	All Kilns	Operating Kilns*		All Kilns	Operating Kilns
1996	11,793	11,793	9,134	77	77
1997	18,414	18,414	9,969	54	54
1998	24,880	18,381	9,908	40	54
1999	26,561	19,305	7,992	30	41
2000	28,172	18,054	9,423	33	52
2001	28,496	17,702	9,298	33	53

Source: Mariwasa and Lepanto

Note: * Operating kilns exclude kilns not commissioned by Lepanto.

Prior to the POI, the industry projected in 1994 that with the economy growing at 6% to 7%, the construction industry would proportionately grow. Mariwasa projected that per capita tile consumption would grow from 0.11 sq. m. in 1995 to 0.34 sq. m. in 2001⁴. With capacity utilization already at around 80% at that time, the domestic industry embarked on a modernization and expansion program in anticipation of increasing demand.

From 13 operating kilns in 1996 (Table 3), with an annual rated capacity of 11.793M sq. m., the installation of 10 new kilns increased capacity to 28.496M sq. m. in 2001 in line with the industry's expansion program.

With the onset of the financial crisis in 1997, there was a slowdown in the economy and a general slump in construction activity. While the ceramic tile market did not grow at the expected rate, demand continued to increase beginning 1999 with the shifting preference of consumers to ceramic tiles from the traditional surfacing materials like wood, marble and vinyl.

As demand increased in 1999 it was also at this time when cheap imports began flooding the market. The domestic industry's difficulty to compete with cheap imports coupled with the decision to reduce its high inventory in 1998 when demand contracted forced them to reduce production. As a result, capacity utilization dropped from 54% in 1998 to 41% in 1999.

When imports surged in 2000, capacity utilization increased to 52% and was maintained at 53% in 2001. The increase in utilization would have been significant if it resulted from an increase in production. But this increase of utilization was a result of the reduction of available capacity (mothballing of kilns) from 19.305M sq. m. in 1999 to 18.054M sq. m. in 2000 and 17.702M sq. m. in 2001. In absolute terms, there was no improvement in production volume as it was maintained at a level below 10M sq. m. just to keep the industry operating with minimal losses. Comparing the production level between 2000 and 2001 revealed that production was even decreasing. The 1% gain in utilization was a result of the shutdown of Mariwasa's plant in Pasig.

Capacity utilization could have grown with the increase in demand. However, with imports fully capturing the growth of the market, this expectation was not realized.

The surge of imports contributed to the underutilization of capacity resulting in serious impairment of the industry's overall condition.

⁴ Mariwasa's Feasibility Study on Expansion, 1994

8.2.5 Productivity

Labor productivity is derived by dividing annual production volume of ceramic tiles by the number of employees directly involved in production. This is the same measure used by the applicant companies to evaluate productivity.

From 1996 to 1999, prior to the surge in imports, labor productivity showed an erratic trend. The labor productivity ratio ranged from 1:5823 to 1:7699.

Table 14. Productivity of Applicant Companies: 1996 – 2001

Year	Production ('000 sq. m.)	No. of Employees	Labor Productivity	% Change
1996	9,134	1,189	7,682	
1997	9,969	1,712	5,823	(24.20)
1998	9,908	1,287	7,699	32.22
1999	7,992	1,217	6,567	(14.70)
2000	9,423	833	11,312	72.26
2001	9,298	697	13,340	17.92

Source: Mariwasa and Lepanto

In 2000, when imports started to surge, labor productivity went up. This notable improvement in productivity was due to the larger decrease in the number of employees relative to the increase in production volume. In 2001, productivity improved further as production remained relatively unchanged while employee numbers continued to fall.

While labor productivity improved significantly during the period of import surge, this was due to sizeable reductions in employment, rather than to increases in output coupled with stable employment levels. This supports the previous conclusion of serious impairment in industry employment.

8.2.6 Profitability

The financial performance of the applicant companies is presented below:

Table 15. Statements of Income of Applicant Companies: 1996 - 2001

Particulars (P '000)	1996	1997	1998	1999	2000	2001
Sales	1,859,672	2,064,646	2,039,658	1,910,425	1,844,074	1,586,967
Less: Cost of Sales		1,409,049	1,390,572	1,496,985	1,705,550	1,594,717
Gross Profit		655,597	649,086	413,440	138,524	(7,750)
Less: Operating Expenses		313,928	337,509	431,386	490,656	432,675
Income (Loss) from Operations	290,522	341,669	311,577	(17,946)	(352,132)	(440,425)
Add: Other Income (Expenses)	(141,492)	(176,311)	(457,061)	(446,087)	(651,505)	(826,232)
Net Income (Loss) Before Income Tax	149,030	165,358	(145,484)	(464,033)	(1,003,637)	(1,266,657)
Less: Provision for income tax	46,068	50,222	20,458	62,036	69,389	
Net Income/Loss	102,962	115,136	(165,942)	(526,069)	(1,073,026)	(1,266,657)

Source: Mariwasa and Lepanto

Combined audited financial statements of the applicants revealed that sales revenue increased by 11% in 1997, from P1.86B to P2.06B. Revenues declined in the succeeding years, however.

In 2000 and 2001, when imports surged, production and sales volume were relatively constant. However, sales revenue fell by 3% and 14%, respectively, as prices continued to fall. In the presence of cheaper imports, the applicants could not increase prices as they would lose market share and incur more losses. Import parity pricing was adopted instead, to retain price competitiveness against imports. As a result, sales revenues declined due to falling selling prices. (Table 17 and *Annex H*)

Cost of sales increased by 14% in 2000 and led to a 66% decline in gross profits, from P413M to P138M, mainly due to escalating cost of production. The following year, the smaller decline in cost of sales of 7%, relative to the decline in sales revenue by 14%, led to a negative gross profit.

The Commission, in its evaluation of profitability, puts more weight to income from operations as this financial measurement is a better indicator as to the state of the financial health of the industry and its ability to propel itself into a condition of profitability.

During the first half of the POI, the applicants generated income from operations ranging from P290M to P342M. In 1999, when imports started to rise, a loss of P18M was incurred. This put pressure on the applicant companies to resort to import parity pricing. As a result, the industry suffered a loss in operation.

In 2000, when imports started to surge, loss from operations increased significantly to P352M due to the continuous decline in sales revenue combined with rising cost of sales and operating expenses. While cost of sales and

operating expenses improved during the year, this was not sufficient to offset the faster decline in sales revenue leading to a bigger loss from operations of ₱440M in 2001.

The bottomline results of operation were unfavorable from 1998 to 2001. Net deficits escalated from ₱166M in 1998 and ₱526M in 1999, prior to the surge in imports, and peaked at ₱1.27B in 2001, after the import surge began.

Interest expenses increased steadily from 1996 to 2000. Escalating interest expense was due to interest rates prevailing at the market, the high cost of money and the loan restructuring agreements entered into with certain banks.

The negative bottomline results of operations were attributable to the following factors: huge interest expense, foreign exchange loss and other expenses (equity in net losses of affiliates, deferred charges, decline in the value of inventories and cost of plant shutdown).

Due to the continuing peso depreciation (*Annex I*), foreign currency losses amounted to ₱3.679M, ₱221M and ₱259M in 1999, 200 and 2001, respectively. These losses led to a bigger net loss, thus, contributory to the worsening financial condition of the applicant companies.

8.2.6.1 Return on Sales

Table 16: Return on Sales of Applicant Companies: 1996 – 2001

Year	Income from Operations (P'000)	Sales Revenue (P'000)	Return on Sales (%)
1996	290,522	1,859,672	15.62
1997	341,669	2,064,646	16.55
1998	311,577	2,039,658	15.28
1999	(17,946)	1,910,425	(0.94)
2000	(352,132)	1,844,074	(19.10)
2001	(440,425)	1,586,967	(27.75)

Source: Mariwasa and Lepanto

Return on sales was derived by dividing income from operation by the sales revenue, and measures the percentage of the operating income out of the sales revenue. To evaluate industry sales performance, income from operations was adopted in favor of net income so as to exclude interest expenses, foreign exchange losses and other expenses (e.g., equity in net losses of an affiliate, deferred charges) which do not form part of the operating costs.

Operating incomes of ₱290M, ₱342M and ₱312M in 1996, 1997 and 1998, respectively, resulted in return on sales of 15.62%, 16.55% and 15.28%, in that order.

Due to a deficit from operations of ₱18M in 1999, when imports had not yet surged, a negative return on sales of 0.94% was registered. Negative returns significantly grew during the period of import surge, however, as increasing losses from operations were incurred.

8.2.6.2 Price Trends

Table 17. Weighted Average Selling Price (Peso/Kg)

Year (a)	Importer*						Domestic Producers (h)
	Indonesia (b)	Spain (c)	Taiwan (d)	China (e)	Italy (f)	Wtd.Ave. (g)	
1996	-	20.88	11.09	9.79	36.11	20.48	16.13
1997	24.92	22.22	13.54	11.96	29.02	20.01	15.44
1998	11.23	25.74	13.56	11.74	60.47	31.06	14.66
1999	12.65	20.44	11.36	12.68	36.84	17.73	13.64
2000	11.05	17.45	8.80	10.08	33.32	13.90	13.10
2001	10.32	15.04	10.39	8.25	31.79	11.67	11.38

* - Wtd Ave. landed cost(net of VAT) plus other incidental exp(net of VAT), Selling, General & Administrative Expenses (SG&A) & profit

(g) - Wtd. Ave. selling price from all sources

(h) - Wtd. Ave. (ex-plant) selling price (net of VAT) based on actual sales

Source: * - IED, NSO-Foreign Trade Statistics

(a) to (g) – refer to Annexes J to O

(h) – Lepanto and Mariwasa

Table 17 shows that the average annual prices of local ceramic tiles steadily decreased during the POI. While Spain and Italy's prices were above local prices, prices of Taiwan and China were consistently below the domestic price during the investigation period. Beginning 1998, Indonesia's prices were lower than the local price. It is evident that cheap prices from Indonesia, China and Taiwan greatly influenced the price of domestic companies.

8.3 Conclusion

The Commission, in accordance with R.A. 8800, finds that the industry has suffered and is suffering a significant impairment in its overall market position, production and sales, capacity utilization, employment and profitability. The improvement in labor productivity is indicative of serious impairment in industry employment.

9 CAUSATION

Rule 12.5 of the IRRs of R.A. 8800 states that the Commission shall demonstrate *“on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry. Any known factors, other than the increased importation of the products under consideration, which at the same time injure the domestic industry, shall also be examined and the injuries caused by these factors must not be attributed to the increased importation of the product under consideration”*.

9.1 Market Share

Prior to the surge in imports, the industry dominated the market with an average market share of 79%. During the period of surge, this average share fell to 63% in 2000 and further declined to 57% in 2001. The decline in the market share of the domestic industry and the erosion of its competitive position are directly attributable to the import surge which commenced in 2000.

9.2 Production and Sales

Despite the significant growth in domestic demand for ceramic tiles during the period of import surge, production and sales of the local industry remained relatively constant. In absolute terms, there was no significant adverse trend in the production and sales of the domestic industry. Relative to demand, however, industry production and sales did not grow indicating the inability of the domestic industry to share in the growth in consumption. This impairment is attributed to the surge in imports which began in 2000.

9.3 Employment

In 2000, when imports started to surge, employment contracted by 32% and further decreased in 2001 which is significant as to constitute serious impairment. The decrease in employment was caused by the non-commissioning of the two (2) new kilns as production and sales volume remained flat due to the surge in cheap imports.

9.4 Productivity

Although labor productivity improved significantly during the period of import surge, this was due to sizeable reductions in employment, rather than to increases in output coupled with stable employment levels. This supports the previous conclusion of serious impairment in industry employment.

9.5 Capacity Utilization

During the period of import surge, capacity utilization increased to 52% and 53%. The increase in utilization would have been positive if it resulted from an increase in production rather than from a decrease in rated capacity.

The domestic industry had not benefited from an increasing demand since this was taken by imports. Capacity utilization could have grown with the increase in demand. However, with imports fully capturing the growth of the market, the new capacity did not add to the supply of tiles in the market.

The surge of imports commencing in 2000 contributed to the underutilization of capacity resulting in serious impairment of the industry's overall condition in 2000.

9.6 Profitability

The surge of cheap imports put pressure on the applicant companies to adopt import parity pricing and sell below cost to produce and sell. This led to a considerable increase in operating loss from ₱18M in 1999, when imports had not surged, to ₱352M and ₱440M during the period of import surge.

9.7 Other Factors

9.7.1 Price Effects

When cheap imports started to rise in 1999, the industry was forced to adopt import parity pricing in an attempt to defend its sales volume. Price depression and price suppression worsened when low-priced imports began to surge in 2000. Local companies were forced to sell at a price below cost in an unsuccessful attempt to maintain market share (Table 18 and *Annex H*). Thus, surge of cheap imports caused depression and suppression on local prices causing significant impairment in the local companies' profitability as manifested by huge operating losses in 2000 and 2001.

9.7.2 Interest Expense / Foreign Currency Losses

The high interest expense and foreign currency losses, while contributory to the overall impairment in profitability of the domestic industry, were not, however, related to import surge.

9.8 CONCLUSION

While there are other factors which contributed to the overall impairment in the position of the domestic industry, the Commission in accordance with R.A. 8800 finds that cheap imports in increased quantities were the dominant cause of serious injury to the domestic ceramic tile industry.

10 CONCLUSION

The Commission concludes that, in accordance with R.A. 8800 and the WTO Agreement:

1. The circumstances provided in Article XIX of GATT 1994 need not be demonstrated since the product under consideration (ceramic tiles) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.
2. The collective output of the two (2) applicant companies constitutes a major proportion of the total domestic production of ceramic tiles.
3. Locally produced ceramic tile is deemed “like product” to imported ceramic tile.
4. Ceramic tiles are being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, starting in 2000. The increase in volume of imports is recent, sharp and significant as to cause serious injury to the domestic industry.
5. The industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; inability to increase production and sales volume despite the increase in demand; decline in employment; underutilization of capacity; and huge losses in operations.
6. While there are other factors which contributed to the overall impairment in the position of the domestic industry, the Commission considers that cheap imports in increased quantities were the dominant cause of serious injury to the domestic ceramic tile industry.

11 RECOMMENDATION

The existence of a causal link between the increased imports of the product under consideration and serious injury to the domestic industry having been established, the Commission recommends that, pursuant to Rules 13 and 15 of the IRRs to R.A. 8800, a definitive general safeguard measure be imposed on all imports of subject articles. The measure shall be effective for four (4) years starting from the date the provisional measure was in effect.

Should the recommendation be adopted:

- The notification and consultation requirements of Article 12 of the WTO Safeguard Agreement and Rule 17 of the IRRs to R.A. 8800 shall be complied with.
- The definitive safeguard measure shall not be applied to imports originating from the following developing countries: Brazil, India, Singapore, South Africa, South Korea, Sri Lanka, Thailand and Vietnam (*de minimis* rule).
- Imports originating from ASEAN Member States shall be governed by the provisions of Articles 6 and 8 of the Agreement on the CEPT Scheme.
- New exporters not covered by the *de minimis* rule shall automatically be imposed the specific duty.

12 DEFINITIVE MEASURE

Rule 13.1.c of the IRRs to R.A. 8800 provides that *“the general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports.”*

Section 13 of R.A. 8800 provides that *“upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure, in the form of:*

- (a) An increase in, or imposition of, any duty on the imported product;*
- (b) A decrease in or the imposition of a tariff-rate quota (MAV) on the product;*
- (c) A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;*
- (d) One or more appropriate adjustment measures, including the provision of trade adjustment assistance;*
- (e) Any combination of actions described in subparagraphs (a) to (d).”*

Section 15 (3) of R.A. 8800 provides further that *“an action described in Section 13(a), (b), or (c) that has an effective period of more than one (1) year shall be phased down at regular intervals within the period in which the action is in effect”.*

12.1 Recommended Definitive Safeguard Measure

12.1.1 Tariff-Rate Quota

The Commission recommends the use of a tariff-rate quota as the form of definitive safeguard measure whereby in-quota importations will be levied the regular tariff duty. In determining the representative period, the Commission adopted the pre-surge period from 1997-1999. The volume of imports during these three (3) years was normal and therefore should not be subject to the safeguard measure.

The average annual importation from each exporting country for the period 1997-1999 was used as the in-quota volume that will not be imposed additional duty during the first year that the safeguard measure is in place. With the average annual growth rate in domestic consumption estimated at 12% during the POI, allocation of in-quota volume for the succeeding years is proportionately increased by such amount as presented in Table 18.

Table 18. Quota Allocation

	Import Volume (square meters)			In-Quota Allocation per Country of Origin (square meters)			
	1997	1998	1999	2002	2003	2004	2005
TOTAL	3,590,602	2,530,863	4,288,470				
<i>COUNTRY</i>							
AUSTRALIA	123	2,381	5,158	2,554	2,860	3,204	3,588
AUSTRIA	0	2,142	0	714	800	896	1,003
BELGIUM	0	0	4,829	1,610	1,803	2,019	2,262
BRUNEI DARUSSALAM	8,378	608	0	2,995	3,355	3,758	4,208
CANADA	0	2,410	102	837	938	1,050	1,176
CHINA	326,192	251,369	593,949	390,503	437,363	489,847	548,629
GERMANY	802	617	34,535	11,985	13,423	15,034	16,838
HONGKONG	33,858	19,167	19,370	24,132	27,028	30,271	33,903
INDONESIA	9,249	199,622	883,559	364,143	407,840	456,781	511,595
ITALY	531,629	183,429	257,237	324,099	362,990	406,549	455,335
JAPAN	715	2,094	4,084	2,297	2,573	2,882	3,228
LUXEMBOURG	0	3,839	0	1,280	1,433	1,605	1,798
MALAYSIA	121,265	135,539	397,691	218,165	244,345	273,666	306,506
PORTUGAL	23,812	7,413	13,951	15,059	16,866	18,889	21,156
SAUDI ARABIA	5,146	2,619	0	2,588	2,899	3,247	3,636
SPAIN	1,326,518	728,995	766,369	940,627	1,053,503	1,179,923	1,321,514
TAIWAN	820,106	654,192	790,088	754,795	845,371	946,815	1,060,433
U.K.	1,101	8,462	18,397	9,320	10,438	11,691	13,094
UNITED ARAB EMIRATES	28,770	172,060	401,947	200,926	225,037	252,041	282,286
UNITED STATES OF AMERICA (USA)	898	15,012	8,280	8,063	9,031	10,115	11,328
VIRGIN ISLANDS (BRITISH)	0	986	0	329	368	412	462
VIRGIN ISLANDS (U.S.)	0	2,182	0	727	815	912	1,022

12.1.2 Specific Duty on Out-Quota Imports

For imports exceeding the in-quota allocations, an additional specific duty of ₱ 2.29 shall be imposed. The specific duty was computed by comparing the weighted average cost to produce and sell (COPS) of the two (2) applicant companies in 2001 *vis-à-vis* the weighted average ex-warehouse selling price of the imported tiles for the same year.

A comparison between ex-plant selling price of the applicants and ex-warehouse selling price of imports was not used since the local manufacturers are already selling at prices below costs which is not in the normal course of trade. In lieu of this, the Commission compared the average COPS *vis-à-vis* imported selling price to enable the industry to operate at competitive level. This will also prevent them from being complacent and make them more efficient.

12.1.3 Equivalent *Ad Valorem* Duty of the Definitive Measure

Although the ₱2.29 per net kg is applied on all imports, regardless of source, its equivalent in *ad valorem* rate as shown in Table 19 varies depending on the value of each shipment. Cheaper imported tiles will have a higher *ad valorem* equivalent than the higher-priced tiles. The impact on the landed cost of the definitive measure will be more significant on cheaper tiles. Thus, the specific duty will not unduly penalize the high-priced exports of ceramic tiles into the Philippines.

Table 19. Equivalent *Ad Valorem* Duty of Definitive Measure Imposed on Out-quota Imports from Major Suppliers

<u>Country</u>	CIF/Dutiable Value Per Country* (₱/kg)	Definitive Duty on Out-Quota Volume	
		Specific duty (₱/kg)	<i>Ad valorem</i> Equivalent (%)
China	5.71	2.29	40
Taiwan	7.22	2.29	32
Indonesia	7.46	2.29	31
Hongkong	8.04	2.29	28
Spain	10.48	2.29	22
Malaysia	11.77	2.29	19
Italy	22.75	2.29	10

*Annexes O-1 to O-30

12.2 Review of Definitive Measure

Rule 15.6 of the IRRs to R.A. 8800 provides that: *“The decision imposing general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity. The industry benefiting from the application of a general safeguard measure shall be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefiting industry fails to shows any improvement, as may be determined by the Secretary.”*

Rule 16.1 of the same IRRs to R.A. 8800 provides that: *“So long as any action taken under Rule 13 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.”*

Pursuant to Rules 15.6 and 16.1 of the IRRs to R.A. 8800, the Commission shall review the application of the definitive safeguard measure regularly.

13 EFFECTS OF THE AFFIRMATIVE RECOMMENDATION

Section 14 of R.A. 8800 provides that: *“The report (of the Commission) shall also include a description of the short and long-term effects of the affirmative or negative recommendation, as the case may be, on the applicant, the domestic industries, the consumers, the workers, and the communities where production facilities of such industry are located.”*

The likely impact of the Commission’s affirmative recommendation is discussed below:

13.1 On Competition

- The tariff rate quota will not dampen competition since significant volumes of ceramic tiles can still come in without additional duty.
- Consumer welfare is not prejudiced since users retain the option to choose between local and imported tiles.
- As the tariff rate quota is only temporary and will progressively be liberalized, competition will return to its normal level.

13.2 On the Domestic Industry

- Imports will be restored to their pre-surge level and the import surge will be arrested;
- Time will be provided to the industry to positively adjust to import competition by putting in place efficiency measures that will allow it to attain global competitiveness;
- Increase in output will reduce the cost of production;
- Reasonable margins will be generated reducing operating losses; and
- Lost market share will be recovered enabling the industry to take part in the growth of the market.

13.3 On User Industries and Consumer Welfare

- Given the competition between and among domestic producers of ceramic tiles, the market is a buyers’ market. Any unreasonable price increases are thus unlikely.

- With the continued existence of a viable domestic industry, consumers are assured of on-time delivery of volume orders and replacements to take care of breakages and defects.
- Since ceramic tiles account for a small proportion of the total cost of commercial and household construction, construction activity will not be adversely affected.

13.4 On Employment

- The expected increase in output and sales would generate additional employment not only in manufacturing activity but also the related sales and distribution services.

13.5 On Regional Development

- Ceramic tile production facilities are all located in towns near Metro Manila. The imposition of the definitive safeguard measure will ensure continuous operation of the ceramic tile manufacturers. This will bring continuing community development to areas where these manufacturers are located. The increase in activity in the industry will spur economic activity within the community.

The Commission, after submitting the report to the Secretary of Trade and Industry, shall make it available to the public except for confidential information and publish a summary in two (2) newspapers of general circulation.

26 March 2002

EDGARDO B. ABON
Chairman

REMEDIOS G. NAZARETH
Commissioner

FERDINAND D. TOLENTINO
Commissioner