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# **1 TERMS OF REFERENCE**

## **1.1 The Application for General Safeguard Measure**

On 22 May 2001, the Department of Trade and Industry (DTI) accepted a properly documented application from the Philippine Cement Manufacturers Corporation (PHILCEMCOR) alleging that cement is being imported into the Philippines in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry within the meaning of Republic Act (R.A.) 8800, otherwise known as the "Safeguard Measures Act." The application sought the imposition of provisional and definitive general safeguard measures on imports of cement.

The imported product covered by the PHILCEMCOR application is gray Portland cement of all types, including blended Portland cement that contains pozzolan, slag or other additives. The application excluded white Portland cement, aluminous cement, and masonry cement.

The application was filed by PHILCEMCOR on behalf of twelve (12) of its member-companies, as follows: Alsons Cement Corporation; Apo Cement Corporation; Continental Operating Corporation; Fortune Cement Corporation; FR Cement Corporation; Iligan Cement Corporation; Lloyds Richfield Industrial Corporation; Mindanao Portland Cement Corporation; Republic Cement Corporation; Rizal Cement Company, Inc.; Solid Cement Corporation; and Union Cement Corporation. The other cement producers (i.e., Limay Grinding Mill Corporation, Northern Cement Corporation, and Pacific Cement Philippines, Inc.) that did not join the application nevertheless supported the imposition of safeguard measures.

## **1.2 The Preliminary Investigation**

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 27 June 2001 with the publication of notices of initiation in the *Philippine Star* and the *Manila Standard*. The investigation determined that critical circumstances existed which justified the imposition of provisional measures to prevent further injury to the local industry that would be difficult to repair. Specifically, the preliminary determination found that increased imports of the product under consideration have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, production, and underutilization of production capacity.

Recognizing the concerns raised by various sectors about the impact on the interest of the general public of the imposition of a provisional safeguard measure on cement, a provisional measure equivalent to ₱20.60 per 40-kg. bag was deemed sufficient by DTI to remedy the serious injury arising from increased imports. In its Order dated 7 November 2001, DTI further provided that said provisional measure should be imposed on all importations of gray Portland cement for a period not exceeding 200 days from the date of issuance by the Bureau of Customs (BOC) of the implementing Customs Memorandum Order (CMO).

The BOC issued CMO No. 38-2001 on 10 December 2001 directing that all importations from all countries of gray Portland cement, including blended Portland cement that contains pozzolan, slag or other additives, whether in bulk or bags, classified under Harmonized System (HS) Codes 2523.29 00 and 2523.90 00, shall be imposed, in addition to taxes and duties and other charges, a cash bond amounting to ₱20.60 per 40-kg. bag or its equivalent in bulk.

On 19 November 2001, the Tariff Commission received the request from DTI for the conduct of a formal investigation to determine the merits of imposing a definitive general safeguard measure on imports of gray Portland cement, including blended Portland cement that contains pozzolan, slag or other additives, pursuant to Section 9 of R.A. 8800 and its Implementing Rules and Regulations (IRR).

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## **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 9 August 2000, i.e., fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Its IRR (Joint Administrative Order No. 03) took effect on 11 October 2000, i.e., seven (7) days after its 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-BIS, 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-BIS 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-BIS or DA initiates the preliminary determination.

Within two (2) calendar days after the decision to initiate the preliminary investigation is made, DTI-BIS 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-BIS 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.” A major feature of the Safeguards Agreement is its proscription of a range of negotiated trade-restricting arrangements, including voluntary export restraints.

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 (gray Portland cement) 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.

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### **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 IRR of R.A. 8800, the Commission made the following notifications during the course of its inquiry.

##### **3.1.1 Commencement of Formal Investigation**

The Commission published a notice of commencement of formal investigation in the *Manila Times* and the *Philippine Star* on 21 November 2001 (see Annexes A-1 and A-2). Individual notices were likewise sent to concerned parties, i.e., PHILCEMCO, importers, exporters, the governments of Indonesia, Japan, and Taiwan through their respective embassies, contractors/builders associations, industry associations, cement workers' groups, consumer groups, non-government organizations, and concerned government agencies, from 21 – 26 November 2001.

Aside from serving notice of the Commission's commencement of formal investigation, the individual notifications informed the recipients of a preliminary conference to be held on 27 November 2001 at the Commission.

##### **3.1.2 Schedule of Public Consultations**

On 21 December 2001, the Commission published a notice of public consultation in the *Manila Times* and the *Philippine Star* (see Annexes B-1 and B-2). Individual notices were likewise sent to the concerned parties from 27 – 28 December 2001.

### **3.2 Preliminary Conference**

A preliminary conference was held on 27 November 2001 at the Commission where matters necessary for the speedy disposition of the instant case were discussed (see *Annex C* for the list of participants).

Among the agreements reached during the preliminary conference were the following: the timetable of the investigation including the schedule of the public consultations; entry of appearance of interested parties including names of lead/alternate/collaborating counsels; confidentiality of documents; and timelines for submission of position papers, information on ownership structures and other supplemental data, and preliminary adjustment plans. These agreements were contained in an Order issued by the Commission on 29 November 2001 and provided the concerned parties.

### **3.3 Staff Report**

The Commission issued a staff report on 21 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 the Commission's preliminary data to determine the presence of serious injury.

Copies of the staff report were sent to the concerned parties on 21 – 22 January 2002.

### **3.4 Public Consultation**

Public consultations were held from 28 – 31 January 2002 at the Commission (see *Annex D* for the list of participants). The consultation allowed for maximum public participation in the inquiry by providing parties an opportunity to be heard and to present evidence, elaborate on their submissions, and respond to the presentations of the other parties

During the four-day consultations, presentations were made by counsels and/or representatives of PHILCEMCOR, Southern Cross Cement Corporation (SCCC), Cohaco Trading Corporation (Cohaco), Vicente T. Lao Construction, and the Philippine Constructors Association (PCA). Several parties were also provided the opportunity to articulate their views on the instant application for safeguard action.

### **3.5 Plant Visits/Verification of Data**

In order to verify submissions of parties, the Commission visited the manufacturing facilities/cement silos/corporate offices of the twelve (12) applicant companies and a number of cement importers. A materials testing company and a batching plant were also visited. (*Annex E* lists the visits made.)

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

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## **4 PARTICIPANTS' VIEWS**

### **4.1 Submissions Received**

The DTI endorsed the entire records of the safeguard measure application to the Commission. The Commission also received position papers, evidence and other manifestations from PHILCEMCOR and various parties (see *Annex F* for the list of submissions).

Forty-one (41) parties submitted position papers supporting PHILCEMCOR's application for safeguard action against imports of cement. These parties included cement plant suppliers, cement workers' groups, members of the House of Representatives, local government executives, community leaders, school principals, and civic organizations.

Opposing the application were fourteen (14) parties. This group was composed of cement importers, consumer groups, constructors' associations, an Indonesian cement producer/exporter, two (2) Japanese cement producers/exporters, and the governments of Indonesia and Japan.

The Commission received the adjustment plans of the applicant companies on 7 January 2002.

All non-confidential submissions, including non-confidential portions of confidential submissions, were made publicly available at the Commission.

### **4.2 The Domestic Industry's Case**

With respect to the criteria required for safeguard action, PHILCEMCOR made the following claims:

- The applicants accounted for 87% of domestic production during January – September 2000.
- Locally produced cement is comparable and substitutable, if not identical, to imported cement. Domestic and imported cement are physically interchangeable, commercially substitutable, are sold in the same channels of distribution, and have the same application. Both are produced on common equipment using the same production processes and thus, have the same commercial value. Imported cement is not qualitatively superior to local cement.

- Imports of cement have rapidly and substantially increased in volume both on an absolute basis and also relative to domestic production beginning July 1999.
- Increased import volumes displaced ton-for-ton locally produced cement resulting in decreased market share, declines in sales volumes and revenues, losses in income, reduction in production, employment, and productivity, and underutilization of production capacities. These increased import levels prevented the domestic industry from realizing the plant efficiencies that were expected from investments to modernize and expand capacity, put at risk the viability of the entire industry, and could impair the industry's ability to raise capital that will be needed to supply the country's long-term cement requirements.
- There are no other material causes of injury since 1998 other than increased imports.
- At the very least, import surge poses a threat of serious injury.

Parties supporting PHILCEMCOR's application for safeguard action cited the local cement industry's significant contributions to the Philippine economy in terms of employment and livelihood, revenues of the national government and local government units, continued viability of upstream/downstream/allied industries, community social development programs, and technology transfer. These parties also bewailed the comparatively meager economic contributions of importers.

In view of the foregoing, PHILCEMCOR requested the imposition of a provisional safeguard measure against imports of cement in the form of a 50% ad valorem tariff in addition to the existing tariff. PHILCEMCOR further requested the imposition of a definitive general safeguard measure in the form of a quota equal to 173,444 metric tons (MT) in the first year increasing by 5% annually in year 2 until year 4.

PHILCEMCOR based the quota on the average annual level of imports during the period July 1997 to June 1999. PHILCEMCOR submitted that clear justification exists for treating July 1997 to June 1999 as the representative period. First, imports during the preceding period July 1996 to June 1997 took place before the Asian financial crisis, when demand was robust and imports were needed to supplement domestic production. Second, import levels after June 1999 are not representative since these would include the import surge that intensified in July 1999.

In its amended position paper, PHILCEMCOR claimed that the appropriate definitive tariff may be ₱68.30 per 40-kg. bag of cement for a period of four (4) years.

## Adjustment Plan

Rule 4.1 of the IRR of R.A. 8800 defines adjustment plan as an *"action plan 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."*

On 7 January 2002, PHILCEMCOR, pursuant to the directive issued by the Commission in its Order dated 29 November 2001, submitted the respective adjustment plans of the following cement companies which joined the application for the imposition of a general safeguard measure:

1. Alsons Cement Corporation
2. Apo Cement Corporation and Solid Cement Corporation
3. Continental Operating Corporation
4. Fortune Cement Corporation, Iligan Cement Corporation, Mindanao Portland Cement Corporation and Republic Cement Corporation
5. FR Cement Corporation and Lloyds Richfield Industrial Corporation
6. Union Cement Corporation

The individual submissions contained the following common efficiency measures that the applicant companies will adopt to facilitate positive adjustment to import competition:

- Power and fuel cost reduction
- Increased management and operational efficiency
- Product research and development
- Improved and aggressive marketing techniques
- Current debt restructuring
- Increased domestic capacity utilization

### **4.3 The Opposing Case**

Oppositors to the application for safeguard action alleged that the criteria required for imposition of safeguard action had not been met in the instant case and safeguard action was therefore not warranted. Their major grounds for opposing the industry's claims were:

- Locally produced cement is not "like" to imported cement due to the latter's superior compressive strength, low temperature, low alkali content, and market segmentation.
- Importations were in response to the call of DTI in March – April 2000 encouraging cement imports in order to stabilize spiraling local prices. Increased imports were also due to the demand for higher-quality cement, the lower prices of imported cement, and the failure of some cement plants to deliver small cement orders on time.

- No serious injury resulted during the period of import surge that could significantly impair the position of the domestic cement industry. The decline in market share was not significant enough to cause serious injury; the industry remains the dominant market player; production increased; volume of domestic sales lost to cement imports was compensated by exports of the domestic industry; capacity utilization is reasonable; the industry's financial position and profitability were improving; and imports of cement have no bearing on employment in the industry.
- There is no threat of serious injury since imports are not going to continue to increase, for the reason that some players have already left the market or have natural volume limits.
- There being no serious injury and the threat thereof, causal linkage becomes moot and academic.

The oppositors contended that non-imposition of definitive general safeguard measures is further justified by the following:

- Tariff concessions granted by the Philippines under the GATT Uruguay Round consisted of tariff bindings on some 2,800 industrial tariff lines and tariff reductions on 66 tariff lines. Cement was not part of the aforementioned concessions and therefore the application for safeguard measure is not justifiable.
- Overwhelming domination of a captive domestic market without any checks and balances in place can lead to abuses in pricing, supply, quality or service. Imports serve as a very real check against possible abuses.
- Imports exert competitive pressure and will force the local cement industry to become truly efficient and globally competitive.
- Legitimate cement importers who have also made substantial investments should not be unfairly punished.
- Since changes in cement prices are largely invisible to ordinary consumers, not much grassroots opposition was generated against the safeguard application and the cement industry was free to equate its interests with the national interest. However, the cost of safeguard action and diminished availability of high quality cement would eventually be passed on to cement-using industries and finally, to consumers and the government.
- Exports of the industry show that it can compete globally, thus disqualifying them from any safeguard measure intended to protect a domestic industry and facilitate adjustment to global competition.

- Direct beneficiaries of non-imposition of safeguard measures number 1.5 million in the construction industry (as of December 2000).

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## **5 THE DOMESTIC INDUSTRY AND MARKET**

Cement is a high-grade bonding agent used as a construction raw material to make concrete. It is a homogenous commodity composed of limestone, silica, shale, and pyrite. These ingredients are processed into clinker and then ground and mixed with gypsum to make the final product. Compared with other bonding agents, such as hydraulic limes and Roman limes, cement has superior hardening properties but requires a higher burning temperature during manufacture.

### **5.1 The Domestic Product**

The local cement industry manufactures four types of cement: gray Portland cement Types I, II and V and pozzolan cement Type P.

Ordinary Portland cement may be regarded as the most important type of cement. It is a fine mineral powder that results from grinding, mixing, and calcifying limestone, clay and small quantities of other raw materials. By changing the mixing proportion of materials, different types of cement can be produced. Ordinary Portland cement's transformation to sound rock is the result of chemical reactions that occur upon mixing the cement with water.

Type I cement is used for general construction projects. Types II and V cement are manufactured only upon order, being special types of Portland cement. These cement types are used for concrete exposed to soil or water with moderate to high sulfate content that can damage concrete.

Pozzolan cement Type P is one of several types of blended cement. It results from grinding clinker, gypsum, and natural pozzolana, a raw material consisting of volcanic ash and rocks. This type of cement is cheaper than Portland because of its lower energy requirements during manufacture and greater yield per clinker ton. It is used in all kinds of construction, especially those where high strength at the early stage is not required. Over time, however, its compressive strength surpasses that of Portland. Pozzolan's optimum use is for structures that are constantly in contact with water or are built in humid or saltpeter ground.

### **5.2 Government Policies and Regulations**

When the cement industry suffered huge losses in the early 1970s due to chronic oversupply, the industry sought government regulations to avoid cutthroat competition.<sup>1</sup> The regulation of the cement industry began on 11 January 1973 when

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<sup>1</sup> SGV Consulting. *Barriers to Entry Study: Final Report*. Manila: Sycip, Gorres, Velayo and Co., 1992.

the government, which had direct participation in many of the cement plants in the form of guarantees, loans and equity, created the Philippine Cement Industry Authority (PCIA), an attached agency of DTI, under Presidential Decree (P.D.) 94.

PCIA's approval was required to set up a new plant or expand an existing one. It also had the authority to export clinker or cement, establish sales quotas and distribution areas, advise the price control body on uniform prices, and make bulk purchases of raw materials for the industry. The PCIA worked closely with the cement manufacturers, i.e., now known as PHILCEMCOR, in the regulation of the industry with the latter acting as the implementing arm of the former.

In 1987, Executive Order (E.O.) 133 abolished the PCIA and most of its functions were transferred to PHILCEMCOR. However, the price control function was maintained by the government and assigned to DTI.

Additional policy reforms were subsequently introduced such as the lifting of the requirement of prior import approval for cement and clinker (Central Bank Circular 1195, effective 31 March 1989), the termination of territorial arrangements of cement companies, and the lifting of the need for DTI approval for establishing or expanding cement plants (DTI Administrative Order 5 issued in 1990).<sup>2</sup> The cement industry was fully deregulated in 1991 when price controls were lifted (DTI Administrative Order 10).

Tariff reforms have also been instituted. The tariff rates on pozzolan cement have been declining in the past decade: from 20% in 1990 – 1994, 10% in 1995 – 1998, 7% in 1999, and 5% thereafter (see Table 1). For gray Portland cement and gray Portland cement clinkers, on the other hand, the rates of duty have varied in response to the domestic supply situation. Specifically, the reductions in the duties on these products in 1992 – 1993 and 1995 – 1997 were at the request of PHILCEMCOR since domestic production could not meet demand and imports were needed to cover the deficit. However, under E.O. 465, the tariffs on gray Portland cement and clinker were set at 5% beginning 2000.

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<sup>2</sup> National Economic and Development Authority (NEDA). *Situationer on the Philippine Cement Industry: June 2000.*

**Table 1. MFN Tariff Rates on Cement and Clinker: 1990 - 2004**

Year	E.O. No.	Effectivity Date	Gray Portland Cement Clinkers (HS 2523.10 90)	Gray Portland Cement (HS 2523.29 00)	Pozzolan Cement (HS 2523.90 00)
1990	364	Jan. 1990	10%	20%	20%
1991	364		10%	20%	20%
	470	Sept. 1991	10%	20%	20%
1992	2 & 5	Jul. 1992	Free	Free	20%
1993	94	Jul. 1993	3%	5%	20%
1994	470	Jul. 1994	10%	20%	20%
1995			10%	20%	20%
	227	Apr. 1995	3%	3%	10%
1996			3%	3%	10%
1997	388	Jan. 1997	3%	3%	10%
1998	465	Jan. 1998	7%	10%	10%
1999			5%	7%	7%
2000			5%	5%	5%
2001			5%	5%	5%
2002			5%	5%	5%
2003			5%	5%	5%
2004			5%	5%	5%

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

On 11 September 2001, the Bureau of Product Standards (BPS) of DTI issued Memorandum Circular No. 004 which requires that “all cement products covered under Philippine National Standards (PNS) 07:2000 and other related reference standards shall undergo compressive strength testing of three (3) days, seven (7) days, and twenty-eight (28) days.” The Memorandum Circular further provides that the issuance of Philippine Standard (PS) Certification Mark License and Import Commodity Clearance shall be made only after completion of the 28<sup>th</sup> day test. All cement samples, whether local or imported, shall be submitted to BPS-accredited testing laboratories for complete physical and chemical testing. The requirement is being imposed for safety reasons.

### 5.3 Market Participants

Supply of cement in the Philippines comes from local production and imports.

#### 5.3.1 Domestic Producers

There are currently seventeen (17)<sup>3</sup> cement manufacturers operating twenty (20) cement plants all over the country. There are twelve (12) plants in Luzon, three (3) plants in the Visayas, and five (5) plants in Mindanao. The

<sup>3</sup> Titan Cement Manufacturing Corporation (in Tanay, Rizal), which was mentioned in the DTI-BIS preliminary determination report, ceased to operate in 2000.

names of these cement manufacturers and the locations of their plants are shown in the table below.

**Table 2. Manufacturers of Cement**

<b>Name of Company</b>	<b>Location</b>
<b>1. Northern Luzon</b>	
Union Cement Corporation (formerly Bacnotan Cement Corporation)	Bacnotan, La Union
Northern Cement Corporation	Sison, Pangasinan
Limay Grinding Mill Corporation	Limay, Bataan
<b>2. Metro Manila</b>	
Republic Cement Corporation	Norzagaray, Bulacan
Continental Operating Corporation	Norzagaray, Bulacan
Rizal Cement Company, Inc.	Binangonan, Rizal
Solid Cement Corporation	Antipolo, Rizal
FR Cement Corporation	Teresa, Rizal
Union Cement Corporation (formerly Hi Cement Corporation)	Norzagaray, Bulacan
Union Cement Corporation (formerly Bacnotan Cement Corporation)	San Ildefonso, Bulacan
<b>3. Southern Luzon</b>	
Fortune Cement Corporation	Taysan, Batangas
Goodfound Cement Corporation	Camalig, Albay
<b>4. Visayas</b>	
Apo Cement Corporation	Naga, Cebu City
Lloyds-Richfield Industrial Corporation	Danao City, Cebu
Grand Cement Manufacturing Corporation	San Fernando, Cebu
<b>5. Northern Mindanao</b>	
Alsons Cement Corporation	Lugait, Misamis Oriental
Iligan Cement Corporation	Iligan City
Mindanao Portland Cement Corporation	Iligan City
Pacific Cement Company, Inc.	Surigao City
<b>6. Southern Mindanao</b>	
Union Cement Corporation (formerly Davao Union Cement Corporation)	Davao City

Source: PHILCEMCOR

With the exception of Goodfound Cement Corporation, all the manufacturers listed above are members of PHILCEMCOR, the industry association.

### **5.3.1.1 Ownership Structure**

Starting 1998, several global cement corporations have acquired considerable equity holdings in the local cement industry. The foreign investors in the twelve (12) applicant companies are: Financiere Lafarge S.A. (Lafarge) of France; Blue Circle Industries, PLC (Blue Circle) of the United Kingdom; Cemex S.A. de C.V. (Cemex) of Mexico; and Holcim

Ltd. (formerly Holderbank Financiere Glaris, Ltd. then Holderfin B.V.) of Switzerland.<sup>4</sup> Lafarge totally acquired Blue Circle on 11 July 2001.

Lafarge is currently considered the world's largest cement conglomerate (in terms of sales and capacity) after its consolidation/acquisition of rival Blue Circle in July 2001. Cemex is regarded as the largest international cement trader in the world, with a traded volume of more than 13 million metric tons in 1999. Prior to the acquisition of Blue Circle by Lafarge, Holcim was the global leader in cement production.

**Table 3. Selected Data on Global Cement Companies: 2000**

Global Cement Company	Sales in 2000 (million MT)		Capacity in 2000 (million MT)		Number of Countries In Which Company is Present		Number of Cement Plants (owned and jointly owned)	
	World	Asia	World	Asia	World	Asia	World	Asia
Lafarge	73.5	10.9	150.0	33.0**	75	12	102	5
Cemex	51.9	1.4	77.2	10.8	11	2	68	8
Holcim	82.0	11.7*	109.8	17.3	40	11	111	20

\* Covers Asia-Pacific Region

\*\* For 1999

Sources: [www.lafarge.com](http://www.lafarge.com); [www.cemex.com](http://www.cemex.com); [www.holcim.com](http://www.holcim.com); [www.petcoke.com/endusers.htm](http://www.petcoke.com/endusers.htm); *The Global Cement Report (4<sup>th</sup> edition)*; and *Cemex primer (1999)*

Lafarge has investments in seven (7) domestic cement companies while Cemex has interests in three (3) companies (see Table 4). Holcim invested in two companies.

<sup>4</sup> Two other global cement companies have interests in the Philippine cement industry: Heidelberger Zement (Germany), which invested in Limay Grinding Mill Corporation in 1998, and Taiheiyo Cement Corporation (Japan), which invested in Grand Cement Manufacturing Corporation in 2000.

**Table 4. Foreign Investments in Cement Industry**

<b>Name of Company</b>	<b>Date of Acquisition/Investment</b>
<b>LAFARGE Group</b>	
1. Republic Cement Corporation (Norzagaray, Bulacan)	Blue Circle: August 1998 Lafarge: July 2001
2. Continental Operating Corporation (Norzagaray, Bulacan)	October 1998
3. FR Cement Corporation (Teresa, Rizal)	November 1998
4. Fortune Cement Corporation (Taysan, Batangas)	Blue Circle: June 1998 Lafarge: July 2001
5. Lloyds-Richfield Industrial Corporation (Danao City, Cebu)	November 1998
6. Iligan Cement Corporation (Iligan City)	Blue Circle: July 1999 Lafarge: July 2001
7. Mindanao Portland Cement Corporation (Iligan City)	Blue Circle: July 1998 Lafarge: July 2001
<b>CEMEX Group</b>	
1. Solid Cement Corporation (Antipolo, Rizal)	November 1999
2. Rizal Cement Company, Inc. (Binangonan, Rizal)	Last quarter of 1997
3. Apo Cement Corporation (Naga, Cebu City)	January 1999
<b>HOLCIM Group</b>	
1. Union Cement Corporation	
Norzagaray, Bulacan Plant	17 July 1998
San Ildefonso, Bulacan Plant	17 July 1998
La Union Plant	17 July 1998
Davao Plant	17 July 1998
2. Alsons Cement Corporation (Lugait, Misamis Oriental)	January 1999 (increase of investment)

Sources: *Goldman Sachs Global Equity Research (21 June 2000)*;  
*Global Cement Report, 4<sup>th</sup> edition (December 2000)*; and  
*NEDA Situationer on the Philippine Cement Industry (June 2000)*.  
**See also Annexes G to K.**

*Annexes G to K* provide further information on the foreign investments listed above.

The global cement manufacturers are present in the three (3) main regional markets. There are four (4) Lafarge companies in Luzon, one (1) in the Visayas, and two (2) in Mindanao. Cemex has two (2) companies in Luzon and one (1) in the Visayas. Cement companies with

Holcim investments are found in Luzon (three plants) and in Mindanao (two plants).

### 5.3.1.2 Kiln Capacities

The domestic cement industry has forty-two (42) kilns with a total rated capacity of 21.544 million metric tons of clinker annually.<sup>5</sup>

The applicant companies currently have a total rated kiln capacity of 19.214 million metric tons annually. Majority of kiln capacity (61%) is in the Luzon area. The Lafarge and Holcim groups each account for approximately 38% of the applicants' total annual rated kiln capacity. Compared with the industry's total kiln capacity, the global cement companies control approximately 89%.

**Table 5. Annual Rated Kiln Capacities By Region: 2001\***

Group	Luzon	Visayas	Mindanao	TOTAL
<b>LAFARGE Group (7 plants)</b>				
1. All Kilns (17)	5,835	591	915	7,341
2. Operating Kilns (4)	2,880	---	465	3,345
<b>CEMEX Group (3 plants)</b>				
1. All Kilns (8)	2,235	2,400	---	4,635
2. Operating Kilns (3)	990	2,400	---	3,390
<b>HOLCIM Group (5 plants)</b>				
1. All Kilns (12)	3,714	---	3,524	7,238
2. Operating Kilns (5)	2,370	---	2,832	5,202
<b>TOTAL</b>				
1. All Kilns (37)	11,784	2,991	4,439	19,214
2. Operating Kilns (12)	6,240	2,400	3,297	11,937

\* thousand tons

Source of basic data: PHILCEMCOR

Four (4) of the applicant companies have suspended operations<sup>6</sup> and five (5) manufacturers are not fully operational, i.e., kilns have been mothballed. Minus the capacities of the four (4) applicant companies with suspended operations and the capacities of the mothballed kilns of the five (5) companies, total annual operating capacity of the twelve (12) applicants amounts to 11.937 million metric tons. This represents approximately 62% of total rated capacity.

<sup>5</sup> This excludes the kiln of Titan Cement Manufacturing Corporation with annual rated capacity of 378,000 metric tons of clinker.

<sup>6</sup> These are Continental Operating Corporation, Lloyds-Richfield Industrial Corporation, Mindanao Portland Cement Corporation and Rizal Cement Company.

Among the global companies, Holcim has the highest operating capacity (i.e., 5.202 million metric tons), accounting for nearly half of the total operating capacity of the twelve (12) applicants. Its capacity is also evenly distributed between the Luzon and Visayas-Mindanao markets.

In contrast, Lafarge's operating capacity is concentrated in the Luzon area while Cemex's capacity is biased towards the Visayas-Mindanao region.

#### Companies with Lafarge Investments

The total annual rated kiln capacity of the seven (7) Lafarge companies is 7.341 million metric tons, representing 38% of the total rated capacity of the applicant companies (see Table 5).

The operations of three companies, i.e., Continental Operating Corporation, Lloyds-Richfield Industrial Corporation and Mindanao Portland Cement Corporation, are currently suspended. Three (3) other companies have mothballed production lines. The total annual operating capacity of the four (4) Lafarge companies that continue to manufacture cement is 3.345 million metric tons. This is less than half (46%) of the total rated production capacity of the seven (7) Lafarge companies.

**Table 6. Annual Kiln Capacities of Lafarge Companies: 2001**

Name of Company	Kiln	Date Operated	Production Process	Date Mothballed	Operating Capacity
Republic Cement Corporation (Norzagaray, Bulacan)	1	1957		Dismantled	62.86% of plant capacity
	2	1959	Dry	Jan. 1998	
	3	1964	Dry	2000	
	4	1968	Dry	2000	
	5	1999	Dry	Operating	
Continental Operating Corporation (Norzagaray, Bulacan)	1	1973	Dry	1999	---
	2	1998	Dry	Nov. 2001	
FR Cement Corporation (Teresa, Rizal)	1	1963	Semi-Dry	1997	64.70% of plant capacity
	2	1963	Semi-Dry	1997	
	3	1964	Semi-Dry	1998	
	4	1997	Dry	Operating	
Fortune Cement Corporation (Taysan, Batangas)	1	1971	Dry	2000	71.43% of plant capacity
	2	1997	Dry	Operating	
Lloyds-Richfield Industrial Corporation (Danao City, Cebu)	1	1959	Semi-dry	Sept. 1997	---
	2	1965	Semi-dry	Nov. 1997	
	3	1970	Wet	Feb. 1998	
Iligan Cement Corporation (Iligan City)	1	1970	Dry	Operating	100% of plant capacity
Mindanao Portland Cement Corporation (Iligan City)	1	1961	Dry	1999	---

Source of basic data: PHILCEMCOR

Table 6 shows that only the newest kilns (all less than five years old) using the dry production process are being operated by Republic Cement Corporation, FR Cement Corporation and Fortune Cement Corporation. Moreover, these newer kilns have annual rated capacities of at least 900,000 tons. In contrast, the annual rated capacities of the mothballed kilns of the Luzon-based plants are far lower at 480,000 tons or less. While kiln 2 of Continental Operating Corporation has an annual rated capacity above 900,000 tons, it was earlier mothballed due to a design flaw. The kiln was fully commissioned last year, operated for a short period, but mothballed again.

The above companies are all located in Luzon. Lafarge's presence in the Visayas-Mindanao area is maintained through Iligan Cement Corporation, which has the newest kiln using the dry process

compared to Lloyds-Richfield Industrial Corporation and Mindanao Portland Cement Corporation.

Suspension of company operations and mothballing of production lines took place from 1997 through 2001. It is noted that Lloyds-Richfield Industrial Corporation was acquired in November 1998 when all its kilns had been mothballed while Mindanao Portland Cement Corporation was acquired in 1998 and its kiln mothballed a year later, practically shutting down the operations of the two (2) plants.

#### Companies with Cemex Investments

The three (3) Cemex companies have a total annual rated kiln capacity of 4.635 million metric tons of clinker (see Table 5). This accounts for 24% of the total rated capacity of the twelve (12) applicants.

The operation of Rizal Cement Company was suspended in 1998 while Solid Cement Corporation mothballed two (2) kilns in 1999. Thus, total operating capacity of the Cemex companies combined is 3.390 million metric tons annually, representing 73% of total rated capacity.

**Table 7. Annual Kiln Capacities of Cemex Companies: 2001**

Name of Company	Kiln	Date Operated	Production Process	Date Mothballed	Operating Capacity
Solid Cement Corporation (Antipolo, Rizal)	1	1966	Wet	Apr. 1999	53.22% of plant capacity
	2	1969	Wet	Apr. 1999	
	3	1993	Dry	Operating	
Rizal Cement Company, Inc. (Binangonan, Rizal)	1	1955	Wet	Sept. 1998	---
	2	1958	Wet	Sept. 1998	
	3	1966	Wet	Sept. 1998	
Apo Cement Corporation (Naga, Cebu City)	1*	1999	Dry	Operating**	100% of plant capacity
	2	1997	Dry	Operating	

\* rehabilitated

\*\* temporarily shutdown since July 2001

Source of basic data: PHILCEMCOR

Cemex's presence in the Luzon market is provided by Solid Cement Corporation which operates its newest kiln using the dry process. The annual rated capacity of the company's operating kiln is more than twice the combined annual rated capacities of the two (2) kilns that were mothballed.

The three (3) mothballed kilns of Rizal Cement Company are relatively old and still employ the wet process. Moreover, the total annual rated capacity of these kilns amounts to less than 400,000 metric

tons. This company was acquired by Cemex in 1997 and its kilns mothballed a year later.

In the Visayas-Mindanao region, Apo Cement Corporation operates both of its kilns which are relatively new and use the dry process.

#### Companies with Holcim Investments

Union Cement Corporation and Alsons Cement Corporation have a combined rated kiln capacity of 7.238 million metric tons of clinker (see Table 5). While Alsons Cement Corporation operates both its kilns, Union Cement Corporation mothballed seven (7) kilns from 1997 through 2000. The company currently operates only the newest kiln employing the dry process in three (3) of its plants. (The kiln in the San Ildefonso plant uses the semi-dry process and the rated capacity is small compared to the capacities of the operating kilns.) Total operating capacity of both companies thus amounts to 72% (5.202 million metric tons annually) of their combined total rated capacity.

**Table 8. Annual Kiln Capacities of Holcim Companies: 2001**

Name of Company	Kiln	Date Operated	Production Process	Date Mothballed	Operating Capacity
Union Cement Corporation					
Norzagaray, Bulacan Plant	1	1968	Dry	Aug. 1999	67.07% of plant capacity
	2	1997	Dry	Operating	
San Ildefonso, Bulacan Plant	1	1969	Semi-dry	Nov. 1998	---
La Union Plant	1	1957	Wet	Oct. 1997	70.59% of plant capacity
	2	1957	Wet	Aug. 1997	
	3	1957	Wet	Dec. 1997	
	4	1994	Dry	Operating	
Davao Plant	1	1966	Wet	Mar. 1998	60.28% of plant capacity
	2	1983	Dry	Nov. 2000	
	3	1996	Dry	Operating	
Alsons Cement Corporation (Lugait, Misamis Oriental)	1	1971	Dry	Operating	100% of plant capacity
	2	1999	Dry	Operating	

Source of basic data: PHILCEMCOR

Similar to the Lafarge and Cemex companies, the Holcim companies cater to the Luzon, Visayas and Mindanao markets.

Overall

From 1997 to 1999, the applicant companies mothballed a total of twenty (20) kilns. In 2000 and 2001, an additional five (5) kilns were mothballed. Thus, only twelve (12) kilns out of thirty-seven (37) are currently operating.

**Table 9. Mothballing of Kilns: 1997 - 2001**

<b>Group</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
<b>LAFARGE Group</b>					
1. Total Kilns	15	16	17	17	17
2. Kilns Mothballed	4	3	2	3	1
<b>CEMEX Group</b>					
1. Total Kilns	7	7	8	8	8
2. Kilns Mothballed	0	3	2	0	0
<b>HOLCIM Group</b>					
1. Total Kilns	11	11	12	12	12
2. Kilns Mothballed	3	2	1	1	0
<b>TOTAL APPLICANTS</b>					
1. Total Kilns	33	34	37	37	37
2. Kilns Mothballed	7	8	5	4	1

The Lafarge Group mothballed a total of thirteen (13) kilns of which nine (9) were mothballed from 1997 to 1999. The Cemex Group mothballed five (5) kilns in 1998 and 1999. The Holcim Group mothballed six (6) kilns from 1997 to 1999 and one (1) kiln in 2000.

The mothballing of twenty (20) kilns from 1997 through 1999 steadily reduced the total annual capacities of the applicants, from nearly 5% in end-1997 to more than 13% in end-1999. Operating capacity further declined by 2.34 million metric tons in 2000-2001, representing a 12% decline compared to total operating capacity of 19.214 million metric tons.

**Table 10. Annual Rated Capacities of Mothballed Kilns: 1997 - 2001\***

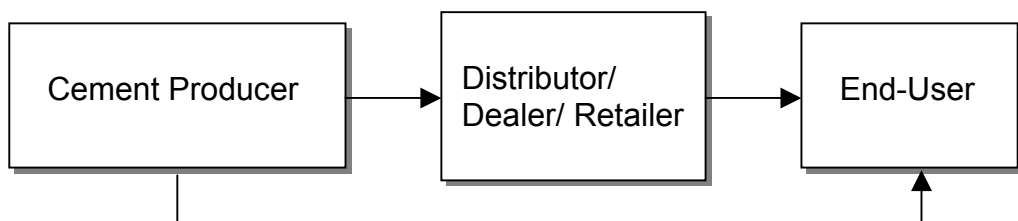
<b>Group</b>	<b>End-1997</b>	<b>End-1998</b>	<b>End-1999</b>	<b>End-2000</b>	<b>End-2001</b>
<b>LAFARGE Group</b>					
1. Total Kilns	5,361	6,351	7,341	7,341	7,341
2. Kilns Mothballed	435	823.5	930	817.5	990
3. % Decrease	8.11	12.97	12.67	11.13	13.49
<b>CEMEX Group</b>					
1. Total Kilns	3,885	3,885	4,635	4,635	4,635
2. Kilns Mothballed	0	375	870	0	0
3. % Decrease	0	9.6	18.77	0	0
<b>HOLCIM Group</b>					
1. Total Kilns	6,038	6,038	7,238	7,238	7,238
2. Kilns Mothballed	300	393	810	533	0
3. % Decrease	4.97	6.5	11.19	7.36	0
<b>TOTAL APPLICANTS</b>					
1. Total Kilns	15,284	16,274	19,214	19,214	19,214
2. Kilns Mothballed	735	1,591.5	2,610	1,350.5	990
3. % Decrease	4.81	9.78	13.58	7.03	5.15

\* thousand tons

### 5.3.1.3 Distribution Channels

The applicant companies sell directly to end-users such as constructors. Cement is also distributed through a marketing channel that could involve several middlemen:

**Figure 1. Distribution of Cement**



Marketing of cement produced by the Lafarge companies is centralized at the Lafarge-Blue Circle head offices in Metro Manila.

On the other hand, Cemex has set up sales offices in Cebu, Bacolod, Bicol, Laguna, Cavite, Iloilo and in Metro Manila to market its companies' output.

Holcim does not maintain a central office in the country. The companies with Holcim investments - Alsons Cement Corporation and Union Cement Corporation - are individually responsible for marketing their cement output.

### 5.3.2 Importers

Cement is imported from various countries. Based on data supplied by PHILCEMCOR and duly validated by the Commission, China was the primary source of cement from 1996 through 1998 (see Table 11). In the succeeding years, however, imports from China decreased considerably (see Table 12). In 2000, its share of total imports plunged to a negligible 0.34%. The following year, imports from China ceased.

**Table 11. Imports of Cement By Country of Origin: 1996 - 1998**

Country of Origin	1996		1997		1998	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
China	306,438	45.09	289,251	82.22	88,272	48.99
Mexico	209,889	30.88	0	0	0	0
Taiwan	51,800	7.62	10,000	2.84	0	0
Japan	6,000	0.88	32,567	9.26	81,263	45.10
Malaysia	22,513	3.31	0	0	0	0
Turkey	11,800	1.74	0	0	0	0
Indonesia	10,000	1.47	0	0	0	0
Korea	6,500	0.96	0	0	10,636	5.90
Hong Kong	54,432	8.01	19,961	5.67	0	0
Singapore	240	0.04	0	0	0	0
TOTAL	679,612	100.00	351,779	100.00	180,171	100.00

Source of basic data: PHILCEMCOR

**Table 12. Imports of Cement By Country of Origin: 1999 -2001**

Country of Origin	1999		2000		Jan. – Sept. 2001	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
Indonesia	0	0.00	369,437	23.40	944,715	50.64
Taiwan	247,580	52.18	901,590	57.10	662,200	35.49
Japan	184,850	38.96	302,600	19.16	258,400	13.85
China	33,400	7.04	5,400	0.34	0	0.00
Hong Kong	8,600	1.81	0	0.00	0	0.00
TOTAL	474,430	100.00	1,579,027	100.00	1,865,315	100.00

Source of basic data: PHILCEMCOR

In 1999, Taiwan and Japan emerged as the two (2) main source countries of imported cement. Taiwan supplied more than half of total imports during the year (from zero imports in 1998). Japan, a market participant from 1996, became a major player in 1999 when it accounted for 45% of total Philippine imports.

The following year, Taiwan's share of total imports rose further to 57%. Indonesia re-entered the market after a three-year hiatus (1997-1999) and captured a 23% share. Japan's share fell to 19% (from 39% in 1999).

For the first three quarters of 2001, Indonesia overtook Taiwan as the biggest supplier, accounting for approximately half of the total volume imported. Taiwan contributed 35% and Japan, 14%.

TCC Cement Corporation is the sole importer of cement from Taiwan (brand name: "TCC") and has a cement terminal at the Manila Harbour Centre. It imported its cement from Taiwan Cement Corporation. As of 1 August 2001, however, TCC Cement Corporation has stopped importing Taiwanese cement. The company now distributes local cement sourced from Apo Cement Corporation.

SCCC is the importer of cement from Japan (brand name: "Star"). It has a cement-handling terminal with a 15,000 metric ton capacity adjacent to the silo of TCC Cement Corporation at the Manila Harbour Centre. The company's cement terminal is equipped with both bulk-loading and bagging machines so that cement can be delivered to customers in either bulk or bags. However, the company's sales of cement are predominantly in bulk.

SCCC sources its cement from its Japanese parent companies, Taiheiyo Cement Corporation and Tokuyama Corporation.

Among the major importers of cement from Indonesia are:

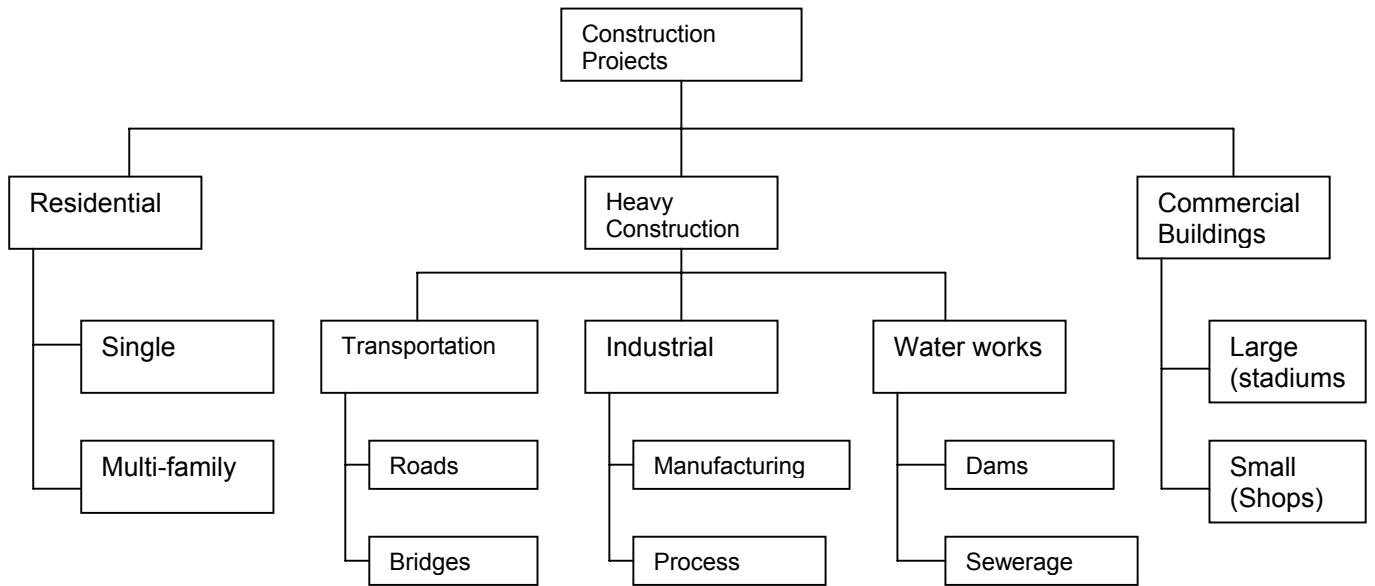
- Arizona Realty Corporation
- Batumbakal Trading & Development Corporation
- Cohaco Trading Corporation
- Davao Constructors Association Center, Inc.
- FZ Import Export Inc.
- GA Manufacturing Corporation
- HCL Construction & Development Corporation
- HLC Marketing Corporation
- Horizon Concrete Products
- Lucky Cement Philippines
- NGC Land Corporation
- V & C Rising Management & Development Corporation
- Vicente T. Lao Construction
- Westpoint Industrial Sales Company
- Samstone Infra-Construction Supply
- Shin Lian Hieng Inc.
- Stanphil Industries, Inc.

The sources of Indonesian cement (brand names: "Horse", "Tiga Roda", "Kujang", "Lion", "Bosowa", "Lucky" and "Indo Bull") include: PT Semen Tonasa, PT Semen Padang, PT Semen Bosowa Maros; and PT Boma Internusa.

### 5.3.3 Users

Illustrated below are the general types of construction projects for which cement is required<sup>7</sup>:

**Figure 2. General Types of Construction Projects Requiring Cement**



<sup>7</sup> Goldman Sachs Global Equity Research, 21 June 2000.

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## **6 DETERMINATION OF LIKE PRODUCT**

Rule 9.4(a) of the IRR of R.A. 8800 requires the Commission to determine “*if the domestic product is a like or directly competitive product to the imported product under consideration.*”

Section 4(h) of the same IRR 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.*” Section 4(e) defines “directly competitive products” as “*domestically-produced substitutable products.*”

### **6.1 Product Under Consideration**

The product under consideration, as identified in the application for safeguard measure, is gray Portland cement of all types, including blended Portland cement that contains pozzolan, slag or other additives. The application excluded white Portland cement, aluminous cement and masonry cement.

### **6.2 Characteristics**

Cement characteristics, properties and quality are gauged by the standard specifications prescribed in the PNS as approved by the BPS. The specifications are set by the Technical Committee on Cement and Lime composed of representatives from PHILCEMCOR, the Association of Structural Engineers of the Philippines, Inc., the United Architects of the Philippines, the Association of Concrete and Asphalt Producers of the Philippines, PCA, concerned government agencies, and materials testing institutions.

Specifications are prescribed in PNS 07:2000 for Portland cement and PNS 63:1987 for pozzolan cement. Such PNS standards follow the specifications set by the American Society for Testing and Materials (ASTM).

#### **6.2.1 Material Composition**

Cement is manufactured using indigenous minerals such as limestone, silica, shale and pyrite or magnetite. Gypsum, natural or chemical, is added during the grinding (finishing) stage to retard cement setting. Volcanic tuft (pozzolan) or fly ash is also added in the case of pozzolan cement.

## 6.2.2 Chemical Composition

Cement properties, such as setting time, strength and color, are determined by the amount of the compounds present in the clinker as a result of firing in the rotary kiln. These products include tetracalcium aluminoferrite ( $C_4AF$ ), tricalcium silicate ( $C_3S$ ), tricalcium aluminate ( $C_3A$ ) and dicalcium silicate ( $C_2S$ ).

Both imported and local gray Portland cement contain the above components as shown in tests conducted by accredited laboratories of the BPS. Imported and local cement also conform to the *standard chemical requirements* stipulated in PNS 07:2000.

Imported cement has average values of 1.8% for magnesium oxide, 1.55% for loss on ignition, 0.32% for insoluble residue, and 2.1% for sulfur trioxide. In the case of local cement, the average values are as follows: magnesium oxide - 1.3%, sulfur trioxide - 2.45%, loss on ignition - 1.85%, and for insoluble residue - 0.215%. The comparative chemical properties of local and imported cement are shown in Table 13.

**Table 13. Quality Test Results of Local and Imported Gray Portland Cement**

SPECIFICATIONS	PHILIPPINE NATIONAL STANDARD	ASTM C-150	LOCAL		IMPORTED	
			LOW	HIGH	LOW	HIGH
<b>PHYSICAL TEST</b>						
FINENESS						
Blaine, Specific Surface, min	280 m <sup>2</sup> /kg	280	316	409	321	415
Autoclave expansion, max	0.8%					
SETTING TIME, Vicat						
Initial Set, minutes, min.	45	45	68	240	138	195
Final Set, hours, max.	8	375	3.68	6.65	2.82	5.73
COMPRESSIVE STRENGTH						
3 days, Mpa, min.	12.4	12.0	15.2	26	19.4	40.9
7 days, Mpa, min.	19.3	19.0	22.85	35	25.3	34.5
28 days, Mpa, min.	27.6	-	35.5	47	29.9	62.8
<b>CHEMICAL ANALYSIS</b>						
COMPONENTS, %						
SiO <sub>2</sub> , min	-	-	19.9	22	20	21.7
Al <sub>2</sub> O <sub>3</sub> , max	-	-	5.3	7	4.4	7.8
Fe <sub>2</sub> O <sub>3</sub> , max	-	-	2.1	3.60	2.6	4.2
CaO	-	-	63	65.0	56.5	65
MgO, max	6	6	0.9	1.70	0.8	2.8
Loss on Ignition (LOI), max	3	3.0	1.2	2.50	0.9	2.2
Insoluble Residue (IR), max	0.75	0.75	0.06	0.37	0.09	0.54
Sulfur trioxide (SO <sub>3</sub> ):						
When C <sub>3</sub> A is 8% or less	3.0 max	3.0			1.9	2.4
When C <sub>3</sub> A > 8%	3.5 max	3.5	2	2.9	1.9	2.2
Alkalies and UD, %, max	0.6*	0.6*	0.5	1.6	0.7	1.6
COMPLEXES, %						
Tri-Calcium Silicate, (C <sub>3</sub> S)	-	-	42	64	3	66
Di-Calcium Silicate (C <sub>2</sub> S)	-	-	9	30	8	60
Tri-Calcium aluminate (C <sub>3</sub> A)	-	-	9	13	5	16
Tetra-Calcium Aluminoferrite (C <sub>4</sub> AF)	-	-	6	11	8	13

\* Maximum value for low-alkali cement. This is an optional chemical requirement and should be specified by the users when cement is to be used in concrete with aggregates that may be deleteriously reactive.

Sources: PNS 07:2000; ASTM C-150-98; Laboratory test results from Cement Central Laboratory, Philippine Geoanalytics, Inc. and Bonifacio-Stanger Materials Testing Corporation

Locally produced pozzolan cement also passes the standard chemical requirements set by the BPS in the PNS 63:1987. Sample quality test results show that local pozzolan cement has 2.9% magnesium oxide content, 3.5% loss on ignition and 2.4% sulfur trioxide content. The table below shows the

laboratory results conducted by Cement Central Laboratory on samples of local pozzolan cement.

**Table 14. Quality Test Results for Local Pozzolan Cement**

SPECIFICATIONS	Philippine National Standard	Local Pozzolan Cement
<b>PHYSICAL TEST</b>		
FINENESS		
Retained % on 325-M		85.9
(Blaine) Specific Surface, min	2800 cm <sup>2</sup> /g	4810
Autoclave expansion, or contraction, max	0.50%	0.01
SETTING TIME, Vicat		
Initial Set, minutes, min	45	150
Final Set, minutes, max	420	295
COMPRESSIVE STRENGTH		
3 days, Mpa	-	20.1
7 days, Mpa, min	10.3	28.5
28 days, Mpa, min	20.7, min	40.9
<b>CHEMICAL ANALYSIS</b>		
COMPONENTS, %		
SiO <sub>2</sub>	-	19.3
Al <sub>2</sub> O <sub>3</sub>	-	7.9
Fe <sub>2</sub> O <sub>3</sub>	-	3.4
CaO	-	59
MgO, max	5	2.9
Loss on Ignition (LOI), max	5	3.5
Insoluble Residue (IR), max	-	8.67
Sulfur trioxide (SO <sub>3</sub> ), max	8	2.4
Alkalies and UD, %, max	0.6	1.6

Sources: PNS 63:1987; ASTM C-150; Laboratory test result from Cement Central Laboratory

### 6.2.3 Physical Characteristics

Cement, being a vital component of concrete, should meet the *standard physical requirements* for safety and durability of buildings and infrastructure. The physical properties of cement are based on specific surface, autoclave expansion, setting time and compressive strength.

Based on results of tests conducted by BPS-accredited laboratories, both local and imported cement conform to the standard physical requirements set in PNS 07:2000 (see Table 13).

Locally produced pozzolan cement, on the other hand, also conforms to the physical requirements set in PNS 63:1987 (see Table 14).

### **6.3 Manufacturing Methods and Technology**

There are four (4) processes in cement manufacturing: wet, semi-wet, semi-dry and dry. The dry process, which was developed in the 1950's, is the latest development in cement manufacturing and is the least energy-intensive among the different processes.

The wet process was the earliest method of producing cement whereby water was used to blend the raw materials and the raw materials were then fed into the kiln in slurry form.

In the semi-wet process, the slurry is passed through the filter press and the raw materials are fed into the kiln in cake form.

In the semi-dry process, the raw materials are formed into pellets before feeding into the kiln.

In the dry process, mixing of raw materials is done during the raw meal grinding stage, whereby the raw materials are fed in mixed proportions and ground together. The mix is further homogenized in the blending silo using air. The blended mix is fed into preheater cyclones and then into the precalciner before burning in the rotary kiln.

### **6.4 Uses**

Gray Portland cement is a hydraulic cement and the binding agent used to make concrete and concrete products.

Portland cement Type I, both local and imported, is used in the production of concrete products, such as hollow blocks and cement pipes, and is also used for general concrete construction such as high-rise buildings and roads. Type II cement is used for construction requiring massive pouring of concrete mix such as dams. Type V is used for concrete construction with high sulfate resistance requirements.

Pozzolan cement can also be used in general concrete construction and production of concrete products. It has, however, a longer curing time.

The linkage chart shows the flow of materials from the raw state to the finished product (see *Annex L*).

## **6.5 Tariff Classification**

Import entries on file with the Commission described imported cement as follows: “ordinary Portland cement”, “ASTM Type I 1997 C-150”, “Portland cement in bulk conforming to ASTM C-150”, or “ASTM C-150-94 Type I in bulk”. Based on the aforementioned descriptions, subject importations are gray Portland cement Type I, classifiable under HS subheading No. 2523.29 00 of the Tariff and Customs Code.

Locally produced gray Portland cement is also classified under HS subheading No. 2523.29 00 of the Code.

Pozzolan cement, which is lumped with other hydraulic cement, is classified under HS subheading No. 2523.90 00.

## **6.6 Production Process**

The cement manufacturing process has not changed through the decades. The dry process, which minimizes the energy requirement thus making the burning process more cost efficient, remains the latest technology.

The manufacture of cement using the dry process involves the following steps:

### Step 1. Quarrying

- Limestone, shale and silica are mined within the vicinity of the cement plant. Pyrite, being a waste product in the metallurgical process, is sourced from smelting companies such as the Philippine Association of Smelting and Refining Corporation (PASAR). Magnetite, which is used as a source of iron in the absence of pyrite, is also mined.

### Step 2. Raw Meal Preparation

- The raw materials, when mined, are in the form of boulders and lumps. These are initially crushed to smaller sizes of about 2 to 3 inches in diameter.
- The raw materials are blended and fed to the raw meal grinder to reduce the particle sizes in order to pass through a 90 micron sieve. The powdered meal is then stored in a blending silo where air constantly mixes the raw materials to obtain a homogeneous mixture.

### Step 3. Burning

- The blended mix is fed to preheater cyclones, then to the precalciner. This mix then goes to the rotary kiln for final burning to form the desired compounds to attain high clinker and cement quality.

- The clinker is cooled and stored in either clinker silos or domes.

#### Step 4. Finish Milling

- Clinker, which is in the form of irregularly-shaped and -sized lumps, is mixed with either natural or chemical gypsum at a maximum proportion of 5%. The mix is then fed to the ball mill to reduce its particle size in order that the mix can pass through a 325 mesh screen with minimum retention.

Pozzolan cement is manufactured using the same process, except that during the finish mill grinding, volcanic tuft is added to the mix.

Types II and V cement are also manufactured using the same process and materials, but the proportions of the raw materials are different to attain the desired properties of the finished product.

### **6.7 Technological Shifts**

The very first cement plant in the Philippines was Rizal Cement Company. Set up in 1914, the plant used the wet process. In 1959, Republic Cement Corporation started the construction of the first dry process line in the Philippines with a capacity of 425 tons of cement per day.<sup>8</sup>

Local cement manufacturers employ the wet, semi-dry and dry processes. However, the applicants currently operate only their dry process lines (see Tables 6 to 8).

### **6.8 Findings**

#### **6.8.1 Chemical Composition**

Cement properties such as setting time, strength and color are determined by the amount of the compounds present in the clinker as a result of firing in the rotary kiln. These products include tetracalcium aluminoferrite (C<sub>4</sub>AF), tricalcium silicate (C<sub>3</sub>S), tricalcium aluminate (C<sub>3</sub>A) and dicalcium silicate (C<sub>2</sub>S).

Both imported and local gray Portland cement contain the above components and conform to the *standard chemical requirements* stipulated in PNS 07:2000.

#### **6.8.2 Compressive Strength**

Compressive strength of cement contributes to the compressive strength of concrete. In concrete formulation, the use of high strength cement lessens cement usage thus lowering construction costs.

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<sup>8</sup> based on information provided by PHILCEMCOR

However, compressive strength is just one factor to consider in concrete formulation. Other factors include water-cement ratio, cement-aggregate ratio, aggregate properties and analysis. Chemical and mineral additives are also utilized to attain the required concrete strength.

Laboratory tests show that the lowest 28-day strength for local manufactured Portland cement Type I is 35.5 Megapascal (Mpa) while the highest is 47 Mpa. Imported cement, on the other hand, has compressive strengths ranging from 29.9 Mpa to 62.8 Mpa. Both, however, pass the minimum BPS requirement for the 28 day compressive strength of 27.6 Mpa, as stipulated in the PNS 07:2000. Hence, both local and imported cement satisfy the minimum compressive strength requirement.

To address the differences between Portland cement Type I with compressive strength of more than 40 Mpa and other cement, the Technical Committee on Cement and Lime drafted PNS 07:2001. This standard provides specifications for Type I Portland Cement (compressive strength of more than 27.6 Mpa but not more than 40 Mpa) and Type I HS Portland Cement (40 Mpa and above). Said standard has not yet been implemented, however.

### **6.8.3 Alkali Content**

Alkali content is an optional chemical requirement in the PNS and ASTM C-150. Low alkali cement should have an alkali content with a value of 0.6% maximum. Laboratory tests conducted by BPS-accredited institutions for alkalis include undetermined substances. Alkalies and undetermined substances for local cement have a low of 0.5% and a high of 1.6%. Imported cement has values of 0.7% to 1.6%. Hence, both local and imported cement are within the same range of values for this particular test.

Based on *The Cement Plant Operations Handbook (second edition)* by Philip A. Alsop, alkali-aggregate reactivity, which leads to the habitual specification of low alkali cement by engineers in some countries, is of concern to, but outside the control of, cement producers. While alkali-aggregate reactivity is a serious problem, reactive aggregates are not ubiquitous and the unnecessary specification of low alkali cement frequently entails additional production cost and the disposal of landfill of process dust.

Cement users should specify the alkali content requirement, if the cement is to be used for concrete with aggregates that are potentially reactive and no other provisions are made to protect the concrete from deleteriously reactive aggregates. According to the Association of Structural Engineers of the Philippines, however, local aggregates are not potentially reactive and therefore, alkali content in cement is not a critical specification to consider.

#### **6.8.4 Cement Temperature**

Temperature of local cement ranges from 60°C to 70°C which is the temperature reached after the sieving/separation process in the finishing stage. Based on *The Cement Plant Operations Handbook* by Alsop, hot cement is a common complaint and cement over 60°C can be unpleasant to handle. Since cement constitutes only 10%-15% of concrete, by weight, the heat contribution of cement is therefore seldom critical.

Cement temperature is not a specification prescribed in both the PNS and ASTM. However, it affects the quality of concrete. Hot cement adds to the heat evolved upon addition of water due to hydration, such that the water in the concrete mixture evaporates more rapidly. When this happens, the hydration reaction will prematurely stop, thus rendering the concrete less durable. However, the effect of temperature is corrected in batching plants by keeping the temperature of aggregates low, using chilled water in the mix and chemical additives. Although the use of chilled water may add to the cost of producing concrete, it is required to reduce the heat generated during hydration.

Ideal cement temperature for purposes of conveyance, packing and mixing is 60°C for flow ability and workability. Colder cement tends to resist flow. This is however corrected by additives.

#### **6.8.5 Bagged vs. Bulk Cement**

Local and imported cement are stored in silos. Cement is withdrawn from the same silo whether for bulk sales or for bagging. Thus, the local industry as well as cement importers set no distinction between bulk and bagged cement. Besides, projects such as the Ninoy Aquino International Airport (NAIA) III and the San Roque Dam in Pangasinan, which require bulk cement deliveries, are also supplied by the local cement industry.

#### **6.9 Conclusion**

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, locally produced gray Portland cement is “like” to imported gray Portland cement. Both locally produced and imported gray Portland cement have the same chemical composition, conform to the chemical and physical requirements of the PNS 07:2000, and are used for the same applications.

Likewise, locally produced blended Portland cement (pozzolan), having the same chemical composition and applications as those of gray Portland cement, is “like” to the imported gray Portland cement.

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## **7 DETERMINATION OF INCREASED VOLUME OF IMPORTS**

Rule 9.4(b) of the IRR 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-BIS determined the period of investigation (POI) to be the five-year interval from 1996 to 2000. DTI-BIS followed Rule 7.2.a of the IRR 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., up to September 2001, for which data is 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 Increased Imports In Absolute Terms**

Its submission having been validated, PHILCEMCOR’s import data were adopted by the Commission.

Table 15 shows that imports of cement amounted to nearly 680,000 metric tons in 1996. This amount fell by almost half in 1997, with imports falling to slightly less than 352,000 metric tons during the year. In 1998, a similar rate of decrease in imports occurred, i.e., imports declined by roughly half to some 180,000 metric tons.

**Table 15. Imports of Cement: 1996 - 2001**

<b>Year</b>	<b>Imports (MT)</b>	<b>Growth Rate (%)</b>
1996	679,612	---
1997	351,779	(48.24)
1998	180,171	(48.78)
1999	474,430	163.32
2000	1,579,027	232.83
Jan. – Sept. 2000	1,200,043	---
Jan. – Sept. 2001	1,865,315	55.44

Source of basic data: PHILCEMCOR

The successive decreases in imports of cement in 1997 and 1998 can be explained by the Asian financial crisis which struck in mid-1997 and affected the Philippine construction industry.

The downward trend in imports of cement during the first half of the POI was reversed subsequently. In 1999, imports rose to more than 474,000 metric tons, representing a 163% increase over the previous year's depressed level. Compared to imports in 1996, the beginning year of the POI, the 1999 level of imports represented 70% of the 1996 level.

In 2000, imports expanded further and at a faster rate. Imports for this year totaled 1.58 million metric tons, 233% higher compared to the 1999 level and 132% higher compared to the 1996 level.

For the first three quarters of 2001, imports of subject article were already higher than the entire volume imported in 2000 at 1.86 million metric tons.

Imports of cement from January to September 2000 amounted to 1.2 million metric tons. A comparison of interim 2001 (January to September) imports against interim 2000 (January to September) imports shows the former exceeding the latter by a substantial 55%.

### 7.3 Increased Imports Relative to Domestic Production

Imports of cement represented approximately 5% of total domestic cement production in 1996. This share fell to less than 2% in 1998, when imports were lowest during the POI.

From 1999 onwards, however, the share of imports relative to domestic production steadily increased. In 2000, this share rose to 13%, from less than 4% the previous year and 5% in 1996. For the first three quarters of 2001, said share increased further to more than a fifth of domestic production of cement.

**Table 16. Share of Imports to Domestic Production of Cement: 1996 - 2001**

Year	Imports (MT)	Domestic Production (MT)	Share of Imports to Total Production (%)
1996	679,612	12,429,101	5.47
1997	351,779	14,680,757	2.40
1998	180,171	12,887,858	1.40
1999	474,430	12,557,524	3.78
2000	1,579,027	11,959,015	13.20
Jan. – Sept. 2001	1,865,315	8,652,936	21.56

Source of basic data: PHILCEMCOR

#### **7.4 Findings and Conclusion**

Based on the annual levels of imports from 1996 to 2000, the surge in imports of cement commenced in 2000. While the rise in imports to 474,430 metric tons in 1999 was sudden, it is an increase, however, that is not significant compared to the 1996 level. On the other hand, the increase in imports in 2000 is recent, sudden, sharp, and more importantly, is of such a magnitude which can be considered significant.

The movements in the shares of imports relative to domestic production from 1996 to 2000 confirm that the surge in imports of cement began in 2000.

Based on the foregoing, the Commission finds that, in accordance with R.A. 8800, gray Portland cement is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The increase in volume of imports is recent, sudden, sharp and significant.

## 8 DETERMINATION OF SERIOUS INJURY

Rule 9.4(c) of the IRR 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, profit and losses, and employment.”*

### 8.1 Domestic Industry Requirement

The twelve (12) applicant companies accounted for between 81% to 86% of total domestic production of gray Portland cement from 1996 to 2000. 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 producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.”*

**Table 17. Production of Cement: 1996 - 2000**

Year	Production (MT)			Share to Total Production (%)	
	Applicant Companies	Non-Applicants	Total	Applicant Companies	Non-Applicants
1996	10,119,894	2,309,207	12,429,101	81.42	18.58
1997	12,709,537	1,971,220	14,680,757	86.57	13.43
1998	11,025,710	1,862,148	12,887,858	85.55	14.45
1999	10,778,253	1,779,271	12,557,524	85.83	14.17
2000	10,326,700	1,632,315	11,959,015	86.35	13.65

Source of basic data: PHILCEMCOR

## 8.2 Serious Injury Factors

### 8.2.1 Market Share

Total apparent domestic consumption of cement amounted to nearly 13 million metric tons in 1996. It peaked at 14.9 million metric tons the next year. Following the Asian financial crisis, consumption dropped by 13% in 1998. Consumption continued to fall in 1999 and 2000 although at progressively lower rates.

**Table 18. Apparent Domestic Consumption of Cement and Market Shares: 1996 - 2001**

Year	Domestic Sales ('000 MT)	Total Imports ('000 MT)	Apparent Domestic Consumption ('000 MT)	Market Share (%)	
				Domestic Industry	Imports
1996	12,273	680	12,953	94.75	5.25
1997	14,536	352	14,888	97.64	2.36
1998	12,714	180	12,894	98.60	1.40
1999	11,869	474	12,343	96.16	3.84
2000	10,478	1,579	12,057	86.90	13.10
Jan. – Sept. 2000	8,205	1,200	9,405	87.24	12.76
Jan. – Sept. 2001	7,115	1,865	8,980	79.23	20.77

Source of basic data: PHILCEMCOR

The decline in total domestic consumption of cement from 1998 to 2000 is validated by the decline in gross value added of the construction industry during the same period.<sup>9</sup>

As consumption of cement fell, total domestic sales of the local cement industry also decreased, from a high of 14.5 million metric tons in 1997 to 10.5 million metric tons in 2000. In contrast, imports contracted in 1998, but recovered in 1999 through 2001.

The contrasting movements in domestic sales of the local cement industry and cement import levels have resulted in a decline in the market share of the domestic cement industry from nearly 99% in 1998 to some 87% in 2000. For the first three quarters of 2001, the domestic industry's market share plunged further to 79%, lower than its share of 87% for the same period in 2000.

The decline in the market share of the domestic industry may be considered 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 nearly 10% compared to the previous year. The

<sup>9</sup> NEDA. *Situationer on the Philippine Cement Industry: September 2001.*

industry's market share decreased by nearly the same rate in January – September 2001 compared to the equivalent period in 2000.

The domestic cement industry has always dominated the local market. Notwithstanding the increased volume of imports and the corresponding reduction in its market share from almost 99% in 1998 to 80% for the first three (3) quarters of 2001, the local industry remains the major market player.

In a liberalized trading environment, a market share of eighty percent (80%) is still considered significant domination of the market. Hence, the decline in the market share of the domestic industry does not constitute serious impairment of its overall market position since it has maintained its market dominance.

## 8.2.2 Production and Sales

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.

Annual production volumes of the domestic cement industry followed the yearly movements in total market demand, peaking in 1997 at 14.7 million metric tons, and then declining thereafter. This behavior is rational given the nature of the product (cement has a shelf life of only six months) and the fixed capacities of the domestic manufacturers' cement silos.

**Table 19. Production and Sales of Cement Industry: 1996 - 2001**

Year	Production ('000 MT)		Sales ('000 MT)					
	Total	% Change	Domestic	% Change	Exports	% Change	Total	% Change
1996	12,429	-	12,273		-	-	12,273	-
1997	14,681	18.12	14,536	18.44	-	-	14,536	18.44
1998	12,888	(12.21)	12,714	(12.53)	86	-	12,800	(11.94)
1999	12,558	(2.56)	11,869	(6.65)	691	703.49	12,560	(1.88)
2000	11,959	(4.77)	10,478	(11.72)	1,343	94.36	11,821	(5.88)
Jan. – Sept. 2000	9,053	-	8,205	-	819	-	9,024	-
Jan. - Sept. 2001	8,653	(4.42)	7,115	(13.28)	1,454	77.54	8,569	(5.04)

Source of basic data: PHILCEMCOR

In 1998, when imports had not yet surged, production registered its biggest drop at 12%.

In 2000, the year when the surge in imports started, production of cement fell by nearly 5% from the previous year's level. A comparison of interim 2001 (January to September) production volume against interim 2000

(January to September) production volume shows the former declining by the same rate of 5% vis-à-vis the latter.

In the evaluation of industry sales, the Commission considers both domestic sales and exports. While only three (3) companies exported, these companies accounted for 53% of total sales revenues and 50% of rated capacity in 2000.

The domestic cement industry sold both in the domestic market and abroad starting 1998. Domestic sales showed a declining trend from 1998. If exports are considered, however, losses in domestic sales are more or less compensated by exports.

In 2000, domestic sales of the industry dropped by almost 12%. However, this decline was offset by an increase in export sales volume, from 777,000 metric tons in 1998-1999 to 1.3 million metric tons in 2000. Since export sales accounted for 11% of total industry sales, the latter declined by only 6% in 2000 compared to the 1999 level.

For the first three (3) quarters of 2001, domestic sales decreased further (by 13%). On the other hand, export sales remained robust, even surpassing total 2000 exports by 111,000 metric tons. The share of export sales to total sales rose to 17%. Total industry sales shrank by 5% compared to the first three (3) quarters of 2000.

The declines in production and total sales during the period of import surge were not sharp enough nor significant enough relative to prior years to constitute serious impairment in the production and sales of the industry.

#### Finished Goods Inventory

Low inventory levels are attributable to the nature of the product, i.e., cement cannot be stored indefinitely due to its natural shelf life. Throughout the POI, there was no evidence of inventory accumulation indicating that cement manufacturers were able to plan well and ensure that low inventory levels would be maintained.

**Table 20. Finished Goods Inventory of Cement Industry: 1996 - 2001**

<b>Year</b>	<b>Finished Goods Inventory (‘000 MT)</b>	<b>% Change</b>
1996	137	
1997	217	58.39
1998	268	23.50
1999	258	(3.73)
2000	250	(3.10)
2001 (as of June)	224	

Source of basic data: PHILCEMCOR

### 8.2.3 Capacity Utilization

In 1996, the domestic cement industry operated 34 kilns with total rated capacity of 12.212 million metric tons of clinker annually (see Table 21 and *Annex M*). The following year, the industry expanded its capacity by 42% to 17.402 million metric tons due to the operation of four (4) new kilns (with capacities ranging from 900,000 metric tons to 1.65 million metric tons). Although seven (7) old kilns were simultaneously mothballed, actual industry operating capacity (i.e., the rated capacities of operating kilns only) totaled 16.667 million metric tons, 36% higher than the previous year's level (see *Annex N*). The incentive to expand capacity arose from the shortage of supply vis-à-vis demand from 1990 – 1997, i.e., demand exceeded supply by an average of 350,000 metric tons per year.<sup>10</sup>

**Table 21. Annual Rated Capacity, Actual Production and Capacity Utilization of the Cement Industry: 1996 - 2001**

Yearend	Rated Capacity ('000 MT)		Clinker Production ('000 MT)	Capacity Utilization (%)	
	All Kilns	Operating Kilns		All Kilns	Operating Kilns
1996	12,212	12,212	9,641	78.95	78.95
1997	17,402	16,667	11,566	66.46	69.39
1998	18,392	16,065	11,101	60.36	69.10
1999	21,922	16,986	10,492	47.86	61.77
2000	21,544	15,257	11,160	51.80	73.15
Jan. - Sept. 2000	16,158	11,443	8,448	52.28	73.83
Jan. - Sept. 2001	16,158	10,700	8,016	49.61	74.91

Source of basic data: PHILCEMCOR

In 1998-1999, five (5) new kilns went online. These kilns, with capacities of 350,000 metric tons to 1.2 million metric tons, boosted industry capacity to 21.922 million metric tons. Mothballing of old kilns continued through this period, however. Eight (8) kilns were mothballed in 1998 and another five (5) kilns in 1999. Thus, 23 kilns with total capacity of 16.986 million metric tons were operating by end-1999.

From 1996 through 1999, industry capacity utilization declined. When the Asian financial crisis struck, the industry was faced with a market that had shrunk and continued to contract juxtaposed against new and additional investments committed to rehabilitate/modernize existing kilns or put up new plants which were now coming on stream. The drop in 1997 was due to the expansion of capacities at a faster rate compared to the increase in clinker production. In 1998 and 1999, when imports had not yet surged, the decrease in cement consumption and consequently, clinker production, combined with further expansion of capacities led to further deterioration of capacity utilization.

<sup>10</sup> NEDA. *Situationer on the Philippine Cement Industry: June 2000*.

The steady decline in utilization was arrested in 2000, when imports surged. Capacity utilization of operating kilns improved from 62% to 73%. For all kilns, utilization likewise increased, from 48% to 52%. Utilization improved as rated capacities were cut (five kilns were mothballed/closed down) while clinker production recovered.

For the first three (3) quarters of 2001, capacity utilization based on the capacities of all kilns dropped relative to the same period in 2000. For operating kilns though, utilization improved further to 75%.

The Commission estimated the global and regional utilization levels of Lafarge, Cemex and Holcim based on sales volumes (see Table 22). While data on production would have been preferred, same was unavailable. On the other hand, sales of cement do not vary much relative to production, due to cement's shelf life, so it was assumed that production was equivalent to sales for the year.

**Table 22. Estimated Capacity Utilization of Global Cement Companies: 2000**

Global Cement Company	Sales in 2000 (million MT)		Capacity in 2000 (million MT)		Estimated Capacity Utilization (Sales/Capacity)	
	World	Asia	World	Asia	World	Asia
Lafarge	73.5	10.9	150.0	33.0**	49.00%	33.03%
Cemex	51.9	1.4	77.2	10.8	67.22%	12.96%
Holcim	82.0	11.7*	109.8	17.3	74.68%	67.63%
TOTAL	207.4	24.0	337.0	61.1	61.54%	39.28%

\* Covers the Asia-Pacific region

\*\* For 1999

Sources: [www.lafarge.com](http://www.lafarge.com); [www.cemex.com](http://www.cemex.com); [www.holcim.com](http://www.holcim.com);

[www.petcoke.com/endusers.htm](http://www.petcoke.com/endusers.htm); *The Global Cement Report (4<sup>th</sup> edition)*; and *Cemex primer (1999)*

The data shows that utilization levels of the domestic cement industry approximate the utilization levels of the global cement companies.

There was an improvement in the capacity utilization of the domestic industry in 2000, when imports started to surge. The subsequent decline in 2001 was not so sudden, sharp, nor significant enough in the contemplation of the law as to constitute serious impairment of the industry's overall condition.

#### 8.2.4 Employment

Total employment of the applicant companies showed an erratic trend from 1996 to 1999. The movement in employee numbers appears to shadow the annual changes in the total capacity of operating kilns (rather than the number of operating kilns).

**Table 23. Employment of Applicant Companies: 1996 – 2001**

Year	No. of Employees	% Change	Annual Rated Capacity of Operating Kilns ('000 MT)	Total Imports ('000 MT)
1996	3,276	-	12,212	680
1997	3,550	8.36	16,667	352
1998	3,116	(12.23)	16,065	180
1999	4,282	37.42	16,986	474
2000	3,400	(20.60)	15,257	1,579
Jan. - June 2001	3,306			

Source of basic data: PHILCEMCOR

The data does not show any relationship between imports and employment. In particular, employment increased in 1999, by 37%, while imports more than doubled from the previous year.

Thus, the decline in employment by 21% in 2000 cannot be attributed to the surge in imports during the year.

### 8.2.5 Financial Performance/Profitability

The financial performance of the twelve (12) applicant companies is presented below:

**Table 24. Statement of Income of Applicant Companies: 1996-2000**

Particulars (P '000)	Year				
	1996	1997	1998	1999	2000
Sales Revenue	21,071,482	24,127,422	18,097,931	20,202,884	25,967,633
Less: Cost of Sales	<u>14,025,289</u>	<u>17,411,348</u>	<u>16,184,768</u>	<u>20,092,594</u>	<u>21,861,601</u>
Gross Profit	7,046,193	6,716,074	1,913,163	110,290	4,106,032
Less: Operating Expenses	<u>1,377,760</u>	<u>1,659,461</u>	<u>1,819,697</u>	<u>2,729,937</u>	<u>2,128,023</u>
Income/ Loss from Operations	5,668,433	5,056,613	93,466	(2,619,647)	1,978,009
Add: Other Income	<u>1,550,671</u>	<u>1,299,885</u>	<u>348,721</u>	<u>436,610</u>	<u>281,300</u>
Income/(Loss) before other expenses	<u>7,219,104</u>	<u>6,356,498</u>	<u>442,187</u>	<u>(2,183,037)</u>	<u>2,259,309</u>
Less: Other Expenses:					
Interest Expenses	571,500	993,558	2,851,675	3,993,021	5,129,162
Foreign Exchange Losses	0	553,961	13,405	109,186	95,233
Other Expenses	<u>12,462</u>	<u>32,466</u>	<u>1,285,831</u>	<u>1,772,174</u>	<u>2,752,448</u>
Total Expenses	<u>583,962</u>	<u>1,579,985</u>	<u>4,150,911</u>	<u>5,874,381</u>	<u>7,976,843</u>
Income/(Loss) before tax	6,635,142	4,776,513	(3,708,724)	(8,057,418)	(5,717,534)
Less: Provision for Tax	(1,128,438)	(743,118)	(94,102)	(257,576)	(112,808)
Add: Income Tax Benefit	<u>1,855</u>	<u>28,679</u>	<u>414,223</u>	<u>606,442</u>	<u>271,671</u>
Net Income/(Loss)	<u>5,508,559</u>	<u>4,062,074</u>	<u>(3,388,603)</u>	<u>(7,708,552)</u>	<u>(5,558,671)</u>

Source: Audited financial statements of 12 applicant companies

Consolidated audited financial statements of the applicants revealed that total sales revenue of ₱24.13 billion in 1997 was 14.52% higher compared with the previous year's ₱21.07 billion (see *Annex O*). It dropped in 1998 by 25% (from ₱24.13 billion to ₱18.10 billion) as a result of volume decline coupled with low selling prices arising from a price war in the industry.

In 1999, the applicants managed to recover as their sales revenue increased by 12% to ₱20.20 billion. This is attributed to a rise in price which compensated for the loss in sales volume.

The following year, sales revenues peaked at ₱25.97 billion, exceeding by 8% the sales revenue in 1997, its banner year. The fact that the applicants were able to increase prices at a year when imports surged speaks well of their ability to compete head on with imports.

Although cost of sales jumped markedly by 24.15% in 1999, this did not adversely affect its financial performance as the applicants generated a gross profit of ₱110.29 million. Cost of sales further increased by 9% in 2000. Gross profit of ₱4.11 billion was however realized, which was an unprecedented rise of 3,623% compared to the previous year's level.

The Commission, in its evaluation of profitability, attaches 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.

The applicants' income from operations steadily dropped from 1996 to 1998. Due to huge operating expenses, a loss of ₱2.62 billion was incurred in 1999, before imports surged.

In 2000 however when imports surged, the applicants managed to recover from the huge deficit, as they registered a ₱1.98 billion operating income, or a 175.51% upturn.

The bottomline results of operations were favorable in 1996 and 1997. However, net deficits were incurred starting 1998 to 2000 at ₱3.39 billion, ₱7.71 billion, and ₱5.56 billion, respectively.

It should be noted that prior to the surge, applicants' net loss was at its peak at ₱7.71 billion. Net loss then declined by ₱2.15 billion in 2000, at the time when imports surged.

It should be noted that interest expenses increased in a sustained manner from 1996 to 2000 from ₱571.50 million in 1996 to ₱993.56 million in 1997 to ₱2.85 billion in 1998 (almost triple increase) to ₱3.99 billion in 1999 (40% rise) and to ₱5.13 billion in 2000 (28.45% increase). With respect to other expenses which were also contributory to the huge deficits, huge increase was noted from 1997 at ₱32.47 million to ₱1.29 billion in 1998, exhibiting a marked

leap of 3,861%. This further increased to ₱1.77 billion and to ₱2.75 billion, in 1999 and 2000, respectively.

The negative bottomline results of operations were attributable to the following factors: huge interest expenses, foreign exchange losses and other expenses (i.e., write down of fixed assets and deferred charges, decline in the value of investments, cost of plant shutdown/voluntary separation, provision for inventory obsolescence, net losses in equity of subsidiaries, cumulative effect of a change in accounting policy, etc).

In contrast, audited financial statements of the non-applicants (i.e., Northern Cement Corporation, Goodfound Cement Corporation, Grand Cement Manufacturing Corporation, Limay Grinding Mill Corporation, and Titan Cement Manufacturing Corporation) disclosed that these companies posted sales revenues totaling ₱2.56 billion in 1999 which increased to ₱3.38 billion in 2000, representing a 31.73% increase (see *Annex P*).

**Table 25. Statement of Income of Non-Applicant Companies: 1996 - 2000**

<b>Particulars (₱ '000)</b>	<b>1999</b>	<b>2000</b>
Sales Revenue	2,563,346	3,376,672
Less: Cost of Sales	<u>2,367,840</u>	<u>2,729,741</u>
Gross Profit	195,506	646,931
Less: Operating Expenses	<u>280,341</u>	<u>249,935</u>
Income/ Loss from Operations	(84,835)	396,996
Add: Other Income	<u>493,620</u>	<u>87,179</u>
Income/(Loss) before other expenses	<u>408,785</u>	<u>484,175</u>
Less: Other Expenses:		
Interest Expenses	376,978	292,111
Foreign Exchange Losses	16,982	38,631
Other Expenses	<u>17,790</u>	<u>15,199</u>
Total Expenses	<u>411,750</u>	<u>345,941</u>
Income/(Loss) before tax	(2,965)	138,234
Less: Provision for Tax	(10,342)	(15,214)
Add: Income Tax Benefit	<u>93,570</u>	<u>14,329</u>
<b>Net Income/(Loss)</b>	<b>80,263</b>	<b>137,349</b>

*Source: Audited financial statements from the Securities and Exchange Commission*

Loss from operations was incurred in 1999 in the amount of ₱84.84 million. However, these companies recovered from the deficit as operating income aggregated to ₱397 million.

Overall financial performance was favorable as net income totaled ₱80.26 million in 1999. Net income improved to ₱137.35 million in 2000, the year when the surge in imports was evident. This was traceable to the decline in operating expenses from ₱280 million to ₱250 million, and by the drop in interest expenses from ₱376.98 million in 1999 to ₱292.11, or by 22.51%.

*Annex Q* shows that even if the industry captures 100% of the market (i.e., there are no imports), the industry, being highly leveraged<sup>11</sup>, will still incur huge deficits.

### Return on Sales

Return on sales was derived by dividing income from operations by the sales revenue and measures the percentage share of the operating income out of the sales revenue. To evaluate industry sales performance, income from operations was adopted in favor of the net income so as not to take into account interest expenses, foreign exchange losses and other expenses (e.g., provision for doubtful account, provision for inventory obsolescence, equity in net losses of subsidiaries) which do not form part of the operating costs.

**Table 26. Return on Sales of Applicant Companies: 1996-2000**

Year	Income/(Loss) From Operations ('000 P)	Sales Revenue ('000 P)	Return on Sales (%)
1996	5,668,433	21,071,482	26.90
1997	5,056,613	24,127,422	20.96
1998	93,466	18,097,931	0.52
1999	(2,619,647)	20,202,884	(12.97)
2000	1,978,009	25,967,633	7.62

*Source: Consolidated audited financial statements of 12 applicant companies*

Return on sales was derived by dividing income from operations by the sales revenue and measures the percentage share of the operating income out of the sales revenue. To evaluate industry sales performance, income from operations was adopted in favor of the net income so as not to take into account interest expenses, foreign exchange losses and other expenses (e.g., provision for doubtful account, provision for inventory obsolescence, equity in net losses of subsidiaries) which do not form part of the operating costs.

Operating incomes of ₱5.67 billion and ₱5.06 billion in 1996 and 1997, respectively, resulted in industry returns on sales of 26.90% and 20.96%, respectively. Positive returns on sales continued until 1998 although negligible (0.52%).

Due to a deficit from operations of ₱2.62 billion in 1999, a negative return on sales was registered when imports have not yet surged. The industry, however, recovered in 2000 when imports surged with a positive return of 7.62%, as operating income of ₱1.98 billion was realized.

<sup>11</sup> NEDA. *Situationer on the Philippine Cement Industry: September 2001.*

### 8.2.6 Productivity

The data shows that the applicant companies attained its highest labor productivity level in 1997 when the labor productivity ratio was 1:3,550. Productivity worsened thereafter, however. In 1999, the marked decline in productivity by 29% was due to the significant increase in the number of employees (by 37%) relative to a much lower decline in production volume (by 2%).

**Table 27. Labor Productivity of Applicant Companies: 1996 – 2000**

Year	Production	No. of Employees	Labor Productivity (MT/Employee)	% Change
1996	10,119,894	3,276	3,089	-
1997	12,709,537	3,550	3,580	15.90
1998	11,025,710	3,116	3,538	(1.17)
1999	10,778,253	4,282	2,517	(28.86)
2000	10,326,700	3,400	3,037	20.66

Source of basic data: PHILCEMCOR

The following year, when imports began to surge, the industry showed improvement in its labor productivity ratio (1:3,037). This arose from the significantly higher rate of decline in employment compared to the rate of decline in production.

### 8.3 Conclusion

The industry has not suffered and is not suffering a significant impairment in its overall market position, production and sales, capacity utilization and profitability. No link was found between employment and imports.

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, the industry has not suffered and is not suffering serious injury.

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## **9 DETERMINATION OF THREAT OF SERIOUS INJURY**

Section 4(q) of R.A. 8800 defines “threat of serious injury” as “*serious injury that is imminent.*”

Rule 12.3 of the IRR of the R.A. provides that “*a determination of threat of serious injury shall be based on facts and not merely allegations, conjectures or remote possibilities. In making a determination regarding the existence of a threat of serious injury, the Secretary and the Commission, at their respective stages of investigation, shall consider the following, among others:*

*Rule 12.3.a. a significant rate of increase in imports into the Philippines indicating the likelihood of substantially increased importation, evidenced inter alia by the existence of letters of credit, supply or sales contract, the award of a tender, an irrevocable offer or other similar contracts;*

*Rule 12.3.b. sufficient freely disposable, or an imminent, substantial increase in, production capacity of the foreign exporters including access conditions they face in third country markets, indicating the likelihood of substantially increased exports to the Philippines;*

*Rule 12.3.c. decline in sales or market share, and a downward trend in production, profits, wages, productivity or employment (or increasing underemployment) in the domestic industry and its inability to generate capital for modernization or maintain existing levels of expenditures for research and development; and*

*Rule 12.3.d. growing inventories of the products being investigated whether maintained by the Philippine producers, importers, wholesalers or retailers.*

*Not one of these factors can, by itself, necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further increased imports are imminent and that, unless protective action is taken, a serious injury would occur.*

### **9.1 Factors Considered**

In making a determination regarding the existence of a threat of serious injury, the Commission considered the following factors:

1. It may be conceded that excess capacity exists in Asia. However, the determination of the existence of threat of serious injury, one that is clearly imminent, should be based on facts and not mere allegations, conjectures or remote possibility. PHILCEMCOR did not present any evidence of the existence of letters of credit, supply or sales contracts, the award of a tender, an irrevocable offer or other similar contracts to demonstrate the likelihood of substantially increased importation. While imports continued after the imposition of a provisional measure, these shipments were covered by existing contracts entered into before said imposition.
2. Although there have been declines in the industry's sales volume and market share and a downward trend in production and capacity utilization in 2000, they are not considered significant. On the other hand, sales revenues increased and the industry generated income from operations during the period of import surge.
3. Inventory levels have remained stable.

Certain conditions and circumstances also exist that tend to dismiss the possibility of threat of serious injury to the domestic industry, as follows:

1. BPS Memorandum Circular No. 004 (dated 11 September 2001) provides revised guidelines on the importation of cement (see *Annex R*). It requires imported cement to be subjected to compressive strength testing lasting for a holding period of 28 days. This regulation effectively injects uncertainty into the sustainability of continued cement importation.
2. TCC Cement Corporation has stopped exporting to the country, a fact verified and admitted even by the applicants. The company is now using its silo to distribute local cement manufactured by Apo Cement Corporation.
3. SCCC has a limited silo capacity. It is therefore not likely that substantially increased importation originating from Japan is imminent.
4. By provisions of the Civil Code of the Philippines (Articles 1723, 2190, and 2192), it is more advantageous for local constructors to source their cement requirements from local producers. By doing so, the local cement producers are held solidarily liable with the local constructors if inferior material quality is found to be the cause of the collapse of an infrastructure.

## **9.2 Conclusion**

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, there is no threat of serious injury that is imminent from imports of gray Portland cement.

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## **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 (gray Portland cement) 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 twelve (12) applicant companies constitutes a major proportion of the total domestic production of gray Portland cement and blended Portland cement.
3. Locally produced gray Portland cement and blended Portland cement (pozzolan) are “like” to imported gray Portland cement.
4. Gray Portland cement is 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, sudden, sharp and significant.
5. The industry has not suffered and is not suffering significant overall impairment in its condition, i.e., serious injury.
6. There is no threat of serious injury that is imminent from imports of gray Portland cement.
7. Causation has become moot and academic in view of the negative determination of the elements of serious injury and imminent threat of serious injury.

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## **11 RECOMMENDATION**

The elements of serious injury and imminent threat of serious injury not having been established, it is hereby recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.

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## **12 EFFECTS OF THE NEGATIVE 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 petitioner, 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 negative recommendation is discussed below:

### **12.1 On the Domestic Cement Industry**

It is the Commission’s view that non-imposition of a safeguard measure will force the domestic cement industry to continue implementing efficiency measures that will make local cement competitive, price-wise and quality-wise, with imported cement. It is believed that continued exposure of the domestic industry to world price signals, through imports, will prevent slackening of the industry’s reforms efforts and push the industry quicker towards global competitiveness.

Given the high concentration of ownership in the cement industry, with three global cement corporations controlling 89% of the industry’s total kiln capacity, imports provide competitive discipline that will discourage the possible abuse of market power.

The Commission believes that the industry has gained considerable relief from the competitive pressure exerted by imports through BPS Memorandum Circular No. 004 requiring all imported cement to undergo compressive strength testing of up to 28 days before an Import Commodity Clearance is issued. This government regulation is a non-tariff barrier for safety reasons that effectively operates as a safeguard measure against imports.

### **12.2 On User Industries and Consumer Welfare**

The Commission is of the view that non-imposition of a safeguard measure protects consumer welfare by improving consumer choice, i.e., consumers retain the option to choose between local and imported cement.

Consumers are also spared the increase in domestic cement prices that can be expected from the imposition of a safeguard measure.

To the extent that imports serve to check unnecessary domestic price increases, the competitiveness of the local construction industry, which uses cement as one of its major inputs, would not be prejudiced. Unpredictable construction costs

(that may result from varying cement prices) and the consequent negative impact on private and government infrastructures are avoided.

### **12.3 On Employment**

Since a clear relationship between employment in the cement industry and import levels has not been established, it is extremely difficult to determine the effects of the non-imposition of a safeguard measure on employment in the industry.

Nevertheless, the Commission believes that employment trends in the cement industry will be balanced by trends in employment in the construction industry. It is noted that the construction industry employed 1.584 million workers in 2001.<sup>12</sup> In contrast, the cement industry employed less than 4,000 workers in 2000 and the first half of 2001.

### **12.4 On Regional Development**

Cement plants, especially in Visayas and Mindanao, are largely located in rural communities. Often, these cement plants are the major source of livelihood and employment opportunities for the community.

It is believed that continuing community development will not be hampered by the non-imposition of a safeguard measure. As has been shown, the domestic cement industry has the capability to compete with imports. Moreover, a turnaround for the cement industry is highly possible since construction gross value added is forecast to grow by an average of 6.4% - 6.9% during the period 2001 –2006.<sup>13</sup>

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<sup>12</sup> based on data from the Bureau of Labor and Employment Statistics

<sup>13</sup> NEDA. *Situationer on the Philippine Cement Industry: September 2001.*

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.

13 March 2002

**EDGARDO B. ABON**  
Chairman

**REMEDIOS G. NAZARETH**  
Commissioner

**FERDINAND D. TOLENTINO**  
Commissioner