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# **FORMAL INVESTIGATION REPORT**

**Ceramic Tiles Industry:**

**Extension of Safeguard Action Against Imports**

(SG Investigation No. 01-2007)

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**(Public Version)**

**28 November 2007**

## **TABLE OF CONTENTS**

| <b>ITEM</b> | <b>DESCRIPTION</b>   | <b>PAGE</b> |
|-------------|--|-------------|
|             | List of Tables & Figures .....                                   | iv          |
|             | List of Annexes .....  | v           |
|             | Abbreviations used .....   | vi          |
|             | Executive Summary .....  | viii        |
| <b>1</b>    | <b>TERMS OF REFERENCE</b>  |             |
| 1.1         | The Initial Application of Definitive Safeguard Measure ..       | 1           |
| 1.2         | Extension of Definitive Safeguard Measure .....                  | 1           |
| 1.3         | The Petition for Final Extension of the Measure .....            | 1           |
| 1.4         | Period under Review .....  | 2           |
| <b>2</b>    | <b>SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION</b>           |             |
| 2.1         | The Safeguard Measures Act of 2000 .....                         | 3           |
| 2.2         | The World Trade Organization Agreement on Safeguards.            | 5           |
| 2.3         | Articles 6 and 8 of the ASEAN Agreement on the CEPT Scheme ..... | 6           |
| 2.4         | Legal Issues .....   | 7           |
| <b>3</b>    | <b>THE COMMISSION'S INQUIRY</b>                                  |             |
| 3.1         | Notifications .....  | 10          |
| 3.1.1       | Commencement of Formal Investigation .....                       | 10          |
| 3.1.2       | Schedule of Public Consultation .....                            | 11          |
| 3.2         | Preliminary Conference .....                                     | 11          |
| 3.3         | Staff Report .....   | 12          |
| 3.4         | Public Consultation .....  | 13          |
| 3.5         | Plant Visits/ Verification of Data .....                         | 13          |
| <b>4</b>    | <b>PARTICIPANTS' VIEWS</b>                                       |             |
| 4.1         | Submissions to the Commission .....                              | 14          |
| 4.2         | The Domestic Industry's Case                                     |             |
| 4.2.1       | Petitioner .....   | 14          |
|             | Adjustment Plan (2008-2011) .....                                | 16          |
| 4.3         | The Opposing Case  |             |
| 4.3.1       | Philippine Ceramic Products Importers Association ...            | 18          |
| 4.3.2       | Golden Ocre Trading Corporation .....                            | 19          |
| 4.3.3       | Citrinum Corporation .....                                       | 21          |
| 4.3.4       | People's Republic of China .....                                 | 23          |
| 4.3.5       | Republic of Indonesia .....                                      | 23          |
| 4.3.6       | Taiwan Economic and Cultural Office .....                        | 24          |
| 4.3.7       | Embassy of the Socialist Republic of Vietnam .....               | 24          |
| 4.4         | Other Submissions  |             |
|             | Embassy of Malaysia .....  | 24          |
|             | Embassy of India .....   | 24          |

|           |  |    |
|-----------|--|----|
|           | Taicera Enterprise Company (Vietnam) .....                     | 25 |
|           | Guocera Tiles (Malaysia) .....                                 | 25 |
| <b>5</b>  | <b>THE DOMESTIC INDUSTRY AND MARKET</b>                        |    |
| 5.1       | The Domestic Product .....                                     | 26 |
| 5.2       | Market Participants .....                                      |    |
| 5.2.1     | Domestic Producers .....                                       | 26 |
| 5.2.2     | Status of Operations .....                                     | 27 |
| 5.2.3     | Distribution Channels .....                                    | 27 |
| 5.2.4     | Importers .....  | 28 |
| 5.2.5     | Users .....  | 29 |
| <b>6</b>  | <b>PRODUCT SUBJECT OF DEFINITIVE SAFEGUARD DUTY</b>            |    |
| 6.1       | Subject to Definitive Safeguard Duty .....                     | 30 |
| <b>7</b>  | <b>VOLUME OF IMPORTS</b>                                       |    |
| 7.1       | Volume .....   | 31 |
| 7.2       | Country Suppliers .....  | 32 |
| 7.3       | Volume of Imports Relative to Domestic Production .....        | 33 |
| 7.4       | Findings .....   | 33 |
| 7.5       | <i>De Minimis</i> Import Volume .....                          | 34 |
| <b>8</b>  | <b>DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF</b>       |    |
| 8.1       | Domestic Industry Requirements .....                           | 35 |
| 8.2       | Serious Injury Factors .....                                   | 36 |
| 8.2.1     | Market Share .....   | 36 |
| 8.2.2     | Production, Sales and Ending Inventory .....                   | 37 |
| 8.2.2.1   | Production .....   | 37 |
| 8.2.2.2   | Sales .....  | 37 |
| 8.2.2.3   | Finished Goods Inventory .....                                 | 37 |
| 8.2.3     | Capacity Utilization .....                                     | 38 |
| 8.2.4     | Cost of Production .....                                       | 38 |
| 8.2.5     | Employment and labor Productivity .....                        | 39 |
| 8.2.6     | Profitability .....  | 40 |
| 8.2.6.1   | Return on Sales .....  | 41 |
| 8.2.7     | Price Trends .....   | 41 |
| 8.2.8     | Conclusion .....   | 42 |
| 8.3       | Foreign Industry Developments .....                            | 42 |
|           | Findings .....   | 43 |
| <b>9</b>  | <b>EFFORTS OF THE INDUSTRY TO ADJUST TO IMPORT COMPETITION</b> |    |
| 9.1       | Adjustment Plans .....   | 44 |
|           | Mariwasa Siam Ceramics, Inc. (2005-2007) .....                 | 44 |
|           | Lepanto Ceramics Inc. (2005-2008) .....                        | 45 |
| 9.2       | Conclusion .....   | 46 |
| <b>10</b> | <b>CONCLUSION</b> .....  | 47 |

|           |  |           |
|-----------|--|-----------|
| <b>11</b> | <b>RECOMMENDATION</b> .....                      | <b>48</b> |
| <b>12</b> | <b>DEFINITIVE MEASURE</b>                        |           |
| 12.1      | Recommended Definitive Safeguard Measure .....   | 49        |
| 12.2      | Review of Definitive Measures .....              | 49        |
| <b>13</b> | <b>EFFECTS OF THE AFFIRMATIVE RECOMMENDATION</b> |           |
| 13.1      | On Competition .....                             | 51        |
| 13.2      | On the Domestic Industry .....                   | 51        |
| 13.3      | User Industries and Consumer Welfare .....       | 51        |
| 13.4      | On Employment .....                              | 52        |
| 13.5      | On Regional Development .....                    | 52        |

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## **TABLES**

| <b>No.</b> | <b>DESCRIPTION</b>   | <b>PAGE</b> |
|------------|--|-------------|
| 1          | Definitive Safeguard Duty on Ceramic Tiles (P/kg) . . . . .  | 1           |
| 2          | Domestic Producers . . . . .   | 26          |
| 3          | Top Importers of Ceramic Tiles . . . . .   | 28          |
| 4          | Tariff Schedule . . . . .  | 30          |
| 5          | Total Volume of Ceramic Tile Imports ('000 SQM) . . . . .  | 31          |
| 6          | Country Suppliers of Ceramic Tiles . . . . .   | 32          |
| 7          | Share of Imports Relative to Domestic Production . . . . .   | 33          |
| 8          | <i>De minimis</i> Volume of Imports . . . . .  | 34          |
| 9          | Domestic Industry Requirements . . . . .   | 35          |
| 10         | Apparent Domestic Consumption of Ceramic Tiles . . . . .   | 36          |
| 11         | Production, Sales and Ending Inventory . . . . .   | 37          |
| 12         | Annual Rated Capacity, Actual Production and Capacity Utilization of Applicant Companies . . . . . | 38          |
| 13         | Cost of Production . . . . .   | 38          |
| 13-A       | Cost of Production (%) . . . . .   | 38          |
| 14         | Employment and Productivity of Applicant Companies . . . . .                                       | 39          |
| 15         | Combined Income Statement of Applicant Companies . . . . .   | 40          |
| 16         | Return on Sales (based on Income from Operations) . . . . .  | 41          |
| 17         | Comparison of Landed Cost and Domestic Selling Prices of Ceramic Tiles . . . . .                   | 41          |

## **FIGURES**

| <b>No.</b> | <b>DESCRIPTION</b>             | <b>PAGE</b> |
|------------|--------------------------------|-------------|
| 1          | Ceramic Tile Imports . . . . . | 31          |
| 2          | Market Shares . . . . .        | 36          |

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## **LIST OF ANNEXES**

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| <b>Annex</b> | <b>DESCRIPTION</b>   |
|--------------|--|
| A            | Referral of Petition to the Tariff Commission for Formal Investigation |
| B; B-1       | Notice of Formal Investigation   |
| C; C-1       | Notice of Public Consultation  |
| D            | List of Participants – Preliminary Conference                          |
| E            | List of Attendees – Public Consultation                                |
| F            | Ocular Inspection/ Verification Conducted                              |
| G; H; I      | List of Submissions by Parties   |
| J            | Adjustment Plans of the Domestic Industry                              |

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## **ABBREVIATIONS**

|            |  |
|------------|--|
| ACFTA      | ASEAN-China Free Trade Area                        |
| AFTA       | ASEAN Free Trade Area                              |
| AHTN       | ASEAN Harmonized Tariff Nomenclature               |
| AKFTA      | ASEAN Korea Free Trade Area                        |
| ASEAN      | Association of Southeast Asian Nations             |
| BETP       | Bureau of Export Trade Promotion                   |
| BOC        | Bureau of Customs                                  |
| BPS        | Bureau of Product Standards                        |
| BSF        | Britanico Sarmiento & Franco Law Office            |
| CEPT       | Common Effective Preferential Tariff               |
| CIAP       | Construction Industry Authority of the Philippines |
| CMO        | Customs Memorandum Order                           |
| Cm         | centimeter   |
| Commission | Tariff Commission                                  |
| COP        | Cost of Production                                 |
| CTMA       | Ceramic Tile Manufacturers' Association            |
| DTI        | Department of Trade and Industry                   |
| EO         | Executive Order                                    |
| EU         | European Union                                     |
| FOB        | Free on Board                                      |
| GATT       | General Agreement on Tariffs and Trade             |
| GOI        | Government of Indonesia                            |
| GOTC       | Grand Ocre Trading Corporation                     |
| IRR        | Implementing Rules and Regulations                 |
| ISO        | International Standards Organization               |
| Kg         | Kilogram   |
| Kwh        | Kilowatt-hour                                      |
| LCI        | Lepanto Ceramics, Inc.                             |
| LPG        | Liquefied Petroleum Gas                            |

|             |   |
|-------------|---|
| M           | Million   |
| MC          | Memorandum Circular                                     |
| MFN         | Most-Favored-Nations                                    |
| MSC         | Mariwasa Siam Corporation                               |
| NSO         | National Statistics Office                              |
| PCPIA       | Philippine Ceramic Products Importers Association, Inc. |
| PNS         | Philippine National Standards                           |
| PROC        | People's Republic of China                              |
| RA          | Republic Act  |
| RTC         | Regional Trial Court                                    |
| SEC         | Securities and Exchange Commission                      |
| Secretary   | DTI Secretary   |
| SG Inv. No. | Safeguard Investigation Number                          |
| sq. m.      | Square meter  |
| STPP        | Sodium Tripolyphosphate                                 |
| TC          | Tariff Commission                                       |
| TECO        | Taipei Economic and Cultural Office                     |
| UAE         | United Arab Emirates                                    |
| US          | United States   |
| VAT         | Value Added Tax   |
| WTO         | World Trade Organization                                |

## **EXECUTIVE SUMMARY**

*This report is about the extension of safeguard action against imports*

This report addresses the question of whether extension of the definitive safeguard action, in accordance with Republic Act 8800 ("Safeguard Measures Act") and the WTO Agreement on Safeguards, would be justified against imports of ceramic floor and wall tiles

### **Background**

*In 2002, the DTI Secretary ordered the imposition of a definitive general safeguard duty for a period of three (3) years...*

In 2002, the DTI Secretary ordered the imposition of a definitive general safeguard duty for a period of three (3) years on imports of ceramic floor and wall tiles. In December 2004, the Secretary issued a Department Order extending the definitive measure for a period of three (3) years.

*In December 2004 ... extending the definitive measure for a period of three (3) years*

*The domestic industry requests a final extension of four (4) years of the safeguard duty ... to implement its adjustment plan*

The domestic industry requests a final extension of four (4) years of the definitive safeguard duty. The domestic industry is asking for additional time to implement its adjustment plan and make it globally competitive.

*Pursuant to the provision of the Safeguard Measures Act*

The Secretary referred the letter request of CTMA to the Tariff Commission pursuant to Section 19 (2) of RA 8800.

### **Statutory Framework**

*The Safeguard Measures Act in consonance with the WTO Agreement of Safeguards allows extension of definitive safeguard action against imports*

An extension of the measure may be extended if

- The action continues to be necessary to prevent or remedy the serious injury and
- There is evidence that the domestic industry is making positive adjustment to import competition

*A safeguard inquiry must follow the requirements spelled out in the Safeguard Measures Act and the procedures prescribed by the WTO*

In responding to the question of whether the extension of safeguard action against imports of ceramic tiles is warranted, the Commission was careful to conduct its inquiry process in accordance with the requirements of the Act and the procedures prescribed by the WTO Agreements on Safeguards

## Findings

|   |   |
|---|---|
| <i>The collective output of the two applicant companies constitutes a major proportion of the total domestic production.</i>  | The collective output of the two (2) applicant companies constitutes a major proportion of the total domestic production of ceramic tiles.  |
| <i>During the period under review...</i>  | China and Hong Kong are now the main sources of imported ceramic tiles, accounting for almost 85% of the total volume of imports  |
| <i>...imports returned to surge levels</i>  | Philippine tile imports significantly increased to levels that surpassed the surge in volume in 2000 - 2001.  |
| <i>There is evidence that the domestic industry is making positive adjustment to import competition.</i>  | The domestic industry is making positive adjustment to import competition. It was able to enhance its efficiency through energy conservation measures, reduced glazing material cost and expansion of distribution network.   |
| <i>The industry has to find alternative sources of energy in the short term ... and make the industry competitive against imports.</i>  | Since the anticipated distribution pipelines for natural gas, which could have reduced production cost by about 40%, is not likely in the near future, the industry has to find alternative sources of energy in the short term if it is to reduce its costs and make the industry competitive against imports.   |
| <i>Serious injury is still being suffered by the domestic industry ... Without the measure, the domestic industry will not be able to finance and have time to pursue its adjustment plan.</i>                        | Serious injury caused by increased imports is still being suffered by the domestic industry and will likely continue if the safeguard measure is removed. Despite the price advantage with the safeguard measure, market share continues to erode resulting to increasing financial losses. Without the measure, the domestic industry will not be able to finance and have time to pursue its adjustment plan. |
| <i>Due to her proximity, the Philippines will continue to be a target market of China's excess capacity ... Without the protection provided by a safeguard action, the domestic industry will continue to suffer.</i> | The excess production capacity in the region, especially in China, is a cause for worldwide concern. In recent years, China has been the main supplier of imported ceramic tiles in the country. Due to her proximity, the Philippines will continue to be a target market of China's excess capacity. Without the protection provided by a safeguard action, the domestic industry will continue to suffer.    |

## Recommendation

*Extension of the imposition of safeguard action is justified in* This investigation finds that an extension of the measure is necessary to prevent and remedy the

*terms of R.A. 8800 and the WTO Agreement on Safeguards* serious injury as the domestic industry is making positive adjustment to import competition.

*The industry has to find alternative sources of energy in the short term ... and make the industry competitive against imports.* Since the anticipated distribution pipelines for natural gas, which could have reduced production cost by about 40% is not likely in the near future, the industry has to find alternative sources of energy in the short term if it is to reduce its costs and make the industry competitive against imports.

*..recommends that the action be extended for another three (3) years.* The Commission recommends that the definitive safeguard action be extended for another three (3) years.

### **Effects of the Affirmative Recommendation**

*... on user industries and consumer welfare* As the measure is only temporary and will be progressively liberalized, competition will return to its normal level

*... on employment, and ....* The expected increase in output and sales would ensure the tenure of additional employment not only in manufacturing but also the related sales and distribution services.

*... on regional development...* The imposition of the definitive safeguard measure will ensure continuous operation of the domestic producers. This will bring continuing community development to areas where these manufacturers are located.

# 1 TERMS OF REFERENCE

## 1.1 The Initial Application of Definitive Safeguard Measure

On 11 April 2002 the DTI Secretary (hereinafter referred to as the “Secretary”), after reviewing the Tariff Commission’s Formal Investigation Report (SG Inv. No. 01-002), issued a decision imposing a definitive general safeguard duty for a period of three (3) years on imports of ceramic floor and wall tiles.

## 1.2 Extension of Definitive Safeguard Measure

On 26 May 2004, the Ceramic Tile Manufacturers’ Association (CTMA) applied for extension of the definitive general safeguard measure. On 15 October 2004, the Commission submitted its Formal Investigation Report and recommendation to the Secretary to extend the safeguard action for three (3) years to allow the domestic industry to fully implement its adjustment plan.

On 21 December 2004, the Secretary issued a Department Order extending the definitive measure on ceramic tiles for another three (3) years beginning 12 January 2005.

Based on the Department Orders and subsequent annual monitoring review conducted by DTI, the definitive safeguard duty for the two (2) three-year periods is shown in Table 1.

**Table 1. Definitive Safeguard Duty on Ceramic Tiles (P/kg)**

| Original Imposition             |                                |                                | 1 <sup>st</sup> Extension      |                                |                                |
|---------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| 1 <sup>st</sup> Year*<br>(2002) | 2 <sup>nd</sup> Year<br>(2003) | 3 <sup>rd</sup> Year<br>(2004) | 1 <sup>st</sup> Year<br>(2005) | 2 <sup>nd</sup> Year<br>(2006) | 3 <sup>rd</sup> Year<br>(2007) |
| 5.40                            | 4.30                           | 3.50                           | 2.80                           | 2.45                           | 2.15                           |

\* The first year implementation took effect on 09 January 2002, the date of issuance of Customs Memorandum Order 4-2002 imposing provisional safeguard duty

Unless otherwise extended by the Secretary, the safeguard action will terminate by 12 January 2008.

## 1.3 The Petition for Final Extension of the Measure

On 03 September 2007, DTI referred the letter request of CTMA to the Tariff Commission pursuant to Section 19 (2) of RA 8800 (Safeguard Measures Act). Section 19 (Extension and Re-application of Safeguard Measure) of the Safeguard Measure provides for the requirements and procedures in applying for extension of the measure. (Full text of Sec. 19 of RA 8800 on page 3).

Petitioner, domestic industry, requests for a *final* extension of four (4) years of the definitive safeguard duty. The domestic industry is asking for additional time to implement its adjustment plan and make it globally competitive. The final extension would ensure that it would be able to commercially implement its project to reduce cost of energy using alternative sources. Petitioner cites the Commission's Monitoring Report as basis that the domestic industry has been serious in its adjustment plan.

#### **1.4 Period under Review**

The Commission shall evaluate if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition during the period when the definitive safeguard was extended for another three (3) years.

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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, RA 8800 (An Act Protecting Local Industries By Providing Safeguard Measures To Be Undertaken In Response To Increased Imports And Providing Penalties For Violation Thereof) was signed into law and took effect on 09 August 2000, i.e., fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

The Joint Administrative Order No. 03, series of 2000 (Implementing Rules and Regulations Pursuant to R.A. 8800), hereinafter referred to as IRR, 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.

#### Extension and Re-application of Safeguard Measures

Section 19 of R.A. 8800 provides that:

“(1) Subject to the review under Section 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.

(2) The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry’s adjustment performance and future plan. The Secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from its receipt of the request. Within seven (7) days from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.”

### Effective Period of any Safeguard Measure

Section 15 (Limitations on Actions) of R.A. 8800 provides that the duration of the period of an action taken under the General Safeguard Provisions shall not exceed four (4) years. Such period shall include the period, if any, in which provisional safeguard relief under Section 8 was in effect.

The effective period of any safeguard measure, including any extensions thereof under Section 19 may not, in the aggregate, exceed ten (10) years.

### The Formal Investigation

The conduct of formal investigation is governed by Rule 9 of the IRR to RA 8800.

The Commission shall, after due notification, conduct marathon public hearings to give all parties, directly affected and such other interested parties as consumers that in the judgment of the Commission are entitled to attend, an opportunity to be heard and to present evidence including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application would be in the public interest.

The Commission shall conclude its formal investigation and submit a report of its findings and reasoned conclusions, whether favorable or not, to the Secretary within one hundred twenty (120) calendar days from the 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.<sup>1</sup>

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.

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<sup>1</sup> For petitions for extension and re-application of safeguard measure, the Commission is given sixty (60) days from its receipt of the request to submit a report to the Secretary.

## Decision

Within seven (7) calendar days from receipt of the final report of the Commission, the 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.<sup>2</sup>

## **2.2 The World Trade Organization Agreement on Safeguards**

Article 2 of the WTO Agreement on Safeguards 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 other such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”

The Agreement provides further that a safeguard measure may be extended provided that the competent authorities of the importing Member have determined in conformity with the procedures set out in Articles 2, 3, 4 and 5 and that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

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.

Safeguard measures, if imposed, must be liberalized progressively. A measure extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

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<sup>2</sup> In case of a negative final determination, the definitive safeguard action on subject ceramic tiles will terminate on 12 January 2008.

The Uruguay Round of Multilateral Trade Negotiations resulted in a new Agreement on Safeguards which interprets and elaborates Article XIX. 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.<sup>3</sup>

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

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

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

#### *“Article 6. Emergency Measures*

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

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

#### *“Article 8. Consultations*

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

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<sup>3</sup> SG Inv. No. 01-02 identified two (2) developments: the Asian financial crisis and the entry of cheap imports from low-priced suppliers of ceramic tiles in the region, as totally unforeseen.

2. Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullification or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the manner, make representations or proposals to the other Member States concerned, which shall give due consideration to the representations or proposals made to it.”<sup>4</sup>

## 2.4. Legal Issues Raised by Oppositors

Before presenting its findings and recommendations as required under Section 9 (Formal Investigation) of RA 8800, the Commission will clarify certain legal issues raised by oppositors that were never brought up in previous safeguard investigations.

### 1. Non-Compliance of the petition with the requisites of Sec. 19 of RA 8800:

#### *Oppositor's Position:*

Golden Ocre Trading Corporation (GOTC) states in its position paper that the subject petition for application for extension of safeguard measures failed to comply with the requirements of Sec. 19 of RA 8800.

GOTC states that under the law, the following requisites must be present for the lawful filing of a petition for extension of safeguard measures:

- the action continues to be necessary to prevent or remedy the serious injury and the industry has made positive adjustment to import competition, based on the findings of the monitoring made under Section 16;
- The petition, as filed, contains a description of the industry's adjustment performance and contains a description of the industry's future plan.

The contention is that with the alleged failure of the petitioner to comply with the requirements set down by law, the dismissal of the petition by the Commission is warranted.

#### *TC Comment:*

Section 19. Extension and Re-application of Safeguard Measure provides:

“(1) Subject to the review under Section 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is

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<sup>4</sup> In case the measure is extended, preferences under the ASEAN CEPT Scheme are not suspended. The definitive general safeguard duty imposed on ceramic floor and wall tiles originating from adversely affected ASEAN countries will be levied on top of the applicable CEPT rate and not on the MFN rate.

evidence that the industry is making positive adjustment to import competition.

(2) The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry's adjustment performance and future plan. The Secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from its receipt of the request. Within seven (7) from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.<sup>5</sup>

The Commission acquires jurisdiction of the case upon the referral of the petition by the Secretary pursuant to the abovementioned provision. Once referred, the petition is presumed to be sufficient in form and substance and the provision of Section 9 will start to operate.

2. Oppositor's contention that efforts or seriousness of the effort is entirely different as that required by Section 19 of RA 8800

*Oppositor's Position:*

During the public consultation, counsel for GOTC stated, for the record, that "making positive adjustment" is entirely different from "making efforts to adjust."

GOTC's position is that under paragraph 1 of Section 19, a petitioner in proving that it is "making positive adjustment" must satisfy the condition of being able to compete successfully with imports. The contention of GOTC is that efforts or seriousness of the effort is entirely different as that required by Section 19 of RA 8800.

*TC Comment:*

In Section 4(k) of RA 8800, "positive adjustment to import competition" shall refer to the ability of the domestic industry to compete successfully with imports after the termination of any safeguard measure, or to the orderly transfer of resources to other productive pursuits; and to the orderly transition of dislocated workers in the industry to other productive pursuits".<sup>6</sup> The law, however, does not define what "making positive adjustment to import competition" is.

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<sup>5</sup> Section 30 (Penalty clause) of RA 8800 provides that any government official or employee who shall fail to initiate, investigate and implement the necessary actions as provided in this Act and the rules and regulations to be issued pursuant hereto, shall be guilty of gross neglect of duty and shall suffer the penalty of dismissal from public service and absolute disqualification from holding public office.

<sup>6</sup> This definition is similar to the definition of "positive adjustment" as given in Section 201(b) of the US Trade Act.

Attention is drawn to Section 16 (Monitoring) where it is expressly provided that,

“So long as any action taken under Section 13 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.”

Likewise, Rule 18.1 of the IRR states that “Action taken under Rule 13 may be reduced, modified or terminated by the Secretary only after:

Rule 18.1.a. Taking into account the results of the monitoring indicated in the report submitted by the Commission under Rule 16, he determines that:

i. No adequate efforts to make a positive adjustment to import competition have been undertaken by the domestic industry...”

X X X X

Before the Secretary can determine and conclude that the domestic industry is making positive adjustment, he must take into account the results of the monitoring indicated in the report submitted by the Commission. The determination as to whether or not a domestic industry is making positive adjustment to import competition is based on the adequate efforts undertaken by that industry.

Had the Secretary determined that there were no adequate efforts by the domestic ceramic tile industry to make a positive adjustment to import competition, he could have terminated the action.

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### **3 THE COMMISSION'S INQUIRY**

Section 19 (2) of RA 8800 provides that:

“The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry’s adjustment performance and future plan. The Secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from receipt of the request. Within seven (7) days from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.”

#### **3.1 Notifications**

In compliance with the public notice requirements of the IRR, the Commission made the following notifications during the course of its inquiry:

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

The formal investigation commenced on 10 September 2007 upon receipt by the Commission of the letter from the Department of Trade and Industry referring the request of CTMA for final extension of the safeguard action. The letter request of CTMA was transmitted to the Commission for appropriate action pursuant to the provisions of Section 19 (2) of R.A. 8800. (*Annex A*)

The Notice of Formal Investigation was published on 13 September 2007 in *Manila Standard* and *The Manila Times*. (*Annexes B and B-1*) The said Notice specified the date of the Preliminary Conference and the matters for discussion in that conference. The Commission sent individual notices to the following:

- The Ceramic Tile Manufacturers’ Association (CTMA) representing the domestic ceramic tile industry;
- The identified importer association, Philippine Ceramic Products Importers Association, Inc. (PCPIA), oppositor in the original investigation;
- Britanico Sarmiento & Franco Law Offices (BSF), which requested the Commission that they be notified in case a petition for extension of the safeguard measure is filed;
- Embassies in the Philippines of the following exporting countries whose exports of subject articles are imposed the safeguard duty: Brazil; People’s Republic China/ Hong Kong; India; Indonesia; Korea; Malaysia; Thailand; UAE; and Vietnam; Cultural Office of Taiwan, Taipei Economic and Cultural Office (TECO);
- Embassies in the Philippines of developed countries: USA and Australia;

- Identified importers and exporters of ceramic tiles from above-mentioned countries/economies;
- Concerned government agencies; and
- Non-governmental organizations/ professional organization/ consumer group
- Philippine Commercial Attachés based in abovementioned countries.

### **3.1.2 Schedule of Public Consultation**

The Notice of Public Consultation was published in *The Manila Times* and *Manila Standard* both on 10 October 2007 (*Annexes C and C-1*). Individual notices were sent to the concerned parties.

Parties were required to submit to the Commission within five (5) calendar days before the scheduled consultation a list of issues they want to explore other than the issues of product comparability. Furthermore, all principal parties, counsels, affiants, deponents and other interested parties are required to appear before the Commission on the first day of the public consultation.

### **3.2 Preliminary Conference**

On 18 September 2007, the preliminary conference was held at the Tariff Commission. In attendance were counsel for petitioner, CTMA; counsels for oppositor, Golden Ocre Trading Corporation.

Other parties who registered their appearances were representatives from PCPIA; Mariwasa-Siam Ceramics; Lepanto Ceramics Inc.;

Representatives from the Embassy of Australia and Embassy of Indonesia also attended.

Government agencies representatives were the DTI - Bureau of Import Services (BIS); DTI – Construction Industry Authority of the Philippines (CIAP); and Bureau of Customs (BOC). (*Annex D – List of Participants*)

The agreements reached during the preliminary conference were the following: the timetable of investigation; entry of appearance of interested parties; names of counsels; sufficient notice; accessibility of documents in the public file; treatment of documents marked confidential; submission of position papers; additional data required by the Commission; and verification thereof, including submission of adjustment plans by the domestic industry; conduct of ocular inspection; and schedule of public consultations.

Petitioner was also required to submit to the Commission the attachments to the instant petition as filed with DTI.

These agreements were contained in an Order dated 18 September 2007 and sent to the following parties: counsels for the petitioner – CTMA; counsel for PCPIA; counsel for Golden Ocre Trading Corporation (GOTC); importers and exporters identified by the Commission; non-governmental organizations;

concerned government agencies; and the embassies of above-mentioned countries.

### 3.3 Staff Report

The Commission issued the Staff Report on 15 October 2007. Copies of the Staff Report were furnished to the parties of interest. Parties were given until 19 October 2007 to submit their comments thereon. The factual findings of the Commission on aspects of product comparability are binding to the party who did not submit its comment.<sup>7</sup>

TC received the comments of GOTC to the Staff Report on 19 October 2007. In summary, GOTC states that:

- the period of review should be limited only to the years 2005 -2007 to justify an extension for the period 2008-2011<sup>8</sup>;
- petitioner failed to submit its proposed adjustment plan in its letter petition (to DTI) dated 16 August 2007 and belatedly submitted in its adjustment plan on September 28, 2007;
- proposed adjustment plan (MSC) does not comply with requirements of the law as there is no statement of efforts the company shall undertake to reach its proposed goals;
- Lepanto did not submit a public version of its adjustment plan and limits the oppositor from knowing whether the requirements have been complied<sup>9</sup>;
- Mariwasa's submission is merely a rehash of the plan it submitted for the period 2005-2008;
- if Lepanto failed to meet, nor comply, with its previous adjustment plan, likelihood of the same to comply with its proposed adjustment becomes questionable;
- the Commission is requested to verify members of the domestic manufacturing (ceramic tile) industry and determine production capacity of the remaining domestic manufacturers<sup>10</sup>;
- data on volume of imports procured from NSO is different from the Staff Report<sup>11</sup>;
- Sales figure of MSC and LCI include sales of both domestic and imported products; Mariwasa is also an importer of ceramic tiles; domestic sales should not include imports;<sup>12</sup>
- domestic manufacturers should disclose their import statistics;

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<sup>7</sup> During the public consultation, counsel for petitioner put on record that they have no comment to the Staff Report. PCPIA and Citrinum Corp. did not submit comments to the Staff Report.

<sup>8</sup> The Staff Report (p. 3) mentioned that "The Commission shall evaluate if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition during the period when the definitive safeguard was extended for another three (3) years."

<sup>9</sup> A summary outline of LCI's adjustment plan was reflected in the Staff Report.

<sup>10</sup> Ocular inspections were conducted on the two (2) remaining identified domestic manufacturers in operation.

<sup>11</sup> GOTC obtained their data from the DTI-BETP website where the unit of measure is reported in FOB US\$.

<sup>12</sup> Domestic sales, as reported in the Staff Report, does not include sales of imported products.

- the combined figures (Table 11) on the combined income statement of applicant companies are inconsistent with audited financial statements as filed with the SEC<sup>13</sup>;
- TC failed to show causal link between increased imports and serious injury or threat thereof to the domestic industry<sup>14</sup>;
- the law does not mention nor sanction mere efforts of the domestic industry to adjust to import competition as sufficient cause to recommend the extension of the imposition of safeguard measures.

### 3.4 Public Consultation

Public consultations were held on 22-24 October 2007 at the Commission's Conference Room. The consultations allowed interested parties opportunity to be heard and to present evidence, elaborate on their submissions, and respond and seek clarifications on the presentations and submissions of the other parties. (*Annex E* - List of Attendees).

### 3.5 Plant Visits/Verification of Data

The manufacturing plants of Mariwasa Siam Ceramics, Inc. and Lepanto Ceramics, Inc. were visited on September 21 and September 26, 2007, respectively. Aside from ocular inspection of production lines in operation, documents inspected were the financial records on production levels, cost, sales, selling price, employment and inventory levels.

An ocular inspection of the plant facilities of the other two (2) identified domestic ceramic tile manufacturers still in operation was conducted to check on their production capacities. The facility of Formosa Ceramic Tiles Manufacturing Corporation (Tenzen) was visited on 18 October 2007 while that of Eurotiles Industrial Corp. was visited on 26 October 2007. (*Annex F* – Ocular Inspection and Verification)

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<sup>13</sup> Lepanto adopts fiscal year in reporting financial statements. The TC Staff Report adjusted Lepanto's financial statement to a calendar year basis to arrive at a combined financial statement for the two (2) applicant companies.

<sup>14</sup> The purpose of the Staff Report is to present available information for parties to comment on. It is for the parties to present their case on issues, such as causal linkage, during the public consultation. Discussion on causal linkage forms part of the Commission's Formal Investigation Report.

## **4 PARTICIPANTS' VIEWS**

### **4.1 Submissions to the Commission**

The Notice of Formal Investigation, as published on 13 September 2007, was sent to all known interested parties. Interested parties were given until 28 September 2007 to submit their respective preliminary/supplemental position papers/documentary evidences. Granting the Motion to extend the time to file the position paper of Golden Ocre Trading Corporation, the Commission likewise gave all interested parties until 08 October 2007 within which to submit their respective position papers.

The Commission received the position papers, through counsel, of the petitioner and oppositors. The Commission received the official position paper of Taiwan on 02 October 2007 while that of the Government of the Republic of Indonesia was received on 15 October 2007. A summary of the preliminary position papers submitted by all parties is given in the Staff Report.<sup>15</sup>

As ordered during the Preliminary Conference, the Commission received from the petitioner the attachment to their letter application as filed with the DTI.

The non-confidential submissions from parties were made publicly available at the Commission for reproduction at cost. (*Annexes G, H and I - List of Submissions*)

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

#### **4.2.1 Petitioner**

The petitioner, CTMA, submitted its final position paper on 30 October 2007. CTMA alleged there is a need for extending the safeguard measure to prevent or remedy serious injury. The petitioner submits that:

- *The Safeguard Measure is still necessary to prevent or remedy the serious injury being inflicted by imported ceramic tiles:*

The market share of the Philippine Ceramic Tile industry decreased for the past four (4) years and the volume of imported ceramic tiles increased. This reduction in market share is validated by the technical Staff Report.

- *Generally the Philippine market for ceramic tiles is price sensitive. The major reason for the decrease in market share of the domestic industry is the cheaper price of imported ceramic tile and increase in cost of production of the domestic industry resulting in the increase in imports.*

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<sup>15</sup> TC Staff Report, p.8

- *The price of imported ceramic tile and increased volume injures or is a cause of serious threat to the Philippine Ceramic Tile Industry.*

The Philippine Ceramic Tile Industry is forced to adopt a policy of import price parity to defend its market share where the domestic industry is forced to sell effectively at a near loss.

Production cost of the domestic tile industry is heavily affected, among others, by the spiraling cost of energy and power. The domestic industry, however, cannot recover these higher costs since it is constrained from increasing prices because of the low priced imported tiles. The flooding of cheap imported tile precludes the domestic industry to operate at optimum levels of production – a major factor in reducing cost.

The price of imported tiles that the domestic tile industry has to mirror in pursuing a policy of import price parity is barely enough to cover the domestic industry's cost to sell.

- *The effect in Reduction of Market Share*

The nature of the ceramic tile business involving kiln operations precludes it from scaling down operations to minimize losses or be more selective in the type of tiles to be produced to be able to cater to niche market without incurring more expenses. Capacity utilization has to be near optimum to be a viable business.

The reduction in market share has adversely affected it resulting to a reduction in volume of production and domestic sales for the past three (3) years; reduction in capacity utilization in the past three (3) years; and reduction in profitability in the past three (3) years.

- *Removing the safeguard measure at this time is premature*

Removing the measure will make imported tiles even cheaper and cause further increase in the volume of imports. Records will show that when the safeguard duty was reduced, the volume of imported ceramic tiles increased and the market share of the domestic industry decreased. Removing the safeguard measure would mean further price depression and its impact would be fatal to the domestic industry.

- *Global Overcapacity*

The threat of even cheaper imported ceramic tiles is greater in the future as there is an overcapacity in the global production of ceramic tiles with total demand exceeding saleable capacity. This overcapacity will result to manufacturers exporting their products that their domestic market cannot absorb at lower price.

- *Petitioners are serious in its adjustment plan*

Lepanto has financially restructured its loan. By end of June 2007, loan obligations amounting to P2.5B were fully settled thereby reducing its loan

obligations to about P500M. Mariwasa is not relying anymore on the promise of cheaper (natural gas) energy and is instead investing on alternative energy source which is in its pilot stage.

The TC Monitoring Report shows that the domestic industry has complied with most of the projects in its adjustment plan.<sup>16</sup>

## **Adjustment Plan**

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

Rule 11.4 of the same IRR provides that “The adjustment plan shall provide a clear quantification of its proposed goals and detail the efforts that the domestic industry and other concerned parties will make to place the domestic industry in a more competitive position. The goals shall be presented using objectively verifiable indicators that will cover the period for which safeguard measures are sought. Measures covering more than one year shall include specific efforts to be undertaken by the domestic industry for each year of progressive liberalization of the measure. It shall likewise include a time frame to enable the Commission to monitor their attainment over the specified period.”

## Submissions<sup>17</sup>

### **A. Mariwasa-Siam Ceramics, Inc. (2008-2011)**

CTMA, in its letter dated September 28, 2007, submitted to the Commission the confidential and non-confidential version of MSC’s adjustment plan for the period 2008 – 2011. Among the schemes it plans to implement in order for it to be more competitive are:

1. To continue with the company’s commitment of providing better and new designs, at least 370 new designs will be launched in 2008 – 2011. The products being developed and introduced are comparable with their foreign counterparts in terms of design and quality.
2. Have a more extensive distribution network by appointing additional dealers, a minimum of 40 new dealers within the 2008-2011 period. This would ensure that the company would be able to tap potential markets on areas not currently being served by Mariwasa.
3. Increase product/brand awareness. In order to boost sales, the company has come up with a more intensified and aggressive marketing program.

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<sup>16</sup> A summary of the results of the TC Monitoring Report was given on pp. 22-24 of the Staff Report.

<sup>17</sup> Annex J

4. Optimization of production capacity. With the projected increase in sales, Mariwasa would be able to optimize its capacity and consequently lower production cost. In the succeeding years, capacity utilization is expected to reach more than 75%.
5. Reduce major cost components. The company is putting more effort in bringing down further the consumption of its major cost components to cushion the negative impact of increasing cost inputs. Mariwasa would be focusing on energy and glaze.

*Quantitative targets:*

1. Reduce power consumption by 8% by year 2011.
2. Lower fuel (LPG) consumption by 10% by year 2011.
3. Lower fuel cost by 40% by year 2011.
4. Reduce glaze cost by 3% by year 2011.

In order to attain these targets, Mariwasa needs to increase further its productivity and efficiency, continue sourcing cheaper alternative sources of fuel and cheaper raw materials. Production and the Technical Group are working closely to improve quality of body powder and glazes. Research and reformulation are being done to replace high cost raw materials with cheaper raw materials.

6. Improve product quality. Mariwasa has to improve more on the quality of its product by having higher extraction rates of Grade A tiles. Planned extraction rates by 2011 are as follows:

Floor tiles (grade A/ grade B) = 90%/ 10%  
Wall tiles (grade A/ grade B) = 94%/ 6%

**B. Lepanto Ceramics, Inc. (2008-2011)**

In its letter dated 09 October 2007, Lepanto Ceramics submitted its Adjustment Plan (2008-2011) marked as confidential. Based on its confidential submission, the programs to be undertaken by Lepanto to enable it to be competitive with imported ceramic tiles are:

1. Organizational changes
2. Key Result Areas:
  - a. Capacity maximization
  - b. Cost reduction and management, and
  - c. Extraction improvement
3. Sales and Marketing Programs
4. New Designs
5. Improvement in financial position

## 4.3 The Opposing Case

### 4.3.1 Philippine Ceramic Products Importers Association, Inc. (PCPIA)

PCPIA submitted its Final Position Paper on 05 November 2007 and states the following:

- *The extension of safeguard measure is no longer necessary because of the following grounds:*

The local ceramic tile industry has already enjoyed a sufficient period of trade protection as a result of their application for safeguard measure. During their initial application for safeguard measure protection, the local industry undertook to make positive adjustments against foreign competition. To ask for another period of extension shows that so-called positive adjustments proposed by the industry are not effective.

The new Bureau of Product Standards (BPS) regulation mandating all ceramic tiles to conform by October 1, 2007 to internationally accepted standard ISO 13006 as outlined in BPS MC 087 s. 2007 will eventually eliminate importation of cheap ceramic tiles of quality below the standards set by BPS.<sup>18</sup>

While the weighted average FOB value of imported ceramic tiles is only US\$0.1344 per kg as reported by the Tariff Commission in its 2004 investigation, the Bureau of Customs is actually adopting a minimum FOB value of US\$0.20 per kg for smaller tiles and US\$0.30 per kg for bigger sizes.<sup>19</sup>

This means that the landed cost of imported ceramic tiles is actually higher than that declared by importers in the import entry as customs appraiser will eventually assess the dutiable value based on higher reference value regardless of actual acquisition cost.

All these factors are sufficient measures to afford protection to the local industry. Under these circumstances, the extension of safeguard measure against imports of ceramic tiles sought by the local industry is no longer necessary.

- *The petition for extension is not in accord with the Law*

The IRR to RA 8800 provides that the adjustment plan shall provide clear quantification of its proposed goals and detail the efforts that the domestic industry and other concerned parties will make to place the domestic industry in a more competitive position.

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<sup>18</sup> A Writ of Preliminary Injunction was issued by RTC Branch 83 of Quezon City directing the Secretary and BPS Director to refrain from enforcing/implementing PNS 13006:2007; BPS MC No. 087 s.2007; BPS MC-090 s.2007, among others.

<sup>19</sup> In its preliminary position paper, PCPIA mentioned US\$0.20/kg for sizes less than 60x60 cm. and US\$0.30/kg for sizes 60x60 or more.

PCPIA has no way of verifying whether the proposed adjustment plan submitted by the local industry is viable, realistic and achievable in the next few years. PCPIA was not afforded an opportunity to see and test the details of the adjustment plan submitted by the local industry. There was no “evidence” presented that the domestic industry is making positive adjustment to import competition.

- *The local industry has already demonstrated the capacity to compete with foreign players*

During the public consultation, Mariwasa stated that his company exports about 100,000 square meter of ceramic tiles to destinations like Thailand and Guam. This shows that the local industry can compete with foreign players even beyond its turf.

In closing, PCPIA mentioned that the safeguard measure will not benefit the consuming public in general for a safeguard measure will keep the cost of imported tiles artificially high and it will not encourage the local manufacturers to price their product competitively.

In the remote possibility that the Tariff Commission recommends extending the measure, it may be worthwhile to consider its recommendation in the original investigation of providing in-quota allocation as this strikes a balance among various interests of the parties involved including the consumer sector.<sup>20</sup>

#### **4.3.2 Golden Ocre Trading Corporation (GOTC)<sup>21</sup>**

GOTC, through counsel, submitted its Final Position paper on 05 November 2007. GOTC prays that the Commission dismiss the petition on the ground that it was filed contrary to law and in the alternative, that the petition for extension of the safeguard measures be denied for lack of merit.

- *Petitioner-corporations failed to prove serious injury or threat thereof to the domestic industry that is directly caused by increased quantity of imported ceramic tiles.*

Sec. 12 of RA 88 provides for the guideline on how serious injury or threat thereof shall be determined. The necessity of determining causal link between increased importations and the serious injury or threat thereof to the domestic industry is thus provided for by law.

Based on evidence on hand, the conclusion can be made that there can be no positive determination of serious injury or threat thereof to the domestic industry that is caused by the increased imports of ceramic tiles. Petitioners failed to substantiate their claims of serious injury or threat thereof to the domestic industry.

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<sup>20</sup> The Secretary did not adopt this recommendation as a form of measure in the original investigation of the Commission.

<sup>21</sup> GOTC is a SEC-registered trading company whose primary purpose is to engage in importation and trading of bathroom accessories and tiles on wholesale. Its office is located in Bagumbayan, Quezon City while its warehouse is located in an industrial complex in Carmona, Cavite.

If there is causal connection between the increase of quantity of imports with the serious injury to the domestic industry, the financial losses of the domestic industry must likewise be in a similar trend. There must be a direct proportion between the increased quantity of imports vis-a-vis the losses sustained by the domestic industry. The financial statements of the domestic manufacturers show fluctuating figures of both net sales, as profit and loss for the period of 2004 - 2006.

The absence of showing of a causal connection between the increase of quantity of imports and the performance of the domestic industry can be explained by the existence of other economic factors that affected the domestic industry. The absence of proof or evidence of such causal link necessarily calls for the denial of the petition for extension.

- *Petitioner-corporations failed to show the public interest that will be served by the extension of safeguard measures*

Petitioner-corporations failed to prove, nor even attempted to prove, the existence of meeting public interest as a justification for the grant of extension of safeguard measures.

The presence or absence of public interest must be taken into consideration when the Commission issues its recommendation to the Secretary of Trade and Industry.

Sec. 10 (Public Consultation) of Commission Order No 00-02 provides that the Commission, after due notification, shall conduct marathon Public Consultation to give all interested parties affected and other interested parties as consumers that in the judgment of the Commission are entitled to attend, an opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest.

The failure of the petitioners to show that public interest will be served by the grant of their application necessitates the denial of the application. GOTC stressed that the extension of the measure is not in keeping with public interest.<sup>22</sup>

- *Petitioner-corporations failed to show that the domestic industry is making positive adjustment to import competition.*

A discussion transpired during the public consultation as to whether “serious efforts in complying with the adjustment plan” is equivalent to “showing positive adjustment to import competition.” There is nothing in the law on safeguard measures that provides that “serious efforts in complying with the adjustment plan”

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<sup>22</sup> The Commission ruled, in the safeguard investigation case against imports of STPP, that no party is prevented from raising the issue of public interest in the course of the formal investigation by way of pleading or position paper. However, said issue will be taken into consideration by the DTI Secretary when he makes a decision following the Commission’s positive determination, on whether or not to impose a definitive safeguard measure. The position of the Commission is anchored on the provisions of Section 5 of RA 8800.

is deemed sufficient. Thus, to justify the extension of safeguard measures, the petitioner-corporations must have shown that within the period that the industry was benefiting from safeguard measure the domestic industry must have been experiencing improvement and competing successfully with imports. The law does not merely require compliance with adjustment plans but the showing of improvement of successful competition with imports.

The independent 2007 Monitoring Report of the Commission supports the oppositor's position that the domestic industry is not positively adjusting to import competition. What the Monitoring Report has shown is the failure of the members of the domestic industry of exhibiting positive adjustments and increasing import competitiveness.

- *It is the task of the Commission to determine whether the petition for extension of the imposition of safeguard measures may be given due course*

Sec. 19 of the law is clear that the findings of the Monitoring Report shall determine whether a petition for extension may be filed. Failure to comply with the requisites of Sec. 19 of RA 8800 shall be tantamount to a condonation by the Tariff Commission of a defiance of the law.

As the Monitoring Report clearly provided for the absence of serious injury and the absence of a positive adjustment to import competition by the domestic industry, the filed petition for extension must have been denied due course by the Commission upon receipt thereof. The findings of the Tariff Commission in its Monitoring Report show the absence of the conditions that must be met to justify the recommendation for an extension of safeguard measures.

The petition of private respondents, by way of a letter-request, did not comply with the requisites of Sec. 19(2) of RA 8800. Concrete reasons for the necessity of an extension of safeguard measures were not stated. The law provides for the grounds for the grant of safeguard measures. The existence of these grounds shall be the reasons that must be stated to justify the request for the extension of the grant of safeguard measures.

To allow the petitioner to disregard the requirements of law, and proceed with giving due course to the non-compliant petition, would undoubtedly adversely affect the right of the oppositor to the protection of the rule of law in the conduct of its business.

#### **4.3.3 Citrinum Corporation<sup>23</sup>**

- *Petitioners have failed to prove that circumstances exist which warrant the extension of the imposition of safeguard measures against the importation of ceramic floor and wall tiles.*

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<sup>23</sup> In its Motion to Enter Appearance, Citrinum Corporation stated that it is a domestic corporation engaged in the business of importing ceramic tiles with business address at ANPN Plaza Bldg., Balintawak, Quezon City.

In its Final Position Paper, petitioners sought to prove the existence of serious injury to the domestic market as a function of increased imports by asserting that the domestic industry's market share has been reduced due to the increased volume of importation of ceramic floor and wall tiles.

Despite the fact that the market share of imported ceramic tiles increased, as the volume of imports increased, petitioners miserably failed to show a causal link between serious injury to the domestic injury and the increased volume of importation of ceramic tiles. Petitioners erroneously presupposed that the increased volume was the proximate result in the decrease of the domestic industry's market share and corresponding increase in the market share of the importers.

Absent a clear showing on the basis of "objective evidence" that a causal link between the increased imports and serious injury or threat thereof to the domestic industry exists, the instant petition lacks the evidentiary basis mandated by the law to support its assertion.

- *The petitioner has not made any positive adjustments to import competition to warrant the extension of the position of safeguard measures against the importation of ceramic tiles into the country*

The petitioners have failed to show that they have made positive adjustments to import competition as they have not accomplished the objectives laid out in their respective adjustment plans.

The Monitoring Report (12 March 2007) of the Commission reveals that the domestic industry has not made any positive adjustments to import competition. Likewise, the same Monitoring Report explicitly states that: "Based on Lepanto's submission, substantial compliance to its adjustment plan was not met".<sup>24</sup>

Based on the foregoing findings of the Commission, the domestic industry has not made any positive adjustments to import competition.

- *To grant a further extension of the safeguard measure would be violative of the country's treaty obligation*

The petitioner's claims are unsubstantiated by clear and convincing evidence. At most they are self-serving and conjectural. Applying Article VI of the Agreement on Safeguards, the extension on the imposition of safeguard measure should not be imposed as the petition sorely lacks the factual basis by which the said extension may be imposed.

The total period of application of a safeguard measure including the period of initial application and any extension thereof, shall not exceed eight years. If the

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<sup>24</sup> The above-quoted statement referred to applies only to Lepanto not meeting targets for working capital accounts.

four (4) year extension is imposed, the entire period of the safeguard measure would be beyond the eight (8) year limit prescribed by the GATT.<sup>25</sup>

- *To grant a further extension would be unreasonable and against the principle of trade liberalization*

Six (6) years is more than ample time for the domestic industry to achieve its aims of bringing about positive adjustments to import competition, which sadly, the domestic industry has not been able to achieve. The importers of ceramic tiles should not be made to suffer any longer for the shortcomings of its domestic counterparts, considering that it has already been placed at an undue disadvantage since the imposition of the safeguard measure way back in 2002.

#### **4.3.4 People's Republic of China (PROC)**

The representative from the Economic and Commercial Consulate Office of the Chinese Embassy expressed that China, as a major exporting country is very concerned about the length of the safeguard measures. She hopes that any petition is in conformity with the WTO Agreement on Safeguards.

China reserves the right to submit position paper in the future and appreciates if their office will be updated from time to time.

#### **4.3.5 Republic of Indonesia**

In its email, dated 14 October 2007, addressed to the Commission, the Government of Indonesia stated several concerns regarding the implementation of the safeguard measures on ceramic tiles:

- the Government of Indonesia (GOI) is really concerned about the length of the safeguard measure and hopes that the Commission will not recommend an extension of the measure;
- from the Monitoring Report, imported products do not cause injury to domestic industry. The domestic industry suffer from loss in the period of safeguard measure being implemented;
- GOI has delivered proposal for trade compensation to DTI but the Philippines has not yet brought any proposal for GOI to discuss trade compensation;
- The imposition of safeguard measure against importation of ceramic tiles originating from Indonesia since 2002 is being considered as a conduct of over protectionism by Philippine authorities.

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<sup>25</sup> Paragraph 2 of Article 9 of the WTO Agreement on Safeguards gives the right to a developing country Member to extend the period of application of a safeguard measure of up to two (2) years beyond the maximum period provided for in paragraph 3 of Article 7 (which is eight years). Also, Sec. 15 of RA 8800 provides that the effective period of any safeguard measure, including any extensions thereof under Sec. 19 may not, in the aggregate, exceed ten (10) years.

#### **4.3.6 Taiwan Economic and Cultural Office (TECO)**

In its letter dated 01 October 2007 addressed to the Commission, the Director of TECO forwarded a copy of Taiwan's official position paper. The paper explains why Taiwan should be exempted if the application of safeguard measure is extended:

- the average import share of products from Taiwan for the past five (5) years was less than 3%.
- Suggests that Taiwan be deleted from the list of exporting countries since its exports to the Philippines is less than 3% of the total imports.
- if there is a decision to extend the measure, the Philippines must provide the evidence supporting its decision as prescribed under Article 12.2 of the WTO Agreement on Safeguards;
- Exporting members should be notified and consulted with or even compensated according to Articles 8 and 12 of the Agreement.

Taiwan declares its rights under Articles 8 and 12 once the Philippines decides to apply the safeguard measure against its subject products. During the public consultation, the representative from Taiwan reiterated their official position.

#### **4.3.7 Embassy of the Socialist Republic of Vietnam**

The Ambassador of Vietnam to the Philippines made a brief presentation to the effect that the safeguard measure should now be terminated as it is not in conformity in today's trend of free trade. The imposition of safeguard duty is not conducive to trade in the ASEAN region. This is a reason why Vietnam does not apply safeguard duties on its imports. The measure protects few producers and not good for consumers. Vietnam's export of subject products is small and it should therefore be excluded from the list of countries subject to safeguard duty.

#### **4.4 Other Submissions**

##### **▪ Embassy of Malaysia**

The Trade Commissioner acknowledged receipt of the Order issued by the Commission and will appreciate if his office is updated from time to time.

##### **▪ Embassy of India**

In its faxed letter, dated 31 October 2007, the Embassy of India requested for a ten (10) day extension of the Public Consultation and submission of Final Position Paper.<sup>26</sup>

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<sup>26</sup> The Public Consultation having been terminated, the Commission gave Indian authorities until 15 November to submit a Position Paper.

- **Taicera Enterprise Company (Vietnam)**

It has no opposition to the said petition. It cites that it is a licensed manufacturing corporation in Vietnam and exports only homogeneous tiles and has no existing branch in the Philippines.

- **Guocera Tiles (Malaysia)**

Guocera requests trade data on ceramic tile imports of the Philippines; customs duties for 2008; and latest report on the safeguard measure on ceramic tiles.

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## 5 THE DOMESTIC INDUSTRY AND MARKET

### 5.1 The Domestic Product

The domestic industry produces unglazed and glazed ceramic floor and wall tiles. Ceramic tiles are used as outdoor and indoor floor and wall coverings in private dwellings, commercial and industrial buildings, urban facilities, etc. The more common sizes in the local market for floor tiles are 30 x 30 cm and 40 x 40 cm. In the case of wall tiles, the more common sizes are 20 x 20 cm and 20 x 25 cm. In the domestic industry, first class tiles are called commercial grade and those with slight glaze and body defects are labeled Grade B. Tiles with very visible defects are tagged rejects.<sup>27</sup>

The major raw materials used to form the tile body are ball clay and feldspar which are also locally available. Silica sand may also be used. The glazing materials are all imported, mostly from Europe and China.

### 5.2 Market Participants

#### 5.2.1 Domestic Producers

**Table 2. Domestic Producers**

| COMPANY  | LOCATION                               | Rated Capacity<br>(‘000 sq. m.) | PRODUCT   |
|--|--|---------------------------------|---|
| Mariwasa Siam Ceramics, Inc. (ISO certified)*    | Bgy. San Antonio, Sto. Tomas, Batangas | 12,100                          | Glazed ceramic floor and wall tiles                   |
| Lepanto Ceramics, Inc.                           | Km. 54, Makiling, Calamba, Laguna      | 6,790                           | Glazed ceramic floor and wall tiles                   |
| Eurotiles Industrial Corporation (ISO certified) | Silang, Cavite                         | 4,900                           | Glazed ceramic floor and wall tiles                   |
| Formosa Ceramic Tiles Mfg. Corp. (Grand Caesar)  | San Simon, Pampanga                    | 1,350                           | Glazed floor and wall tiles (30 x 30 cm; 40 x 40 cm.) |
| Filcera Manufacturing, Inc. **                   | San Vicente, San Pedro, Laguna         | 2,227                           | Glazed wall tiles (4’x4” and 8” x 8”)                 |
| Italfil Manufacturing, Inc. **                   | AIP-SEZ, Calibutbut, Bacolor, Pampanga | 1,250                           | Unglazed floor tiles                                  |
| Tri-Little Dragon (Pioneer) ***                  | Mandaluyong City                       | —                               | Glazed floor tiles                                    |

\* Mariwasa reports as normal capacity

\*\* Ceased operations

\*\*\* On shutdown (based on information from the domestic industry, with relatively small production capacity); production is not limited to ceramic tiles.

<sup>27</sup> SG Inv. No. 2001-02 Report, p.21

## 5.2.2 Status of Operations

The following domestic ceramic tile manufacturers are currently in operation:

- Lepanto Ceramics, Inc.
- Mariwasa Siam Ceramics, Inc.
- Eurotiles Industrial Corporation.
- Formosa Ceramic Tiles Mfg. Corp. (Grand Caesar)

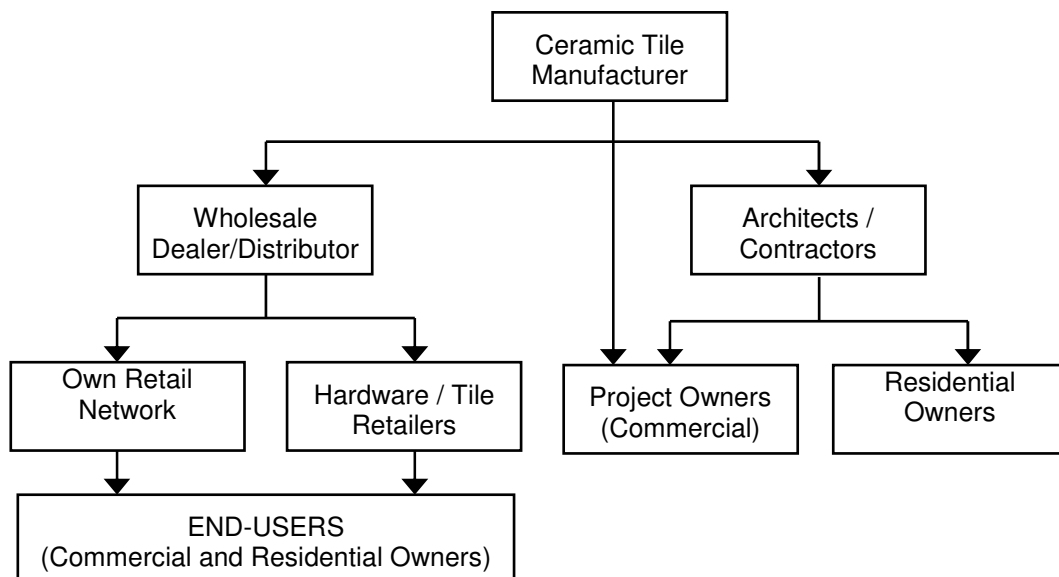
On the other hand, Filcera; Italfil; and Pioneer Ceramics have shut down their respective production operations.

Filcera, in its letter dated 21 July 2004, stated that it had shut down its operations and has no definite period for resumption of operations. Italfil has also confirmed to the Commission that it had shut down production operations and is now selling off remaining inventories. On the other hand, based on information from CTMA and the company itself, Pioneer Ceramics had shut down.

## 5.2.3 Distribution Channels

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

**Distribution Network Flow Chart \***



\* SG. Inv. No. 01-02 Report, p. 24.

## 5.2.4 Importers

Based on Import Entries on file with the Commission, the top importers (on a volume basis) identified for the period 2004, 2005 and 2006 are:

**Table 3. Top Importers of Ceramic Tiles**

| <b>Year</b> | <b>Importer</b>        | <b>Country /(Port of Origin)</b>       |
|-------------|------------------------|--|
| <b>2004</b> |                        |  |
| 1           | Davao Citihardware     | China                                  |
| 2           | Eurotiles              | Brazil, China, Malaysia                |
| 3           | Decoarts               | China, Brazil, Indonesia, Thailand,    |
| 4           | Wilcon Builders        | China, Indonesia                       |
| 5           | FC South Trading       | China, Hongkong                        |
| 6           | Cebu Oversea Hardware  | China, Malaysia                        |
| 7           | Sun-Lor Enterprise     | China, Hongkong                        |
| 8           | World of Tiles         | China, Hongkong                        |
| 9           | Felpport International | China, Hong Kong, Indonesia, Singapore |
| 10          | Adventure              | Vietnam                                |
| <b>2005</b> |                        |  |
| 1           | World of Tiles         | China, Hong Kong                       |
| 2           | Felpport International | China, Hong Kong                       |
| 3           | Wilcon Builders        | China, Indonesia, Spain                |
| 4           | Davao Citihardware     | China, Malaysia                        |
| 5           | FC South Trading       | Hong Kong                              |
| 6           | Malogan Enterprises    | China, Hong Kong                       |
| 7           | MGO Marketing          | China, Hong Kong                       |
| 8           | Encabo International   | China                                  |
| 9           | Syo Hatsu Trading      | China, Hong Kong                       |
| 10          | RAK Ceramics           | China, Hong Kong                       |
| <b>2006</b> |                        |  |
| 1           | Citrinum Corp.         | China, Indonesia                       |
| 2           | Wilcon Builders        | China, Indonesia, Spain, Italy,        |
| 3           | Golden Ocre            | China                                  |
| 4           | Dau Tiles Center       | China                                  |
| 5           | Felpport Marketing     | China, Italy, Spain, Singapore,        |
| 6           | Futek Enterprises      | China                                  |
| 7           | Davao Citihardware     | China, Malaysia                        |
| 8           | Decoarts Marketing     | Indonesia, Thailand,                   |
| 9           | Olongapo Home Builders | China, Hong Kong                       |
| 10          | Frontier Ceramics      | Indonesia, Spain                       |

### **5.2.5 Users**

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

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## 6 PRODUCT SUBJECT OF DEFINITIVE SAFEGUARD DUTY

Section 4(h) of RA 8800 states that “like product” shall mean 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.<sup>28</sup>

### 6.1 Subject to Definitive Safeguard Duty<sup>29</sup>

The application of definitive safeguard duty is directed against imports of ceramic floor and wall tiles, glazed or unglazed, classified under the ASEAN Harmonized Tariff Nomenclature (AHTN) Code Nos. 6907.90.10; 6907.90.90; 6908.90.11; 6908.90.19; 6908.90.21; 6908.90.29; 6908.90.90 .

Imported ceramic tiles from Japan and member states of the European Union (EU) are not covered by the imposition of definitive safeguard duty per decision of the Secretary dated 11 April 2002.

**Table 4. Tariff Schedule**

|            |  |                              | Tariff Duty (% ad val.) |        |         |         | Additional Duty |
|------------|--|------------------------------|-------------------------|--------|---------|---------|-----------------|
| HS Code    | AHTN Code*   | 2007 AHTN                    | MFN                     | AFTA** | ACFTA** | AKFTA** | Safeguard Duty  |
| 6907.90 00 | 6907.90.10 ]<br>6907.90.90 ]   | 6907.90.00                   | 10                      | 5      | 8       | 8       | P 2.15/kg       |
| 6908.90 00 | 6908.90.11 ]<br>6908.90.19 ]<br>6908.90.21 ]<br>6908.90.29 ]<br>6908.90.90 ] | 6908.90.10 ]<br>6908.90.90 ] | 10                      | 5      | 8       | SL      |                 |

\*Transposition from the Harmonized System (HS) Code to the AHTN Codes following the official adoption in 2004 by the Philippines of the AHTN.

MFN – Most Favored Nation; AFTA – ASEAN Free Trade Area; ACFTA – ASEAN-China Free Trade Area; AKFTA – ASEAN-Korea Free Trade Area

\*\* Requires a Certificate of Origin (CO) Form to be eligible for preferential tariff.

SL – Sensitive List

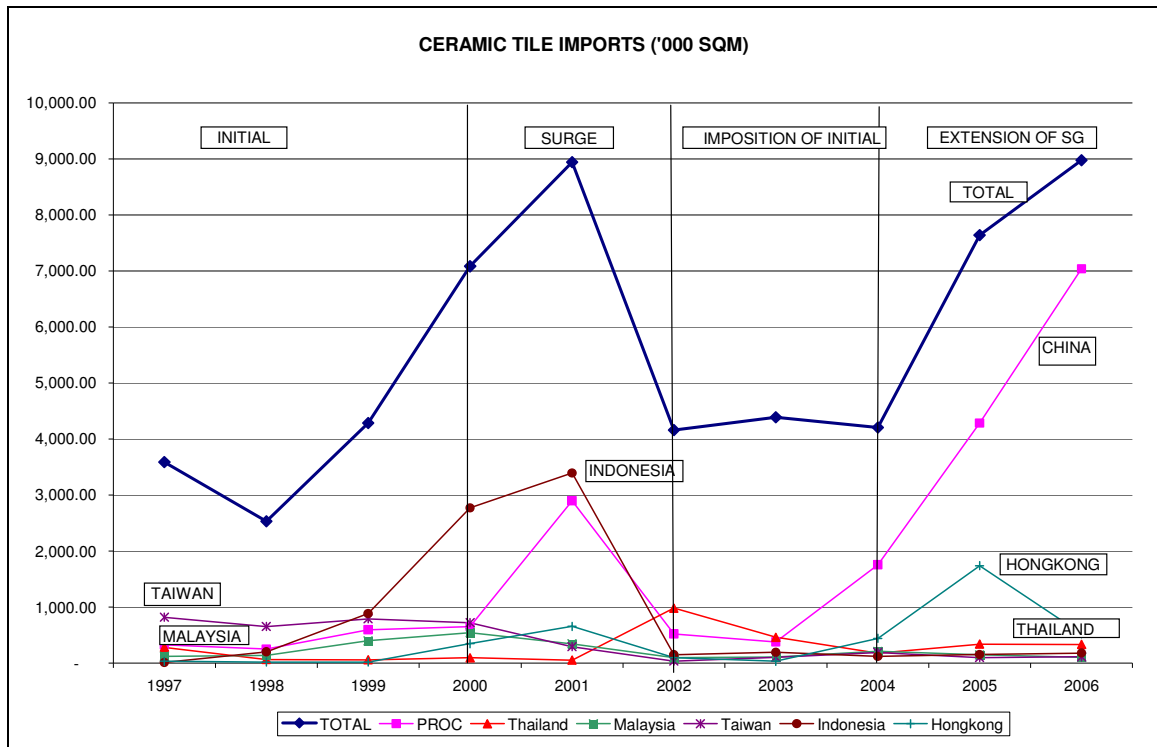
<sup>28</sup> No comment to the Staff Report on the aspect of product comparability was received by the Commission hence the findings on product comparability as contained in the Staff Report is binding on all Parties.

<sup>29</sup> Imports originating from a developing country are excluded from the imposition of safeguard measures if its share of imports of the product to the Philippines is less than 3%, provided that developing countries with less than 3% import share collectively account for not more than 9% of total imports.

## 7 VOLUME OF IMPORTS

### 7.1 Volume

**Fig. 1. Ceramic Tile Imports ('000 SQM)**



**Table 5. Total Volume of Ceramic Tile Imports ('000 SQM)**

| Year           | 1997  | 1998  | 1999  | 2000  | 2001  | 2002  | 2003  | 2004  | 2005  | 2006  |
|----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Volume         | 3,591 | 2,531 | 4,288 | 7,086 | 8,945 | 4,160 | 4,391 | 4,206 | 7,642 | 8,978 |
| Growth Rate, % |       | (30)  | 69    | 65    | 26    | (53)  | 6     | (4)   | 82    | 17    |

\* Data based on NSO Trade Statistics, reported in gross kg converted to sq. m. using methodology used in original Formal Investigation (SG 2001-02).

The original investigation determined that surge in imports commenced in year 2000. The Commission concluded in the original investigation that, in accordance with RA 8800, ceramic tiles are being imported in increased quantities, both in absolute terms and relative to domestic production.

With the imposition of the definitive safeguard measure beginning in 2002, total imports of ceramic tiles for the period 2002-2004 were drastically reduced that the Commission concluded in its 2004 formal investigation report that the measure was effective. The safeguard measure was extended in 2005 to give time to the domestic industry to complete its adjustment plan. However, China's tile exports to

the Asian region intensified recently. Philippine tile imports significantly increased to levels that surpassed the surge in volume in 2000 - 2001.

## 7.2 Country Suppliers

**Table 6. Country Suppliers of Ceramic Tiles**

| SOURCE COUNTRY         | IMPORTS IN ' 000 SQM |              |              | % SHARE TO TOTAL |               |               | Growth Rates (%) |              |              |
|------------------------|----------------------|--------------|--------------|------------------|---------------|---------------|------------------|--------------|--------------|
|                        | 2004                 | 2005         | 2006         | 2004             | 2005          | 2006          | 2004-2005        | 2005-2006    | Average      |
| China <sup>1</sup>     | 1,756                | 4,285        | 7,041        | 41.75            | 56.06         | 78.43         | 143.96           | 64.34        | 104.15       |
| Hong Kong <sup>1</sup> | 443                  | 1,738        | 523          | 10.52            | 22.75         | 5.83          | 292.75           | -69.90       | 111.42       |
| Thailand <sup>1</sup>  | 181                  | 339          | 333          | 4.30             | 4.44          | 3.71          | 87.87            | -1.95        | 42.96        |
| Brazil <sup>1</sup>    | 325                  | 41           | 9            | 7.72             | 0.54          | 0.10          | -87.28           | -78.12       | -82.70       |
| Taiwan <sup>1</sup>    | 192                  | 98           | 112          | 4.56             | 1.28          | 1.24          | -48.86           | 13.90        | -17.48       |
| Malaysia <sup>1</sup>  | 212                  | 146          | 101          | 5.04             | 1.92          | 1.12          | -30.99           | -31.19       | -31.09       |
| Vietnam <sup>1</sup>   | 130                  | 66           | 17           | 3.09             | 0.86          | 0.19          | -49.19           | -74.49       | -61.84       |
| Indonesia <sup>1</sup> | 119                  | 153          | 179          | 2.84             | 2.01          | 2.00          | 28.34            | 17.07        | 22.71        |
| EU <sup>2</sup>        | 626                  | 624          | 506          | 14.89            | 8.16          | 5.64          | -0.35            | -18.85       | -9.60        |
| Japan <sup>2</sup>     | 75                   | 23           | 70           | 1.77             | 0.30          | 0.78          | -69.76           | 211.28       | 70.76        |
| Others <sup>3</sup>    | 148                  | 128          | 86           | 3.52             | 1.68          | 0.96          | -13.18           | -32.78       | -22.98       |
| <b>TOTAL</b>           | <b>4,206</b>         | <b>7,642</b> | <b>8,978</b> | <b>100.00</b>    | <b>100.00</b> | <b>100.00</b> | <b>81.69</b>     | <b>17.47</b> | <b>49.58</b> |

Source: Based on NSO Trade Statistics, reported in gross kg converted to sq. m. using methodology adopted in the original Formal Investigation (SG 2001-02).

<sup>1</sup> With safeguard duty.

<sup>2</sup> Excluded from safeguard duty

<sup>3</sup> Includes, among others, India, Korea and UAE whose exports of tiles to the Philippines are with safeguard duty.

After the extension of the imposition of safeguard measure, China became the major source of imported ceramic tiles in the Philippine market. Imports from China grew at an average annual rate of 104% for the period 2004 - 2006. Last year, China (together with Hong Kong) accounted for almost 85% of the total volume of imports. As seen in the graph above, the recent, sudden, sharp and significant rise in imports from China reflects the trend for the recent significant increase in total volume of imports.<sup>30</sup>

Except for Thailand which still accounted for 3.71% share of total ceramic tile imports of the Philippines in 2006, imports in the last two (2) years from other developing countries covered by the imposition of safeguard duty are now below the 2% minimum threshold.

Philippine imports of ceramic tiles from EU (mostly Italy and Spain), although not covered by the safeguard action but higher-priced (better quality) than

<sup>30</sup> The above finding is consistent with the finding in the DTI Order, dated 21 December 2006, in relation to the phase down at regular intervals of the measure within the period in which the safeguard action is in effect. In that Order, the Secretary states that "An analysis of the available import transactions for the January to October 2006 period indicated that China contributed the biggest share of 80.74% to total Philippine imports. Imports from Hong Kong registered the second highest share at 9.76%. Imports from these two (2) sources accounted for about 90% of total Philippine imports during the 2005 to 2006 (January to October) period."

other imported tiles also exhibited negative growth rates for the past two (2) years.<sup>31</sup>

### 7.3 Volume of Imports Relative to Domestic Production

**Table 7. Share of Imports Relative to Domestic Production**

| Year | Imports              |                  | Domestic Production  |                 | Share of Imports to Total Production |
|------|----------------------|------------------|----------------------|-----------------|--------------------------------------|
|      | Volume ('000 sq. m.) | Growth Rates (%) | Volume ('000 sq. m.) | Growth rate (%) |                                      |
| 2004 | 4,206                | (4)              | 13,996               | (28)            | 30                                   |
| 2005 | 7,642                | 82               | 14,233               | 2               | 54                                   |
| 2006 | 8,978                | 17               | 13,420               | (6)             | 67                                   |

Based on Table 7, the total apparent demand for ceramic tiles increased from 2004 to 2006. It is clear that the increase in total volume of imports is significant. Based on 2004-2006 figures, however, total domestic production exhibited an opposite trend. Domestic production was relatively flat for the same period and even decreased in 2006.

### 7.4 Findings

In recent years, the total apparent demand of the Philippines for ceramic tiles significantly increased. Annual volume of ceramic tile imports for the period 2005 - 2006 reached levels comparable to the import surge in 2000 and 2001.

China and Hong Kong are now the main sources of imported ceramic tiles, accounting for almost 85% of the total volume of imports. Imports from most developing countries are now below the 3% minimum threshold.

In 2004, the Commission concluded that switching between import sources is rather easy in the ceramic tile industry.<sup>32</sup> Imports from developing countries waned after their removal from the *de minimis* list.

Imports from EU, traditionally from Spain and Italy, declined in the last two (2) years despite being exempted from the imposition of the safeguard duty.

<sup>31</sup> According to the International Ceramics Journal (Oct. 2006 issue), the exports from China are destined to Asian countries, and it will take some more time before the companies based in Foshan or Shandong, can produce tiles of such a high quality as Italian ones.

<sup>32</sup> Formal Investigation Report, SG 01-2004, p. 23.

## 7.5 *De Minimis* Import Volume

The volume of imports from the following developing countries was found to be *de minimis* throughout the period when the safeguard action was extended in 2004:

**Table 8. *De minimis* Volume of Imports**

| DEVELOPING COUNTRY                 | % SHARE TO TOTAL IMPORTS |             |             |
|------------------------------------|--------------------------|-------------|-------------|
|                                    | 2004                     | 2005        | 2006        |
| Bahrain                            | 0.06                     | -           | -           |
| Bangladesh                         | 1.98                     | 0.50        | 0.03        |
| Chile                              | -                        | -           | 0.01        |
| India <sup>1</sup>                 | 0.03                     | -           | 0.00        |
| Indonesia <sup>1</sup>             | 2.84                     | 2.01        | 2.00        |
| Korea <sup>1</sup>                 | 0.07                     | 0.02        | 0.01        |
| Mexico                             | -                        | 0.00        | -           |
| Pakistan                           | -                        | -           | 0.01        |
| Saudi Arabia                       | -                        | 0.21        | -           |
| Singapore                          | 0.37                     | 0.38        | 0.73        |
| South Africa                       | -                        | 0.00        | -           |
| Sri Lanka                          | -                        | 0.02        | -           |
| Turkey                             | 0.06                     | 0.04        | 0.02        |
| UAE <sup>1</sup>                   | 0.24                     | -           | 0.01        |
| <b>TOTAL of de minimis imports</b> | <b>5.66</b>              | <b>3.16</b> | <b>2.83</b> |

Sources: NSO Trade Statistics; UNCTAD country classification  
<sup>1</sup> Currently with safeguard duty.

The composition of developing countries in the *de minimis* list may change depending on the most recent annual data available.

## 8 DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF

Rule 19 (Extension and Re-application of Safeguard Measure) of the IRR provides that:

“Rule 19.1. Subject to the review under Rule 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.”

Likewise, Rule 9.4.c requires the determination of “the presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product.”

### 8.1 Domestic Industry Requirements

Sec. 4(f) of R.A. 8800 defines “domestic industry” as “the domestic producers, as a whole, of like or directly competitive products manufactured or produced in the Philippines or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of these products”.

Table 9 shows that the two (2) applicant companies accounted for 71% of the total domestic production of ceramic tiles thereby satisfying the domestic industry requirement under Section 5 of RA 8800.

**Table 9. Domestic Industry Requirements**

| YEAR  | Actual Production (in '000 sq.m.) |  |        | Share to Total Production (%)    |  |
|-------|-----------------------------------|--|--------|----------------------------------|--|
|       | Applicant Companies <sup>1</sup>  | Other local Manufacturers <sup>2</sup> | TOTAL  | Applicant Companies <sup>1</sup> | Other local Manufacturers <sup>2</sup> |
| 2004  | 13,996                            | 5,505                                  | 19,501 | 72                               | 28                                     |
| 2005  | 14,233                            | 5,409                                  | 19,642 | 72                               | 28                                     |
| 2006  | 13,420                            | 5,459                                  | 18,879 | 71                               | 29                                     |
| 2007* | 6,342                             | 2,600 **                               | 8,942  | 71                               | 29                                     |

Source: <sup>1</sup> Mariwasa and Lepanto

<sup>2</sup> Eurotiles and Formosa

\* - January to June 2007

\*\* - estimate

## 8.2 Serious Injury Factors

### 8.2.1 Market Share

Table 10 and Figure 2 show that the share of imports to total domestic apparent consumption increased from 24% in 2004 to 36% in 2005 and continued to increase in 2006 to 41%.

Notwithstanding the extension of safeguard measures, imports in 2005 and 2006 surpassed the import levels in 2000 and 2001. The increase in total domestic demand was fully supplied by imports. The declining trend in market share of the domestic industry led to its serious impairment.

**Table 10. Apparent Domestic Consumption of Ceramic Tiles**

| Year  | Domestic Sales <sup>/a</sup> | Imports <sup>/b</sup> | Apparent Domestic Consumption | % Share to Estimated Apparent Consumption |         |
|-------|------------------------------|-----------------------|-------------------------------|---|---------|
|       | ('000 sqm)                   | ('000 sqm)            | ('000 sqm)                    | Domestic                                  | Imports |
| 2004  | 13,647                       | 4,206                 | 17,853                        | 76  | 24      |
| 2005  | 13,742                       | 7,642                 | 21,384                        | 64  | 36      |
| 2006  | 12,957                       | 8,978                 | 21,935                        | 59  | 41      |
| 2007* | 6,427                        |                       |                               |   |         |

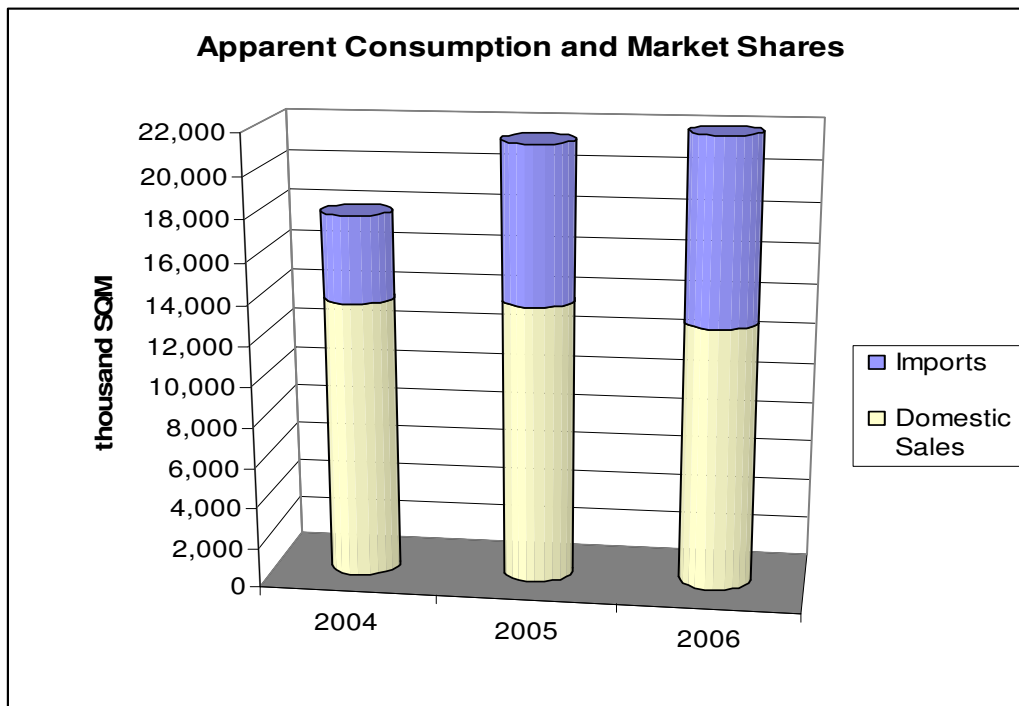
Source: <sup>/a</sup> - Mariwasa and Lepanto (Sales from imports excluded)

<sup>/b</sup> - NSO Foreign Trade Statistics

Monitoring Report on the Adjustment Plan of the domestic industry

\* January to June 2007

**Fig. 2. Market Shares**



## 8.2.2 Production, Sales and Ending Inventory

**Table 11. Production, Sales and Ending Inventory**

| Year  | Production<br>( '000 sqm) |             | Sales<br>( '000 sqm) |         |        |             | Ending<br>Inventory |             |
|-------|---------------------------|-------------|----------------------|---------|--------|-------------|---------------------|-------------|
|       | Total                     | %<br>Change | Domestic             | Exports | Total  | %<br>Change | Total               | %<br>Change |
| 2004  | 13,996                    | -           | 13,647               | 520     | 14,167 | -           | 1676                | -           |
| 2005  | 14,233                    | 2           | 13,742               | 70      | 13,812 | (3)         | 1526                | (9)         |
| 2006  | 13,420                    | (6)         | 12,957               | 73      | 13,030 | (6)         | 1976                | 29          |
| 2007* | 6,342                     |             | 6,427                | 128     | 6,555  |             |                     |             |

Source: Mariwasa and Lepanto  
2007 Monitoring Report on the Adjustment Plan of the domestic industry  
\* - January to June 2007

### 8.2.2.1 Production

The Commission treats production as constituting aggregate output (i.e., regardless of market segments). Thus, in the evaluation of applicant-companies' production levels, the Commission did not distinguish between production for domestic and export markets.

Production was relatively flat for the period 2004-2006 despite the 23% increase in total apparent consumption. In 2006, a slight decline in production was noted. The production data showed that despite the growth in consumption, domestic production lagged behind as imports captured the growth in demand.

### 8.2.2.2 Sales

Sales figures in Table 11 refer to applicant-companies' sales out of their own production (i.e., imports of applicant companies of ceramic tiles are excluded). In the evaluation of industry sales, the Commission considers both domestic and export sales.

Volume of sales declined from 2004 to 2006. Domestic sales declined by 6% in 2006 despite the growth in total demand during the same year.

### 8.2.2.3 Finished Goods Inventory

Despite a slowdown in production in 2006, an increase of 29% in ending inventory was reported by the industry as a result of decreasing sales.

The 2006 ending level approximates the 1997-1998 levels reached during the Asian financial crisis.<sup>33</sup> Against this backdrop of increasing demand but decreasing production and sales, the increasing level of ending inventory (with its corresponding carrying cost) is a cause for concern to any domestic industry.

<sup>33</sup> TC Formal Investigation Report (SG 01-2004), p.26

### 8.2.3 Capacity Utilization

**Table 12. Annual Rated Capacity, Actual Production and Capacity Utilization of Applicant Companies: 2004-2007**

| Year  | Rated Capacity ('000 sqm) | Production ('000 sqm) | Capacity Utilization (%) |
|-------|---------------------------|-----------------------|--------------------------|
| 2004  | 18,890                    | 13,996                | 74                       |
| 2005  | 18,890                    | 14,233                | 75                       |
| 2006  | 18,890                    | 13,420                | 71                       |
| 2007* | 18,890                    | 6,342                 | 67                       |

Source: Mariwasa and Lepanto

\* - January to June 2007; projected capacity utilization.

The data show that there was a decrease in capacity utilization as production declined in 2006 by 5% even as apparent domestic consumption increased by nearly 3%.

### 8.2.4 Cost of Production

**Table 13. Cost of Production (P/sq.m.)**

|                        | 2004 | 2005 | 2006 | 2007 |
|------------------------|------|------|------|------|
| Raw Materials          | ***  | ***  | ***  | ***  |
| Direct Labor           | ***  | ***  | ***  | ***  |
| Variable Overhead      | ***  | ***  | ***  | ***  |
| Fixed Overhead         | ***  | ***  | ***  | ***  |
| <b>Cost to Produce</b> | ***  | ***  | ***  | ***  |

Source: Mariwasa and Lepanto

**Table 13-A. Cost to Produce (%)**

| Cost Components    | 2004 (%)      | 2005 (%)      | 2006 (%)      | June-2007 (%) | % Change (2004-05) | % Change (2005-06) | % Change (2006-07) |
|--------------------|---------------|---------------|---------------|---------------|--------------------|--------------------|--------------------|
| Raw Materials      | 28.72         | 26.84         | 25.27         | 24.84         | (0.82)             | 5.11               | 4.88               |
| Direct Labor       | 2.03          | 1.72          | 2.29          | 2.77          | (10.00)            | 48.96              | 29.02              |
| Variable Overhead  | 43.72         | 45.65         | 47.90         | 46.01         | 10.82              | 17.13              | 2.51               |
| Fixed Overhead     | 25.54         | 25.79         | 24.53         | 26.38         | 7.14               | 6.21               | 14.73              |
| Cost of Production | <b>100.00</b> | <b>100.00</b> | <b>100.00</b> | <b>100.00</b> | <b>6.11</b>        | <b>11.63</b>       | <b>6.72</b>        |

Source: Mariwasa and Lepanto

Monitoring Report on the Adjustment Plan of the domestic industry

Cost escalated across all factors of production from 2004-2007 yielding a cost to produce at an average increase of 8% per annum. This is largely attributed to the rise in fuel and power cost. Expectation of a lower cost due to availability of Malampaya gas did not materialize.

Variable and fixed overhead costs which contribute to about 70% of production cost have been increasing from 2005 to 2007 at an average rate of 10% and 9%, respectively.

The domestic industry is no longer banking on the reported availability of natural gas piped in from Malampaya and instead concentrating on its search for alternative sources of energy in its new adjustment plan though the industry still considers this a welcome development when it finally becomes available

### 8.2.5 Employment and Labor Productivity

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

Labor productivity improved in 2005 due to an increase in production as well as reduction in manpower. However, productivity in 2006 decreased by more than 6% as there was decrease in output.

**Table 14. Employment and Productivity of Applicant Companies**

| Year  | Production ('000 sqm) | No. of Employees | % Change | Labor Productivity | % Change |
|-------|-----------------------|------------------|----------|--------------------|----------|
| 2004  | 13,996                | 1,455            |          | 9,619              |          |
| 2005  | 14,233                | 1,188            | (18.35)  | 11,981             | 24.55    |
| 2006  | 13,420                | 1,194            | 0.51     | 11,240             | (6.19)   |
| 2007* | 6,342                 | 1,264            |          |                    | -        |

Source: Mariwasa and Lepanto

\* - January to June 2007

## 8.2.6 Profitability

**Table 15. Combined Income Statement of Applicant Companies**  
(in thousand pesos)

| <b>Particulars</b>                  | <b>2004</b>      | <b>2005</b>      | <b>2006</b>      | <b>2007</b><br>(Jan.-June) |
|-------------------------------------|------------------|------------------|------------------|----------------------------|
| Sales                               | 2,485,197        | 2,532,234        | 2,421,673        | 1,285,763                  |
| Less: Cost of Sales                 | 2,140,789        | 2,215,032        | 2,220,059        | 1,128,534                  |
| Gross Profit                        | 344,408          | 317,202          | 201,614          | 157,229                    |
| Less: Operating Expenses            | 450,974          | 457,634          | 462,342          | 181,417                    |
| <b>Income(Loss) from Operations</b> | <b>(106,566)</b> | <b>(140,432)</b> | <b>(260,728)</b> | <b>(24,188)</b>            |
| Other Income (Expenses)             | (686,298)        | (178,659)        | (294,481)        | (21,754)                   |
| Income(Loss) before Income Tax      | (792,864)        | (319,091)        | (555,209)        | (45,942)                   |

Source: Audited Financial Statements of Mariwasa and Lepanto

Table 15 demonstrates the combined income statements of Lepanto and Mariwasa which were culled from applicants' audited financial statements. Lepanto prepares its financial statement on a fiscal year while Mariwasa on a calendar year. For purposes of presenting the combined income statement, Lepanto's financial statement was recasted to calendar year.

The table shows declining gross profit against increasing operating expenses resulting to losses from operations of ₱ 260 M in 2006 which is more than double that in 2004.

As shown in the combined income statement of applicant companies, sales increased by 2% in 2005 but declined by 4% in 2006. On the other hand, the average increase in cost of sales was 2% from 2004 to 2006. Thus, the applicant companies suffered declining gross profit, i.e., from ₱344 M in 2004, down to ₱ 317 M in 2005, and, ₱ 201 M in 2006.

The Commission, in its evaluation of the industry's profitability puts more emphasis on income from operation as this measurement is a more stringent gauge of the industry's financial health and a better indicator of the industry's ability to put itself back into a condition of profitability. Through this indicator, the Commission could better assess the direct impact of imports on the industry's financial performance. Although interest expense and foreign exchange losses also adversely affect the bottom line profitability of the domestic industry, these are not, however, directly related to imports.

Combined income statements of Mariwasa and Lepanto showed increasing loss from operations for the period 2004 to 2006.

The recent surge in imports prevents the applicant companies from increasing their selling prices even when their cost of production is increasing. This led to increased operating losses.

### 8.2.6.1 Return on Sales

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

Return on sales worsened from negative 4% in 2004 to negative 11% in 2006.

**Table 16. Return on Sales** (based on Income from Operations)

| Year  | Income(Loss) from Operations<br>(P'000) | Sales Revenue<br>(P'000) | Return on Sales<br>(%) |
|-------|---|--------------------------|------------------------|
| 2004  | (106,566)                               | 2,485,197                | (4.29)                 |
| 2005  | (140,432)                               | 2,532,234                | (5.55)                 |
| 2006  | (260,728)                               | 2,421,673                | (10.77)                |
| 2007* | (24,188)                                | 1,285,763                | (1.88)                 |

Source : Mariwasa and Lepanto  
\* - January to June 2007

### 8.2.7 Price Trends

**Table 17. Comparison of Landed Cost of Imported Ceramic Tiles and Domestic Selling Prices of the Local Ceramic Tiles (P/kg)**

| Year                                       | Brazil | China | Hong Kong | Indonesia | Malaysia | Taiwan | Thailand | Vietnam | Wtd Ave.     | Domestic Producers |
|--|--------|-------|-----------|-----------|----------|--------|----------|---------|--------------|--------------------|
| <b>Without VAT; without Safeguard Duty</b> |        |       |           |           |          |        |          |         |              |                    |
| 2004                                       | 11.40  | 9.28  | 9.45      | 9.37      | 16.64    | 9.73   | 12.92    | 8.40    | <b>9.84</b>  | ***                |
| 2005                                       | 13.98  | 8.29  | 6.81      | 7.35      | 16.43    | 21.18  | 9.95     | 20.95   | <b>8.34</b>  | ***                |
| 2006                                       | 19.33  | 13.00 | 14.82     | 12.52     | 12.68    | 14.15  | 12.39    | 11.52   | <b>13.16</b> | ***                |
| <b>Without VAT; with Safeguard Duty</b>    |        |       |           |           |          |        |          |         |              |                    |
| 2004                                       | 14.90  | 12.78 | 12.95     | 12.87     | 19.07    | 13.23  | 16.42    | 11.54   | <b>13.29</b> | ***                |
| 2005                                       | 16.78  | 11.09 | 9.61      | 10.15     | 19.23    | 23.98  | 12.75    | 23.75   | <b>10.36</b> | ***                |
| 2006                                       | 21.92  | 15.50 | 17.54     | 15.00     | 15.16    | 16.74  | 14.96    | 13.99   | <b>15.68</b> | ***                |

Source: Unliquidated Import Entries

Landed cost of imported tiles in 2004 and 2005 enjoyed a price advantage over local tiles. In 2006, however, with the Customs revision orders on value, the weighted average price of imported ceramics increased to a level about 50%

higher than the price of domestic producer. Despite this price advantage, however, the decline in the market share of domestic producer was not arrested.

Table 17 shows that in 2004, the average selling price of local ceramic tiles on a per kg basis (₱ \*\*\*) was lower by ₱ \*\*\* compared to the weighted average landed cost per unit (₱13.29) with safeguard duty on imported counterparts.

In 2005, however, the unit selling price of local tiles (₱ \*\*\*) was now higher by ₱ \*\*\* when compared to the weighted average unit landed cost (with safeguard duty) of imported tiles (₱ \*\*\*). This situation was due to decreasing landed cost of imported tiles from China, Hong Kong, Indonesia and Thailand, with China and Hong Kong comprising the bulk of imports for that year. The 22% decrease in unit landed cost of imported tiles approximates the 20% phase-down in safeguard duty in 2005.

In 2006, however, the average unit landed cost of the imported ceramic tiles (w/ safeguard duty) increased to ₱15.68 while the unit selling price of local ceramic tiles remained at about the same level.<sup>34</sup>

With the increase in cost of production from ₱ \*\*\*/kg to ₱ \*\*\*/kg in 2006, the mark-up was now only \*\*\* % based on cost of production. The low domestic selling price was adopted by the industry to ensure and protect their market share.

### 8.2.8 Conclusion

Serious injury is still being suffered by the domestic industry and will likely continue if the safeguard measure is removed. Despite the price advantage with the safeguard measure, market share continues to erode resulting to increasing financial losses. Without the measure, the domestic industry will not be able to finance and have time to pursue its adjustment plan.

## 8.3 Foreign Industry Developments

The importation of ceramic tiles by the Philippines from China in the last three (3) years has been sharp and significant that it (together with Hong Kong) practically accounts for the total share of imports of subject products. This development is not surprising based on the “China Ceramic Industry Report, 2006-2007” available at the vertical portal for China Business Intelligence (<http://www.researchinchina.com/>).<sup>35</sup>

The abstract states:

“China ceramic industry has a long history, and the producing areas are widely distributed all over the country. Up to now, many major producing areas have taken shape, including Foshan of Guangdong, Jingdezhen of Jiangxi, Zibo of Shandong, Jiajiang of Sichuan and Fujian, etc. In recent years, China

<sup>34</sup> The increase in landed cost of ceramic tiles may be in part due to the updates in Revision Orders (Reference Values) for ceramic tiles issued by the Bureau of Customs starting in July 2005.

<sup>35</sup> [www.researchinchina.com/Report/Material/3411.html](http://www.researchinchina.com/Report/Material/3411.html)

ceramic industry developed rapidly and has now taken 2/3 plus of the world total output of ceramics.

... During this period, the national output of ceramic tiles achieved 1.6 billion sq. meters, up by 28.8% over the same period of 2005 and the accumulated sales/output ratio was 94.6%, up by 0.7% year-on-year. Shandong, Guangdong, Fujian and Sichuan still maintained rapid growth. The accumulated output of the four provinces achieved 1.47 billion sq. meters, up by 30.8% year-on-year. The growth rate of Fujian and Sichuan were 50% plus and 40% more respectively in the first half of 2006. ...”

The world ceramic industry, according to Ceramic World Review, has likewise come to terms with the Chinese dragon and monitors its development constantly, either in an attempt to check its growth or to establish production or commercial partnerships with local players.<sup>36</sup> The same literature notes that Chinese Customs data for ceramic tile exports in 2004 revealed growth in its exports to more than 300 million square meters and the majority of these exports (77%) were bound for Asian countries although the variables of Hong Kong (60+ million sq.m.) and Singapore (about 22 million sq.m.) make it difficult to clearly determine the final destinations of products.

In terms of production, the majority of the more than 2.5 billion square meters of tiles produced in China (production capacity is 3 billion sq.m.) continues to be single fired tile and polished porcelain tile, of which 30% is of medium-high quality and 10% has technical and quality standards comparable to European products.<sup>37</sup>

## Findings

The available literature shows that the excess production capacity in the region, especially in China, is a cause for worldwide concern. In recent years, China has been the main supplier of imported ceramic tiles in the country and due to her proximity, the Philippines will continue to be a target market of China's excess capacity. Without the protection provided by a safeguard action, the domestic industry will continue to suffer.

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<sup>36</sup> Ceramics World Review n.67/2006, p. 60, 62.

<sup>37</sup> Ibid.

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## **9 EFFORTS OF THE INDUSTRY TO ADJUST TO IMPORT COMPETITION**

Sec. 19 of RA 8800 provides that subject to the review under Sec. 16, extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.

In case one or more firms of the benefiting industry which applied for safeguard measure failed to comply with their commitments as reflected in the approved adjustment plan, the safeguard measure shall continue to be in effect, provided however, that the firms which complied with their commitments constitute the majority in accordance with the definition of the domestic industry under Section 4 of paragraph (f) of RA 8800.<sup>38</sup>

### **9.1 Adjustment Plans**

In summary, the results of the Commission's 2007 monitoring of the adjustment plans submitted in 2004 by Mariwasa and Lepanto Ceramics are as follows:

#### **1. Mariwasa Siam Ceramics, Inc. Adjustment Plan (2005-2007):**

A. Provide even better products.

Introduce 180 new designs and features using the latest technology.

Monitoring Report (March, 2007): - *199 new series from 2004 to 2006*

B. Improve distribution

The key to sustaining market leadership is keeping an extensive distribution network. Mariwasa will expand its distribution network by appointing new distributors throughout the country.

Monitoring Report : *13 new distributors from 2004 to 2006*

C. Strengthen brand equity

Various marketing programs are in place to improve the Company's brand equity like increased advertising, participation in trade exhibits and upgrading product displays.

Monitoring Report: *Acquired 35 billboard sites and placed 39 ads on broadsheets and glossy magazines from 2004 to 2006*

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<sup>38</sup> TC Manual on Safeguards Investigation, p. 11b.

D. Reduce manageable costs.

Three variable cost elements have the greatest impact on production costs are power costs, fuel costs and glaze raw material cost. Mariwasa will continue to maintain and operate its own power plant. It also plans to reduce debts in 2005 by asset sales and additional capital infusion.

Quantifiable targets:

1. Reduce LPG cost by 12% over the next four years.

Monitoring Report : *LPG consumption (kg./sqm) from 2004 to 2006 is less than 1.00 resulting to higher savings. (recognition from DOE.)*

2. Reduce bunker fuel cost by 12% over the next four years.

3. Further reduce electricity consumption by 10% over the next three years.  
Monitoring Report: *Power consumption (kwh/sqm) for 2004-2006 is less than 4.00 resulting to higher savings. (Recognition from DOE)*

4. Reduce glaze costs by 8% over the next three years.

Monitoring Report: *Glaze consumption (kg/sqm) for 2004-2006 is less than 1.00 resulting to higher contribution.*

5. Reduce maintenance cost by 8% over the next three years.

6. Lower cost of funding.

E. Increase production yield.

Monitoring Report: *Produced at higher efficiencies above 90% from 2004 to 2006; reduced raw materials costs (P/ton) at 12% from 2004 to 2006 resulting to improved margin.*

1. Improve knowledge and skill of people in production line
2. Improve line management systems
3. Improve equipment performance

Monitoring Report: *Under its Enercon Projects, the following actions were undertaken in 2006:*

1. Installed heat recovery systems. Invested millions for the heat recovery systems resulted to savings equivalent to 300% of said investment.
2. Modification of various equipment. Investments on the modification/reduction of power ratings of several equipments resulted to savings.

## **2. Lepanto Ceramics, Inc. Adjustment Plan (2005 – 2008)**

### **A. Competitiveness through Cost Reduction and Efficiency**

- Increasing production volume to an average of 600,000 square meters/month
- Cost down scheme to result in 10-12% reduction of production cost.

Monitoring Report: *The rate of rejects was brought down to 5% in 2006 and targeted to be at 4% in 2007. The efficiency of the spray dryer was increased by increasing the density of the slip (glaze) to reduce milling time. The gain made in increasing efficiency was wiped out by increase in cost of fuel and power.*

### **B. Working Capital Management**

- Maintain finished goods inventory at under 60 days stock;
- Trade receivables at maximum of 90 days
- Stockpiling of body materials to hedge on cost and seasonal constraints;
- Terms kept to 120 days maximum;
- Debt reduction by 50%.

Monitoring Report: *Based on Lepanto's submission, substantial compliance to its adjustment plan was not met.*

### **C. Product and Service Quality**

- Rationalization of product mix by reviewing product mix and increase designs by 50%;

Monitoring Report: *Product mix ranges from low to high end; 2-3 new designs every 6 months since 2005.*

- Selective price increases where possible;

Monitoring Report: *Average selling price improved by 9% in 2006.*

- Distribution network

Monitoring Report: *Expansion in distribution is concentrated on the local market. Exports remain a plan in 2007.*

## **9.2 Conclusion**

The domestic industry is making positive adjustment to import competition. It was able to enhance its efficiency through energy conservation measures, reduced glazing material cost and expansion of distribution network.

## **10 CONCLUSION**

The Commission concludes that, in accordance with RA 8800 and the WTO Agreement on Safeguards:

1. The collective output of the two (2) applicant companies constitutes a major proportion of the total domestic production of ceramic tiles.
2. The volume of imports in 2006 returned to surge level. With excess production capacity of tile manufacturers (especially China), imports are expected to continue to enter the country.
3. Serious injury caused by increase imports is still being suffered by the domestic industry and will likely continue if the safeguard measure is removed. Despite the price advantage with the safeguard measure, market share continues to erode resulting to increasing financial losses. Without the measure, the domestic industry will not be able to finance its adjustment plan.
4. The domestic industry is making positive adjustment to import competition. It was able to enhance its efficiency through energy conservation measures, reduced glazing material cost and expansion of distribution network. Unless safeguard action is extended, the industry will find difficulty to complete its adjustment plan to effectively face import competition.

## **11 RECOMMENDATION**

This investigation finds that an extension of the measure is necessary to prevent and remedy the serious injury as the domestic industry is making positive adjustment to import competition.

Since the anticipated distribution pipelines (Malampaya - Batangas) for natural gas, which could have reduced production cost by about 40%, is not likely in the near future, the industry has to find alternative sources of energy in the short term if it is to reduce its costs and make the industry competitive against imports.

In view of the foregoing, the Commission recommends that the action be extended for another three (3) years - the timeframe given to the industry to fully implement its adjustment plan and be competitive against imports.

Should the recommendation be adopted:

- The notification and consultation requirements of Article 12 of the WTO Safeguard Agreement and Rule 17 of the IRR to RA 8800 shall be complied with.
  - Imports originating from ASEAN Member States shall be governed by the provisions of Articles 6 and 8 of the Agreement on the CEPT Scheme.
  - Imports originating from Japan and the Member States of the European Union, however, are excluded from the imposition of safeguard duty as provided in the 11 April 2002 Decision of the Secretary.
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## 12 DEFINITIVE MEASURE

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

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

The WTO Agreement on Safeguards provides that “a measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period and should continue to be liberalized.”

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

### 12.1 Recommended Definitive Safeguard Measure

The WTO Agreement on Safeguards and the domestic law contain provisions as to the reckoning of the extended measure and the intervals of its phase down. Rule 13.1.c of the IRR to RA 8800 further provides that “the general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports.” The Agreement and the IRR to RA 8800 do not specifically provide how the measure is progressively liberalized.

The Commission recommends to the Secretary that the measure for the first year of the final extension be in the amount of ₱2.00/kg for the first year.<sup>39, 40</sup> The recommended extension will allow time for the domestic tile industry to fully implement its adjustment plan to positively adjust to import competition.

### 12.2 Review of Definitive Measures

Rule 15.6 of the IRRs to RA 8800 provides that: “The decision imposing general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity. The industry benefiting from the application of a general safeguard measure shall

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<sup>39</sup> The additional duty will allow the domestic industry to set its selling price where it can cover its full costs and make reasonable margins.

<sup>40</sup> In previous Department Orders issued by the Secretary imposing/extending a definitive safeguard duty, the amount of the measure was subjected to an annual review (by DTI) for the purpose of liberalizing or reducing its intensity citing, as basis, Rule 15.6 of the IRR.

be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefiting industry fails to show any improvement, as may be determined by the Secretary.

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

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## **13 EFFECTS OF THE AFFIRMATIVE RECOMMENDATION**

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

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

### **13.1 On Competition**

- The domestic tile market is a buyers’ market. Although consumer welfare may be prejudiced because of relatively higher prices, users retain the option to choose between local and imported tiles as there are no quantitative restraints on imports; and
- As the proposed measure is only temporary and will progressively be liberalized, competition will return to its normal level.

### **13.2 On the Domestic Industry**

- Imports will return or at least approximate the pre-surge level;
- Additional time will be provided to the domestic industry to complete their adjustment plan to positively adjust to import competition by putting in place efficiency measures that will allow it to attain competitiveness *vis-à-vis* imports;
- Increase in output will create conditions to further reduce the cost of production;
- Reasonable margins will be generated as a consequence of reducing operating losses;
- Market share regained will enable the industry to take part in the growth of the market; and
- Increases in market share allow introduction of new models as the market grows.

### **13.3 User Industries and Consumer Welfare**

- Given the competition among domestic producers of ceramic tiles, the market is a buyers’ market. Any unreasonable price increases are thus unlikely, unless, there are supply shocks;
- With the continued existence of a viable domestic industry, consumers are assured of on-time delivery of volume orders, after-sales services in replacements of breakages and defects, and allow small lot orders;
- Credit line is extended by local industry to buyers; and
- Presence of local products mitigates foreign exchange risk because transaction is done in peso.

#### **13.4 On Employment**

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

#### **13.5 On Regional Development**

- Ceramic tile production facilities are located in towns near Metro Manila. The imposition of the definitive safeguard measure will ensure continuous operation of the domestic producers. This will bring continuing community development to areas where these manufacturers are located.
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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.

28 November 2007

**(Sgd.) EDGARDO B. ABON**  
**Chairman**

**(Sgd.) EDGARDO R. MARALIT**  
**Acting Commissioner**

**(Sgd.) MARILOU P. MENDOZA**  
**Acting Commissioner**