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ABBREVIATIONS

| | |
|-------------|---|
| ASTM | American Society for Testing and Materials |
| Blue Circle | Blue Circle Industries, PLC |
| BIS | Bureau of Import Services |
| BOC | Bureau of Customs |
| BPS | Bureau of Product Standards |
| Cemex | Cemex S.A. de C.V. |
| CMO | Customs Memorandum Order |
| Cohaco | Cohaco Trading Corporation |
| DA | Department of Agriculture |
| DTI | Department of Trade and Industry |
| E.O. | Executive Order |
| GATT | General Agreement on Tariffs and Trade |
| Holcim | Holcim Ltd. |
| HS | Harmonized System |
| IRR | Implementing Rules and Regulations |
| Lafarge | Financiere Lafarge S.A. |
| MFN | Most-Favoured-Nation |
| Mpa | Megapascal |
| MT | Metric Tons |
| NAIA | Ninoy Aquino International Airport |
| NEDA | National Economic and Development Authority |
| PASAR | Philippine Association of Smelting and Refining Corporation |
| PCA | Philippine Constructors Association |
| PCIA | Philippine Cement Industry Authority |
| P.D. | Presidential Decree |
| PHILCEMCOR | Philippine Cement Manufacturers Corporation |
| PNS | Philippine National Standards |
| POI | Period of Investigation |
| PS | Philippine Standard |
| psi | pounds per square inch |
| R.A. | Republic Act |
| SCCC | Southern Cross Cement Corporation |
| tpd | tons per day |
| WTO | World Trade Organization |

EXECUTIVE SUMMARY

This report is about safeguard action against imports.

This report addresses the question of whether definitive general safeguard action, in accordance with Republic Act No. 8800 (otherwise known as the “Safeguard Measures Act”) and the WTO Agreement on Safeguards, would be justified against imports of gray Portland cement.

Background

The Philippine cement industry was affected by the Asian financial crisis.

The financial crisis of 1997 marked the end of the boom years of many businesses in the Philippines amongst them cement which, in prior years, saw the sustained growth of its market at extraordinary levels which engendered a binge of business expansions in terms of reach and capacity that were unheard of and unseen in the past. Where demand was outstripping supply, the cement industry initially resorted to importation at reduced tariffs and then to capacity expansions which have a gestation period of three to five years to satisfy the needs of the market.

What seemed to be a very sound business decision showing the wisdom and the good business acumen of the cement industry at the time, proved to be the very source of their difficulties when the crisis presented itself in 1997. While the move to expand capacities to meet higher market demand expectation was a logical decision at the time and while the option to contract dollar-denominated loans to finance their expansion plans due to the stable peso-dollar exchange rate and lower interest charges was a wise decision at the time, the additional capacities and the foreign-denominated loans, however, became the bane of the industry when the crisis erupted in 1997.

The Big Four took over the locals.

The financial crisis of 1997 marked the beginning of the takeover by the foreign cement companies. Before 1997, majority shares of the cement companies were owned by the locals.

After 1997, faced with a shrinking market and financial problems, the local companies were ripe for the picking. They were looking for investors or partners as their “knights in shining armor” to save them from their financial woes. The attractiveness of the local cement companies was something that the international players could not ignore. Given the cement companies’ dire straits and given the fact that the peso had depreciated considerably vis-à-vis the dollar, given that new plants were now being put up or going on stream, given the foreign cement companies’ experience in other countries of achieving market dominance, and given the openness of the local owners to foreign investments, the time had come for the global companies to enter the Philippine market in a big way. The local companies could be had at bargain, if not basement, prices. Between 1997 and 1999, Blue Circle, Cemex, Holcim and Lafarge took over twelve companies which now control 89% of total industry capacity.

A price war in 1998 ensued.

While the price of cement was reasonable because of a brewing price war among the different companies, the constructors did not see it as a healthy sign. In several meetings, they accepted the possibility of price increases to a level that would not hurt the players in the sector. So when the price of cement started to rise subsequently, they accepted this as part of the consolidation and rationalization process that was going on within the industry. But when cement prices continued to escalate beyond reasonable levels without any semblance of stabilizing, alarm bells rung. Since this was a sellers’ market, the constructors could not arrest the escalations. Despite several meetings and pleas to the cement industry to put some rhyme and reason into the movement of prices, the escalation continued unabated to a point that contracts were being put in jeopardy. In the first quarter of 2000, the Secretary of Trade and Industry, alarmed by the irrational price escalations, encouraged importations to inject some discipline, if not competition, in the market.

Safeguard Action

The Safeguard Measures Act, in consonance with the WTO Agreement on

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

Safeguards, allows temporary safeguard action against imports.

- special safeguard measures (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.

A safeguard inquiry must follow the requirements spelled out in the Safeguard Measures Act...

In responding to the question of whether safeguard action is warranted against imports of certain gray Portland cement, the Commission has been careful to conduct its inquiry process in accordance with the requirements of the Act and to follow the procedures and apply the criteria specified.

...and apply the criteria specified under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

In particular, the Commission is required to determine:

- if as a result of unforeseen developments and of the effect of obligations granted under the WTO Agreement, including tariff concessions, the product under consideration is being imported in such increased quantities as to cause or threaten serious injury;
- if the domestic product is a like product or a product directly competitive to the imported product under consideration;
- if the product is being imported into the Philippines in increased quantities (absolute or relative to domestic production);
- the presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product; and
- the existence of a causal relationship between the increased imports of the product under consideration and the serious injury or threat thereof to the affected domestic industry.

The circumstances of ‘unforeseen developments’ and ‘effect of tariff concessions’ need not be demonstrated in the current inquiry.

The existence of circumstances provided in Article XIX of GATT 1994 need not be established for the reason that the product under consideration (gray Portland cement) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.

Findings

Locally produced gray Portland cement is “like” to imported gray Portland cement.

Both locally produced and imported gray Portland cement have the same chemical composition, conform to the chemical and physical requirements of the PNS 07:2000, and are used for the same applications.

Likewise, locally produced blended Portland cement (pozzolan) is “like” to the imported gray Portland cement.

Locally produced blended Portland cement (pozzolan) has the same chemical composition and applications as those of gray Portland cement.

The collective output of the twelve (12) applicant companies constitutes a major proportion of the total domestic production.

The twelve (12) applicant companies accounted for between 81% to 86% of total domestic production of gray Portland cement from 1996 to 2000.

Imports have increased significantly....

In considering the question of whether imports have increased, the Commission has concluded that an appropriate period of investigation covers 1996 to September 2001.

... in absolute terms...

Imports of cement increased from 474,430 metric tons in 1999 to 1,579,027 metric tons in 2000. For the first three quarters of 2001, imports of subject article were already higher than the entire volume imported in 2000 at 1.86 million metric tons.

...and relative to domestic production.

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

Import surge commenced in 2000.

The annual levels of imports from 1996 to 2000 and the annual shares of imports to domestic production show that the surge in imports of cement began in 2000.

The industry has not suffered and is not suffering a significant impairment in its overall market position,

Although its market share declined, the domestic industry maintains its market dominance with an 80% market share.

... production and sales, ...

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

... capacity utilization, ...

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

...and profitability.

Consolidated audited financial statements of the applicants revealed that in 2000 when imports surged, the applicants managed to recover from the huge deficit, as they registered a ₱1.98 billion operating income, or a 175.51% upturn.

Prior to the surge, applicants' net loss was at its peak at ₱7.71 billion. Net loss then declined by ₱2.15 billion in 2000, at the time when imports surged.

No link was found between employment and imports.

The data does not show any relationship between imports and employment. In 1999, employment increased by 37%, while imports more than doubled from the previous year. Thus, the decline in employment by 21% in 2000 cannot be attributed to the surge in imports during the year.

Labor productivity improved.

When imports began to surge, the labor productivity ratio of the industry increased to 1:3,037.

There is no threat of serious injury that is imminent from imports.

There is no evidence of the existence of letters of credit, supply or sales contracts, the award of a tender, an irrevocable offer or other similar contracts to demonstrate the likelihood of substantially increased importation.

Although there have been declines in the industry's sales volume and market share and a downward trend in production and capacity utilization in 2000, they are not considered significant. On the other hand, sales revenues increased and the industry generated income from operations during the period of import surge.

Inventory levels have remained stable.

Certain conditions and circumstances also exist that tend to dismiss the possibility of threat of serious injury: the BPS regulation requiring imported cement to be subjected to compressive strength testing lasting for a holding period of 28 days which injects uncertainty into the sustainability of continued cement importation; SCCC's limited silo capacity and the cessation of TCC Cement Corporation's importing activity; and the provisions of the Civil Code which make it more advantageous for constructors to use local cement where domestic cement producers are held solidarily liable with the constructors if inferior material quality is found to be the cause of the collapse of an infrastructure.

Recommendation

Imposition of safeguard action is not justified in terms of R.A. 8800 and the WTO Agreement on Safeguards.

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

Effects of the Negative Recommendation

The non-imposition of a safeguard measure will push the cement industry faster towards global competitiveness,...

Without safeguard action, the domestic cement industry will be forced to continue implementing efficiency measures that will make local cement competitive, price-wise and quality-wise, with imported cement. Continued exposure of the domestic industry to world price signals, through imports, will prevent slackening of the industry's reforms efforts and push the industry quicker towards global competitiveness.

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

... promote consumer welfare and user industries, and...

Non-imposition of a safeguard measure protects consumer welfare by improving consumer choice, i.e., consumers retain the option to choose between local and imported cement. Consumers are also spared the increase in domestic cement prices that can be expected from the imposition of a safeguard measure.

To the extent that imports serve to check unnecessary domestic price increases, the competitiveness of the local construction industry, which uses cement as one of its major inputs, would not be prejudiced. Unpredictable construction costs (that may result from varying cement prices) and the consequent negative impact on private and government infrastructures are avoided.

... will not prejudice overall employment levels...

Employment trends in the cement industry will be balanced by trends in employment in the construction industry. The construction industry employed 1.584 million workers in 2001. In contrast, the cement industry employed less than 4,000 workers in 2000 and the first half of 2001.

... and community development.

The domestic cement industry has the capability to compete with imports and a turnaround is anticipated as construction gross value added is forecast to grow by an average of 6.4% - 6.9% during the period 2001 –2006.

A non-tariff barrier effectively operates as a safeguard measure.

The industry has gained considerable relief from the competitive pressure exerted by imports through BPS Memorandum Circular No. 004 requiring all imported cement to undergo compressive strength testing of up to 28 days before an Import Commodity Clearance is issued.