
1 TERMS OF REFERENCE

1.1 The Application for General Safeguard Measure

On 13 February 2006, the Secretary of the Department of Trade and Industry (DTI) officially accepted a properly documented petition for the imposition of safeguard measures against imports of Sodium Tripolyphosphates - Technical Grade (STPP-TG) under Republic Act (R.A.) 8800 (otherwise known as the "Safeguard Measures Act"). The local industry, represented by CAWC, Inc. (CAWC), alleged that increased imports of STPP-TG had contributed significantly to the serious injury suffered by the local industry which began in 2001 and continued until 2005. CAWC likewise submitted that the deterrent effect of the anti-dumping duty imposed on STPP imported from China had proven to be inadequate.

1.2 The Preliminary Investigation

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 08 March 2006 with the publication of notices of initiation in the *The Philippine Star* and the *Manila Standard Today*.

On 6 July 2006, the DTI issued its report on the preliminary determination on the application. The investigation showed that increased imports of the product under consideration had caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, profitability, productivity, price suppression and price undercutting. While there were other factors which contributed to the serious injury suffered by CAWC, the increased volume of imports, both in absolute terms and relative to production, was found to be the substantial cause of the over-all impairment in the local industry's operations.

Acting under Section 8 of R.A. 8800, the DTI Secretary ordered on 06 July 2006 the imposition of provisional safeguard measures in the form of a cash bond amounting to ₱14.15/kg on all importations of STPP-TG for a period not exceeding 200 days from the date of the issuance by the Bureau of Customs (BOC) of the relevant Customs Memorandum Order (CMO) or fifteen (15) days after the publication of the DTI Order in two (2) newspapers of general circulation, whichever came earlier. Exempted from the imposition of the provisional safeguard measures are imports originating from the developing countries listed in Annex A of said DTI Order pursuant to Rule 8.8 of the Implementing Rules and Regulations (IRRs) of R.A. 8800.

BOC issued CMO No. 168-2006 on 27 July 2006 directing that all importations of STPP-TG classified under ASEAN Harmonized Tariff Nomenclature (AHTN) subheading 2835.31.00 from all countries, except those from developing countries listed in Annex A of the DTI Order, be imposed, in addition to taxes and duties and other charges, a provisional safeguard measure in the form of a cash bond amounting to ₱14.15/kg.

On 13 July 2006, the DTI transmitted the records of the STPP safeguard case to the Tariff Commission for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure pursuant to Section 9 of R.A. 8800 and its IRRs.

2 SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION

2.1 The Safeguard Measures Act of 2000

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

Its IRRs (Joint Administrative Order No. 3) took effect on 11 October 2000, i.e., seven (7) days after their publication.

The Act provides for:

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

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

Prima Facie Determination

Upon acceptance of a properly documented petition, the DTI-BIS, in the case of industrial products, or the Department of Agriculture (DA), for agricultural products, has five (5) calendar days to examine the accuracy and adequacy of the evidence submitted in order to determine the existence of a *prima facie* case that will justify the initiation of a preliminary investigation.

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

Preliminary Determination

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

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

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

In the event that the preliminary findings are negative, the DTI or DA Secretary shall terminate the investigation.

In case of preliminary affirmative findings and where a delay would cause damage which would be difficult to repair, the DTI or DA Secretary issues through the Secretary of Finance, within three (3) calendar days from making a decision, written instructions to the Commissioner of Customs authorizing the imposition of a provisional safeguard measure.

Within three (3) calendar days from making its preliminary affirmative determination, the DTI-BIS or DA transmits the records of the case to the Tariff Commission with the request for the conduct of a formal investigation.

Formal Investigation

The Commission conducts the formal investigation to determine:

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

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

Upon its positive determination, the Commission recommends to the Secretary an appropriate definitive general safeguard measure. Thereafter, the Commission undertakes 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 requests for extension and re-application of safeguard measures;
- conduct of investigation on requests for reduction, modification and termination of safeguard action; and
- after the termination of the safeguard measure, evaluation of the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition.

Decision

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

If the final determination is affirmative, the Secretary furnishes, within two (2) calendar days, the Secretary of Finance with the copy of his Order requesting the latter to direct the Commissioner of Customs to collect the definitive safeguard duty or, in the case the definitive safeguard measure is in the form of a tariff rate-quota or quantitative restriction, to require the importer to present the relevant import clearance or authority.

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

2.2 The World Trade Organization Agreement on Safeguards

Article XIX (Emergency Action on Imports of Particular Products) of the General Agreement on Tariffs and Trade (GATT) 1994 provides that: *“If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.”*

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

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

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

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

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

In *Argentina – Footwear and Korea – Certain Dairy Products*, the WTO Appellate Body held that safeguard measures may be applied only when the requirements of Article XIX of GATT 1994, i.e., the “increased” imports are a result of both GATT obligations and unforeseen developments, are fulfilled.

In relation to the current inquiry, the circumstance of “as a result of unforeseen developments” need not be demonstrated in order for safeguard measure to be applied for the reason that the product under consideration (STPP-TG) is not a subject of any Philippine obligation or tariff concession under the GATT 1994.

Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.

2.3 Articles 6 and 8 of the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area

The members of the Association of South East Asian Nations (ASEAN) signed the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) on 28 January 1992 in Singapore. Article 6 of this Agreement provides for emergency measures as follows:

“Article 6. Emergency Measures

1. *If, as a result of the implementation of this Agreement, imports of a particular product eligible under the CEPT Scheme are 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.*
2. *x x x*
3. *Where emergency measures are taken pursuant to this Article, immediate notice of such action shall be given to the Council referred to in Article 7 of this Agreement, and such action may be the subject of consultation as provided for in Article 8 of this Agreement.”*

The Interpretative Notes to Article 6.3 state that *“where imports of particular products eligible under the CEPT cause or threaten to cause injury to sectors producing like or directly competitive products in the importing Member States, the importing Member States may suspend preferences provisionally and without discrimination, and send an immediate notice to the Council through the ASEAN Secretariat.”*

Article 8 on the same Agreement states:

“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 consultation.*
2. *Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullifications or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the matter, make representations or proposals to the other Member States concerned, which shall give due consideration to the representations or proposals made to it.*
3. *Any differences between the Member States concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably between the parties. If such differences cannot be settled amicably, it shall be submitted to the Council referred to in Article 7 of this Agreement, and if necessary, to the AEM.”*

STPP-TG is a subject of tariff concession under the CEPT Scheme. Hence, the authorities shall demonstrate, pursuant to paragraph 1 of Article 6 of the CEPT Agreement, that the alleged increase in imports in the instant case arises from unforeseen developments.

3 THE COMMISSION'S INQUIRY

Section 9 of R.A. 8800 provides that:

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

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

3.1 Notifications

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

3.1.1 Commencement of Formal Investigation

The Commission published a Notice of Formal Investigation on 19 July 2006 in two (2) newspapers, *The Manila Times* and *Manila Standard Today* (*Annexes A-1 and A-2*). Individual notices about the Commission's initiation of the formal investigation were sent on 19-26 July 2006 to all identified interested parties, i.e., CAWC; importers; exporters; the governments of exporting countries (Japan, Spain, China, Belgium, Vietnam, South Africa, Thailand, Israel, Russia, France) through their respective embassies; the Taiwan Economic and Cultural Office (TECO); industry associations, namely, Soap and Detergent Association of the Philippines (SDAP), Chemical Industries Association of the Philippines (CIAP) and Federation of Philippine Industries (FPI); the Philippine Mission in Geneva; Philippine Commercial Attaches based in the above-mentioned countries; and concerned government agencies.

All identified interested parties were also notified about the conduct of a preliminary conference on 28 July 2006.

3.1.2 Schedule of Public Hearing

On 8 September 2006, the Commission published a Notice of Public Hearing in the *The Manila Times* and *Manila Standard Today* (Annexes B-1 and B-2). Individual notices were likewise sent to the concerned parties from 8 - 14 September 2006.

3.2 Preliminary Conference

On 28 July 2006, a preliminary conference was held at the Commission for the purpose of discussing the schedule and procedure of the public consultations; the nature of administrative and fact-finding proceedings; the non-applicability of the technical rules of procedures in the Rules of Court; the submission of parties' evidence and position papers; the confidentiality of information; the timeframe of the formal investigation; and other related matters necessary for the speedy disposition of the case.

In attendance were representatives from the following: petitioner CAWC; Chemphil Group; SDAP; Nakayama Technology Corporation; Lepanto Ceramics Inc.; Newey Industrial Corporation; Material Resources International Corporation; Procter and Gamble Distributing (Phils.) Inc.; Enzed Trade; Uni Dravo; FMC Foret S.A.; Embassies of Belgium, France, South Africa, Spain and Russia; Pricewaterhouse Coopers; BIS; BOC; and Office of Senator Manuel A. Roxas.

Among the agreements reached during the preliminary conference and contained in an Order (*Annex C*) issued by the Commission on 01 August 2006 were the following:

- timetable of activities of the investigation;
- schedule of marathon public hearings (18-22 September 2006);
- entry of appearance of interested parties including names of lead/alternate/collaborating counsels;
- accessibility of documents;
- confidentiality of documents; and
- service of pleadings/affidavits.

On the issue of public interest raised by the oppositor SDAP, the Commission ruled 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. As clearly pointed out by the Commission, however, said issue will be taken into consideration only 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 on the foregoing issue is anchored on the provisions of Section 5 of R.A. 8800 which state that:

“The Secretary shall apply a general safeguard measure upon a positive final determination of the Commission that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, so as to be a substantial cause of serious injury or threat thereof to the domestic industry; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest.”

3.3 Staff Report

The Commission issued a Staff Report on 7 September 2006. The report contained the Commission’s findings on the issues of product comparability and increased volume of imports. Also provided in the report were the Commission’s preliminary data to determine the presence of serious injury.

Copies of the Staff Report were sent to the concerned parties on 7 - 11 September 2006.

3.4 Public Hearing

Marathon public hearings were held on 18, 19 and 21 September 2006 at the Commission.

The hearings allowed for maximum public participation in the inquiry by providing parties the opportunity to present evidence, elaborate on their submissions, and respond to the presentations of the other parties.

In attendance were representatives and/or counsels of the following: petitioner CAWC; Chemphil Group; SDAP; Procter and Gamble Distributing (Phils.) Inc.; Hubei Xingfa Chemicals Group Company Ltd.; Hamburg Trading Corporation; Enzed Trade; Newey Industrial Corporation; Embassies of Belgium, South Africa, Spain and Vietnam; TECO; Pricewaterhouse Coopers; TA Trade Advisory; FPI; BIS; and BOC.

3.5 Plant Visits/Verification of Data

An ocular inspection of the manufacturing facilities of CAWC (located in Pasig City) was conducted on 14 August 2006.

Among the information gathered during the plant visit were the following: production process; production lines; machinery/equipment; quality test results; plant capacities; production levels; employment; inventory levels; company ownership; and the plant shutdown.

Verification of accounting records was done on 26 September and 6 October 2006.

4 PARTICIPANTS' VIEWS

4.1 Submissions Received

During the course of the investigation, the Commission received submissions from various parties (*Annex D*).

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

4.2 The Domestic Industry's Case

With respect to its petition for safeguard action, CAWC claimed and prayed that:

- Imported STPP and the locally-produced STPP are like products.
- There was a surge of imported STPP during the period of investigation or from 2001 to 2005.
- The domestic industry suffered injury in business operations during the period of investigation.
- There is causal linkage between the continuing surge of imported STPP and the material/serious injury to the domestic industry.
- Imposition of safeguard measure in the amount of ₱14.15 per kilogram of imported STPP will be in the public interest.
- The safeguard measure should also be imposed against STPP imported from Thailand, Indonesia, South Korea, Hong Kong and Taiwan.
- Certificates of country of origin should be required for all importations of STPP to assure the proper imposition of the safeguard measure.

Adjustment Plan

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

Pursuant to the directive contained in the Commission's Order dated 01 August 2006, CAWC submitted its adjustment plan which listed the following priority measures that it will adopt to facilitate positive adjustment to import competition:

- Plant Re-Engineering
 - develop and enhance multi-skilled operators
 - raise level of workers' qualifications and skills
 - reduce labor complement by outsourcing non-critical plant operations
- Cost Savings Initiatives
 - shift fuel use from kerosene to LPG gas
 - heat recovery in the exhaust gas
 - in-house generation of electrical power using special fuel oil for the generator set
 - shift from fluid drive coupling to frequency converter for the exhaust fan and hammer mill
 - installation of rotary kiln cum burner
 - optimization of liquid CO₂ production
 - optimization of P₂O₅ content of STPP
- Establishment of a Fertilizer Facility as an Integrated Part of the Merchant Grade Phosphoric Acid (MGPA)-Fertilizer Project

Parties manifesting support for CAWC's petition were: CIAP, FTA and FPI. Their principal arguments were as follows:

Chemical Industries Association of the Philippines

- Given the protection that the government is legally empowered to provide and the time to improve operations, CAWC can be competitive in price and supplying capability.
- The impact of preserving an industry is profound both on the national and local levels. Without a local alternative, prices often spiral upwards as regional distributors and manufacturing powerhouses are free to manipulate availability and price to the detriment of the Philippine consuming public.
- The local contribution of traders and importers pales in comparison to the community building effects a manufacturing concern has at the local government level in terms of taxes and employment.

Fair Trade Alliance

- The imposition of a safeguard tariff is just and fair, given the predatory behavior of the importers-exporters involved in the dumping of Chinese STPP into the domestic market and given the now comatose state of the domestic STPP industry.
- From a marginal share in 2000, the foreign STPP exporters have increased their share of the domestic STPP market to over 60%. From 2001 to 2005, STPP imports shot up to 560 %, i.e., a surge of 140 % a

year. The surge is sudden, massive and debilitating for the local producers.

Federation of Philippine Industries

- The surge of imported STPP is detrimental not only to the domestic STPP industry but also to the local soap and detergent industry which will be totally dependent on foreign suppliers if CAWC shuts down. Inaction on the part of the government to impose the necessary safeguard measure may cause supply instability that will be detrimental to the soap and detergent industry.
- Providing more protection to the basic industries and in turn creating a stable supply situation is best for the end consumers (like the people who use soap and detergent). If this domestic supply chain is broken by foreign intervention, the public will be in danger of being exploited by the foreign suppliers. There will be no other recourse then because CAWC is the only manufacturer of STPP in the country. As in the case of oil, absence of oil refineries will put the country at the mercy of foreign oil producers.
- The imported STPP may be cheaper but this is largely the result of a lot of predatory pricing in global trading today where the major exporters disable the manufacturing industries in their target markets in order to gain market dominance especially if there is only one manufacturer in that particular target market.

4.3 The Opposing Case

Oppositors to the petition for safeguard action, which included STPP-TG importers and foreign exporters, associations and governments of foreign exporting firms, submitted the following arguments to support their position:

Soap and Detergent Association of the Philippines

- There are no legal grounds for the imposition of safeguard measures since the petitioner failed to prove the presence of the following requisite elements:
 - (a) import surge - importation was resorted to only to fill the shortfall in domestic production, meet the requirement of the local market, and respond to the petitioner's prohibitively high prices
 - (b) serious injury - the reduction in anti-dumping duties in 2004 on STPP imports from China implies the mitigation of material injury to the petitioner and hence the lack of serious injury, considering that the "material injury" requirement in anti-dumping cases is of a lesser degree than the "serious injury" requirement in safeguards cases
 - (c) causal linkage - there is no correlation between STPP imports and the petitioner's employment level; there is high correlation of the petitioner's declining capacity utilization and market share with the substantial increase in its selling prices; the petitioner's problems are

the result of its ill-considered past business decisions, i.e., credit/loan expenses; devaluation of investments in the Petrochemical Corporation of Asia Pacific; misjudgment of domestic demand; and reliance on single source of yellow phosphorus

- (d) unforeseen developments - STPP imports during the POI followed a regular, predictable trend that was merely aligned with domestic demand
- Neither the petitioner nor the public will benefit from the imposition of a safeguard measure for the following reasons:
 - (a) It would be futile since the petitioner is commercially incompetent and inefficient.
 - (b) It would be damaging to the public interest as it would result in a substantial increase in the prices of soaps and detergents to the detriment of consumers. Moreover, the viability of soap and detergent manufacturers, who employ over 20,000 workers and contribute hundreds of millions of pesos through taxes and charitable works to the Philippine economy, would be compromised. Once the soap and detergent industry loses market share to imports, petitioner's own market for STPP will likewise contract.
 - (c) It will result in a staggering 45% increase in the cost of STPP amounting to an additional ₱300 million in the cost of raw materials.
 - (d) It would not only cost the public's money but the country's diplomatic relations as well – which would undoubtedly be more potentially damaging to the public interest.
 - CAWC has undeservedly benefited from substantial protection since 1997 at the expense of the local business sector and the public. Such costs would only balloon further with the imposition of safeguard measure.
 - A safeguard measure would cause a tariff distortion between STPP-TG (with an effective tariff of 61% following the provisional duty) and soap/detergents (with only 3% - 5% tariffs).
 - The resulting effective duty rate will lead to a ₱6.71 - ₱7.20 on 44g. low priced bars and ₱8.82 - ₱9.45 on medium priced bars.
 - Safeguard measures are responses to fair trade acts and should be applied carefully as studies show that said measures generally do not promote the economic development of the importing country.

Procter and Gamble (P&G) Vietnam

- The decision to shift to global procurement was taken due to the high selling price of the locally produced STPP.
- Sourcing of P&G is based on centralized decision-making (regional sourcing) so P&G can exploit its buying strength. Decision is based on best-value supplies: quality, price stability/predictability and potential to supply other P&G sites.
- P&G buys STPP from the best selling suppliers with whom P&G has long term contracts and to whom they are committed.

Hubei Xingfa Chemicals Group Company Ltd.

- The imposition of provisional safeguard duties for the entire tariff heading is without basis considering the incomplete and insufficient “like product” analysis necessary to determine what constitutes a “like or directly competitive product” and a “domestic producer”.
- The provisional safeguard duty contravenes Section 36 of R.A. 8800 and the 1987 Philippine Constitution as it allows monopolistic practices and is confiscatory.
- The alleged financial distress of the domestic manufacturer is mainly caused by the lack of vertical integration and the prohibitive cost and unavailable source of its major raw material inputs which are mostly imported.
- There is an absence of causal link between the increased imports of STPP-TG and the alleged serious injury of the domestic manufacturer.
- The events arising from the WTO obligations resulting in marked reduction in tariffs and the removal of trade barriers have long been foreseen by the domestic manufacturer.
- The domestic manufacturer’s adjustment plan is absolutely not viable. It is contingent on two (2) major factors which will not happen, i.e., (a) local manufacturers will source from CAWC in the event safeguard measures are imposed and (b) the MGPA plant will be totally efficient and productive.

Nakayama Technology Corporation (NTC) and Nakayama Jyuutaku Co. Ltd. (formerly Nakayama Toso Kogyu Co. Ltd.)

- NTC has not caused nor threatens to cause serious injury to the Philippine industry with its importation of STPP from Nakayama Jyuutaku Co. Ltd., its mother company in Japan. The only reason for its importation is to ensure that the quality of the brick tiles that it manufactures will pass the standards of the Japanese market.

Lepanto Ceramics Incorporated

- The company requested that it be excused from participating further in the proceedings since it imported a minimal volume of STPP-TG and only once during the period 2001 to 2005.

Government of Belgium

- Exports from Belgium of STPP-TG are of such minimal amounts that they approximate the *de minimis* level.
- Such minimal exportations hardly pose a threat to the domestic industry.
- In the ceramic tiles safeguard case, DTI unilaterally excluded ceramic tiles originating from Italy and Japan (both developed countries) on the basis that said tiles are not directly competitive to locally produced tiles. The Commission should adopt the rule on precedence and apply it to Belgium with respect to the instant case.

Government of France

- Exemption from further participation in the proceedings was requested since France had exported STPP-TG only twice during the period 2001 to 2005 with shares of merely 0.28% in 2001 and 0.07% in 2004 of the total Philippine STPP imports.

Government of the Russian Federation

- The current situation in the Philippine market could be the result of the following factors: inadequately low dumping duty on imports from China; low Philippine customs tariffs; insufficient supply leading to increased imports; and non-competitiveness of the Philippine domestic industry.
- Philippine tariff obligations are voluntary and supposed to be approved by domestic industries so the current situation in the Philippine market should not be considered as the result of unforeseen developments.
- The imposition of a safeguard measure would cause establishment of a monopoly.
- The decrease in sales of the Philippine domestic industry is linked to its pricing policy, financial state, and import competitiveness. There is no causal link between increased imports and the injury of the domestic industry.
- Since China has the largest production capacities in the region, the imposition of a safeguard measure, rather than a selective anti-dumping duty, would not give protection to the Philippine domestic industry.
- The growth in imports from the Russian Federation is due to increasing demand.
- The imposition of a safeguard measure, since it might cause a shortage, may not be in the public interest.

Government of Spain

- Exports from Spain have not been proven to be the cause of increased imports of STPP-TG and the resulting damage to the local industry.
- The apparent cause of the import increase is the exports of China.
- The import increase was not unforeseen or sudden; instead it was predictable as the anti-dumping duty on China's exports was reduced.
- The Philippine government should consider a more thorough investigation on how a revision of anti-dumping mechanisms may adequately curtail imports of STPP-TG.

Taiwan Economic and Cultural Office

- According to the WTO Agreement on Safeguards, if there are companies that will capitalize on the "*de minimis*" status of a country to avoid Philippine safeguard measures, the Philippines can place said companies in the implementation list through a mid-term review. It is against WTO principles to deprive a developing country of "*de minimis*" status if only to prevent the shifting from a country that is subject to dumping duty to a country that is not so.

Government of Vietnam

- CAWC does not represent the Philippine chemical industry.
- Safeguards would not be an appropriate measure for the protection of only one local producer/monopoly. On the other hand, said safeguards would affect consumers, traders and detergent manufacturers and curtail the ability of the Philippine chemical industry to compete globally.
- The domestic industry's prices are higher than those of other countries including those countries with high labor costs, making locally produced STPP-TG uncompetitive with imports. Imported STPP-TG is not the main reason for the domestic industry's unprofitability.
- Philippine tariffs on subject article (at 5% for CEPT and 7% for MFN) are higher than Vietnam's 3% CEPT and 5% MFN rates.
- While permitted in international and national commercial rules, the imposition of safeguard measures is not in conformity with the general trend of regional/international free trade.
- Constant application of safeguard measures leads to uncertainty and unpredictability and does not serve the goals of improving the trade and investments environment in the Philippines, expanding commercial ties between the Philippines and Vietnam, and enhancing the trade and investment environment in ASEAN.

5 THE DOMESTIC INDUSTRY AND MARKET

5.1 The Domestic Product

STPP-TG is a white, slightly hygroscopic powder (or in granular form) with the formula $\text{Na}_5\text{P}_3\text{O}_{10}$. Soluble in water and with pH (1% solution) of 9.75, STPP-TG is a molecularly dehydrated phosphate. As a molecularly dehydrated builder, it has a range of properties particularly directed toward conditioning water.

STPP-TG is an excellent builder for synthetic detergents in that it provides outstanding detergent and anti-redeposition properties as well as excellent sequestering ability in hard water. It has a peptizing effect or the ability to keep finely divided solids in colloidal suspension in liquid which prevents re-deposition of dirt onto the washed clothing.

STPP-TG is used in the manufacture of detergents as water softeners and is particularly effective in bar soaps as dispenser of soap curds in hard water and scum eliminator; as purificator of China clay; as conditioner of oil drilling mud; as clay dispersant; as anti-pitch agent in papermaking and textile processing; and as dispersant in cement.

5.2 Tariff Profile

The Most Favoured Nation (MFN) rate of duty for STPP was set by Executive Order (EO) No. 334, signed on 03 January 2001, at 7% for 2001 and 5% from 2002 until 2004 (Table 1). The 2004 rate was increased to 7% under EO No. 264 issued on 30 December 2003.

Table 1. Rates of Duty on STPP-TG: 2001 - 2006

AHTN Code	Description	Type of Duty	Rates of Duty (%)						
			2001	2002	2003	2004	2005	2006	
28.35	Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined.								
2835.31.00	- Polyphosphates: -- Sodium triphosphate (sodium tripolyphosphate)	MFN CEPT	7 3	5 3	5 3	7 5	7 5	7 5	

The Common Effective Preferential Tariff (CEPT) rate of duty was set at 3% under EO No. 453 issued on 31 October 1997. On 30 December 2003, the rate was increased from 3% to 5% pursuant to EO No. 263.

Anti-dumping duties are imposed on STPP imports from China. On 17 December 1998, the Department of Finance (DOF) issued Anti-Dumping Decision No. 1-99 imposing the following definitive anti-dumping duties for a period of five (5) years: Kunming STPP Plant Import and Export Development (Kunming) - \$31/MT; Qing Dao Chemicals and Medicines Import and Export Company, Ltd (Qing Dao) - \$42/MT; other exporters from China - \$31/MT. Upon a motion for reconsideration filed by Chemphil Albright and Wilson Corporation with the Special Committee, the duties were adjusted on 17 June 1999 to \$116.42/MT for Kunming and \$139.29/MT for Qing Dao and other exporters from China.

Following an expiry review by the Commission, the anti-dumping duties on STPP imports from China were extended for another three (3) years starting 14 April 2004. The current anti-dumping duties are as follows: Kunming Import and Export Corporation - \$70.22/MT; Yunnan Centsun Industry Company - \$33.91/MT; other exporters from China - \$70.22/MT.

The Philippines did not bind the tariff rate on STPP-TG under the WTO.

5.3 Market Participants

Supply of STPP-TG in the Philippine market comes from local production and imports.

5.3.1 Domestic Producer

CAWC is the only local manufacturer of phosphates products, namely, STPP and Tetrasodium Pyrophosphates (TSPP). Total actual production of STPP-TG from 2001 to 2005 was 123,574 metric tons (MT).

Ownership Structure

CAWC is a 100% percent Filipino-owned corporation with 99.67% percent of its outstanding capital stocks owned by Chemical Industries of the Philippines, Inc., a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. The remaining 0.33% is owned by individuals who are all citizens of the Philippines.

CAWC's business as the sole manufacturer and supplier of STPP and TSPP started as early as 1971 when it was established as a pioneering project of the Chemphil Group. Originally named as Polyphosphates, Inc. (PPI), the company was the pioneer in the manufacture of phosphates products not only in the Philippines but also in the South East Asian region. PPI has since changed its corporate name: first, to Chemphil Albright & Wilson Corporation in 1994 and then to CAWC Inc. on 06 April 2004.

Production Capacity

CAWC's production capacity for STPP-TG is 150 MT per day or approximately 49,500 MT per year.

Distribution Channels

CAWC's channel of distribution for its manufactured products is via direct selling to end users.

Phosphates and the other manufactured products, being industrial products, are offered and sold directly by the Sales & Marketing Group of CAWC to customers/users. Main markets include industrial (soap and detergents) manufacturers and food processors.

5.3.2 Importers

During the period of investigation, the identified importers of STPP-TG are the following:

ACS Manufacturing Corporation	Leysam Commercial Inc.
Alpha-Novell International Industrial Corporation	Marchem Inc.
Clarkchem Inc.	Mariwasa-Siam Ceramics Inc.
Colgate Palmolive Philippines	Material Resources International Corporation
Coolly International Corporation	Nakayama Technology Corporation
DHL Worldwide Express Phil. Corporation	Neet International Corporation
Eurotiles Industrial Corporation	Newey Industries Corporation
Filfram Enterprises	Optimus Industrial Development Inc.
FMC Marine Colloids Philippines Inc.	Premera Suertes Corporation
Formosa Ceramic Tiles Manufacturing Corporation	Procter & Gamble Philippines Inc.
Grand Formosa International Trading	QBQ Enterprises
Henkel Philippines Inc.	Spord Commercial International Trading
Himmel Industries Inc.	Tennessee Feedmill Inc.
Ilyon Industrial Corporation	Turriss Philippines Inc.
Islandwide Chemical Corporation	Uni-dravo Commercial Corporation
JIT Bonded Trading Warehouse Inc.	Unilever Philippines Inc.
Lepanto Ceramics Inc.	Vi-Carlo Enterprises

5.3.3 Users

The principal users of STPP-TG are the following: Procter and Gamble Philippines, Inc.; Unilever Philippines, Inc. and Mariwasa-Siam Ceramics, Inc.

6 DETERMINATION OF LIKE PRODUCT

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

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

6.1 Product Under Consideration

The product under consideration, as determined in the DTI preliminary investigation of the instant safeguards case, is sodium tripolyphosphates - technical grade. According to the Condensed Chemical Dictionary, STPP ($\text{Na}_5\text{P}_3\text{O}_{10}$) is also known as tripoly and pentasodium triphosphate.

6.2 Characteristics

6.2.1 Chemical Composition

Locally Produced STPP-TG

- chemical formula $\text{Na}_5\text{P}_3\text{O}_{10}$ with a minimum purity of 90%;
- maximum arsenic content and total iron content of 100 parts per million (ppm);
- maximum water insoluble matter of 0.1%; and
- volatiles are lost at a maximum rate of 1% at 150°C for 1 hour.

Imported STPP-TG

- chemical formula $\text{Na}_5\text{P}_3\text{O}_{10}$;
- purity of 95.2% with loss on ignition at 150°C of 0.4% (imported from Vietnam); and
- purity of 94% to 96% with iron content of 100 ppm and volatiles at 0.1% to 0.9% (imported from China).

6.2.2 Physical and Chemical Properties

Locally Produced STPP-TG

Locally produced STPP-TG is a free-flowing fine white powder with pH of 9 - 10.5. A minimum of seventy-five percent (75%) of its particles passes thru a mesh of 150 μm or less and a maximum of two percent (2%) is retained at 425 μm .

Imported STPP-TG

Imported STPP-TG is a white powder with pH of 9.2 - 10.3. A minimum of 62.8% of its particles passes thru 150 μm mesh and five percent (5%) or less is retained at 425 μm .

Table 2 shows the comparative chemical and physical properties of local and imported STPP-TG.

Table 2. Comparison of Chemical and Physical Properties of Local and Imported STPP-TG

Chemical or Physical Property	Local STPP-TG	Imported STPP-TG
Total P_2O_5	58% min.	56.5 to 58.5%
Tripolyphosphate as $\text{Na}_5\text{P}_3\text{O}_{10}$	90% min.	94-96%
Volatiles	1% max.	0.1 – 0.9%
Rate of hydration	79-83.5°C	81-87°C
Matter insoluble in water	0.1% max	0.1%
pH 1% solution @ 25°C	9-10.5	9.2-10.3
Total Iron as Fe	100 ppm. max.	100ppm
Arsenic, As	100 ppm max.	
Particle size distribution, Tyler		
+ 35 mesh (425 μm)	2% max.	5% max.
- 100 mesh (cumulative) (150 μm)	75% min.	62.8% min.
Appearance	White free-flowing, fine powder	White powder

6.3 Manufacturing Method

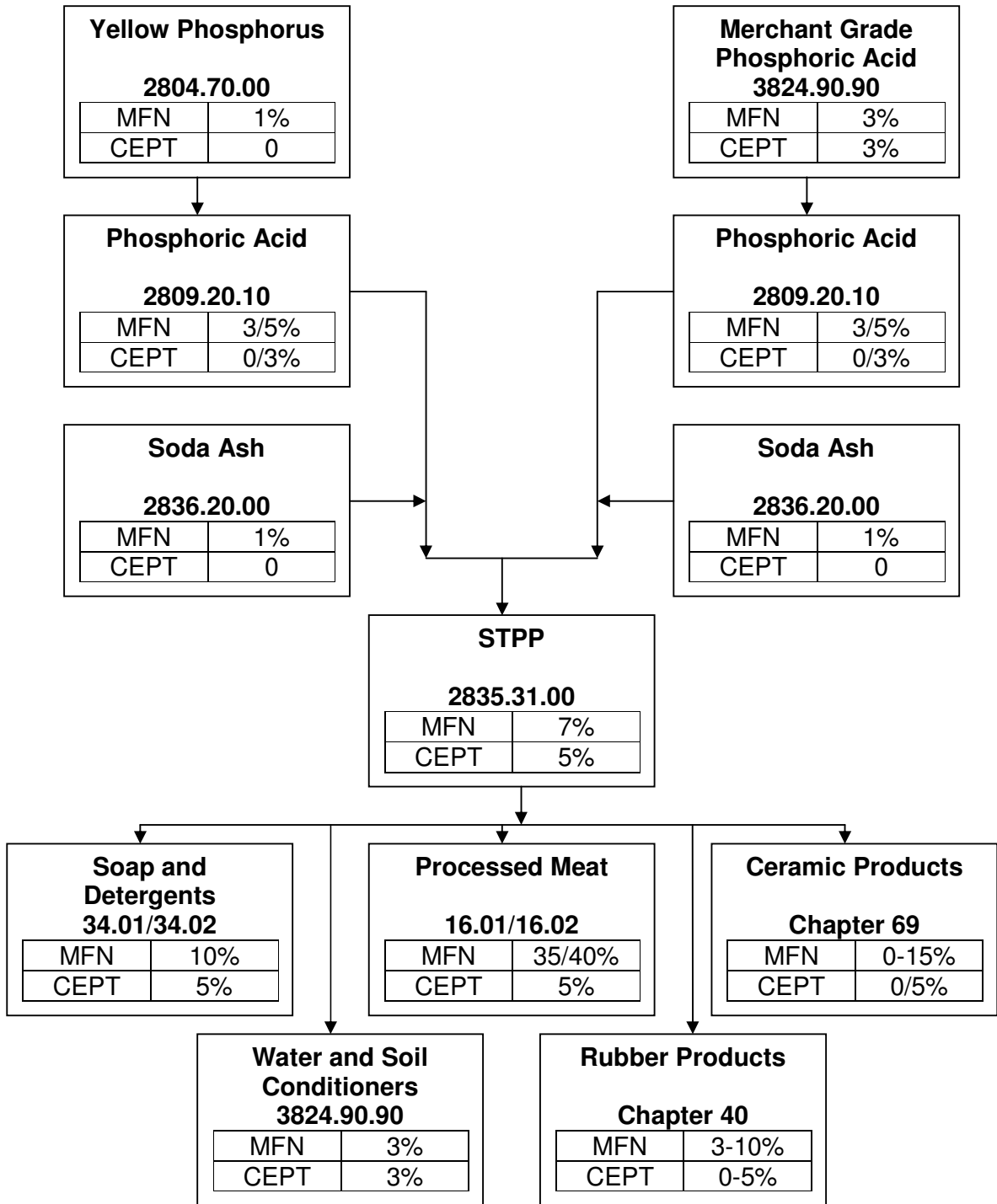
Locally Produced STPP-TG

The linkage chart of STPP-TG illustrates the flow of materials from the raw form to the end products (Figure 1). CAWC manufactures STPP in two ways: using purely phosphoric acid from yellow phosphorus (P₄) and using merchant grade phosphoric acid (MGPA) for blended STPP. To produce unblended STPP, the phosphoric acid from P₄ is mixed with soda ash. The mixture is called STPP liquor. The liquor is then heated to complete the reaction to form the STPP. On the other hand, in order to produce the blended STPP, phosphoric acid from P₄ and phosphoric acid extracted from MGPA are separately mixed with soda ash. The liquors are then blended at the desired ratio and heated to complete the reaction.

Imported STPP-TG

Subject article is produced through slow crystallization from a heated mixture of monosodium and disodium phosphates made from proper amounts and concentrations of phosphoric acid and soda ash.

Figure 1. Linkage Chart of STPP Using 100% P4 or MGPA/P4 Blend



6.4 Uses

Locally Produced STPP-TG

Locally produced STPP-TG is used as a principal builder for laundry detergents, in the formulation of boiler water treatment/conditioning chemicals and metal cleaners, dispersing and emulsifying agent, deinking newsprint, textile dyeing, viscosity control of drilling muds, scouring of wool, and in the synthetic rubber and ceramics manufacturing.

Imported STPP-TG

Imported STPP-TG is used similarly as the locally produced product, i.e., it is used as a principal builder for laundry detergents, in the formulation of boiler water treatment/conditioning chemicals and metal cleaners, dispersing and emulsifying agent, deinking newsprint, textile dyeing, viscosity control of drilling muds, scouring of wool, and in the synthetic rubber and ceramics manufacturing.

6.5 Tariff Classification

Both local and imported STPP-TG are specifically covered under AHTN subheading 2835.31.00.

6.6 Findings

The locally produced STPP-TG and the imported STPP-TG have the same chemical formula, description, uses, have properties lying within a close range, undergo the same manufacturing process (except that CAWC has developed a process using phosphoric acid from MGPA), and are both classified under the same subheading (AHTN 2835.31.00) of the Tariff and Customs Code of the Philippines.

6.7 Conclusion

In view of the foregoing, the Commission finds that, in accordance with RA 8800, the locally produced STPP-TG is a like product to the imported STPP-TG.

7 DETERMINATION OF INCREASED VOLUME OF IMPORTS

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

7.1 Period of Investigation

Rule 7.2(a) of the IRRs of R.A. 8800 provides that import data covering the last five (5) years preceding an application for safeguard measure should be evaluated for purposes of substantiating claims of increase in imports.

CAWC having officially filed its application for safeguard measure with DTI in February 2006, the period of investigation (POI) was determined to be the five-year period 2001 - 2005 for purposes of the Commission’s formal investigation.

7.2 Increase in Volume of Imports In Absolute Terms

Import data on STPP-TG were sourced from the National Statistics Office (NSO), BIS/BOC, CAWC and import entries on file with the Commission.

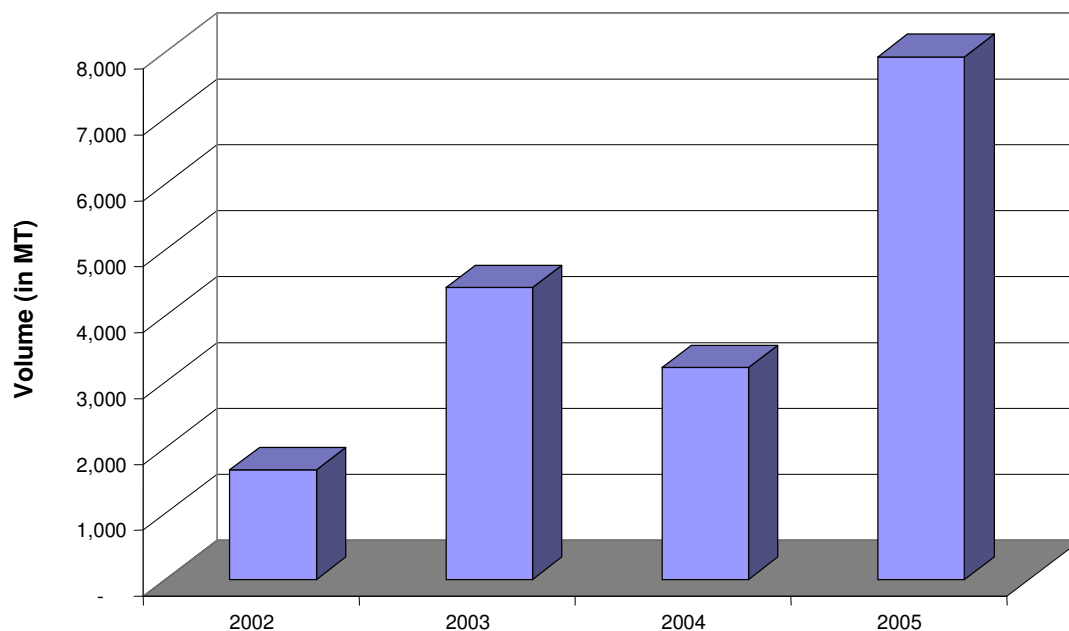
In 2001, imports of STPP-TG amounted to 2,960 MT (Table 3). Import volume rose to 4,630 MT or by 56% the following year and increased further to 9,060 MT or by 96% in 2003. Imports peaked in 2005 at 20,210 MT, an increase of 7,930 MT or 65% over the previous year’s level of 12,280 MT (Figure 2).

Table 3. Volume of Imports of STPP-TG: 2001-2005

Year	Volume (MT)	Growth Rate (%)
2001	2,960	--
2002	4,630	56.42
2003	9,060	95.68
2004	12,280	35.54
2005	20,210	64.58

Sources of basic data: NSO, BIS/BOC, CAWC, import entries

Figure 2. Actual Increase/Decrease in the Volume of Imports of STPP-TG: 2002-2005



7.3 Increase in Volume of Imports Relative to Domestic Production

Imports of STPP-TG represented about 9% of total domestic STPP-TG production in 2001 (Table 4). The share of imports relative to local production increased to 15%, 34% and 57% in 2002, 2003 and 2004, respectively.

Table 4. Share of Imports to Domestic Production of STPP-TG

Year	Imports (MT)	Domestic Production (MT) ¹	Share of Imports to Total Production (%)
2001	2,960	33,365	8.87
2002	4,630	30,635	15.11
2003	9,060	26,700	33.93
2004	12,280	21,580	56.90
2005	20,210	11,290	179.01

¹Source: CAWC

In October 2005, CAWC declared a temporary shutdown and in November and December, plant operations went on definitive shutdown. Consequently, domestic production fell by 48%. The share of imports to production increased to 179%; i.e., imports exceeded production by 79%.

7.4 Findings

Based on the annual levels of imports from 2001 to 2005, a significant increase in imports of STPP occurred in 2005 when imports expanded by 65% compared to the previous year's volume. The 2005 import level was the highest over the POI and was almost seven times more than the initial import volume.

The movements in the shares of imports relative to domestic production over the POI confirm a sharp increase in imports of STPP-TG in 2005. Starting 2002, the share of imports increased by 70%. The share of imports continuously grew in 2003 and 2004. It was in 2005 that the share of imports was already at an alarming rate of 179% vis-à-vis domestic production.

In a shrinking STPP-TG domestic market, imports increased its share. While demand contracted by 7% in 2005, imports cornered an even bigger portion of the market, its share rising to 65% from only 37% the previous years (Table 7).

7.5 Unforeseen Developments Leading to Increased Importation

Yellow phosphorus (P4) is a major raw material in the production of STPP-TG and is not available locally. CAWC imports this raw material from China.

Historical prices of P4 averaged: US\$899/MT in 2000, US\$901/MT in 2001, US\$910.00/MT in 2002 and US\$1,055/MT in 2003. In 2004, P4's average price was \$2,004/MT, up by 90% from the 2003 level. It further went up to US\$2,195/MT in 2005 or an increase of 10% from the 2004 level.

While increase in price is an expected development, the extent of such an increase in the price of the domestic industry's raw material imported from China that affected the competitive situation of the industry could not reasonably be expected to have been foreseen.

7.6 Conclusion

Based on the foregoing, the Commission finds that, in accordance with RA 8800, STPP-TG was imported into the Philippines in increased quantities in 2005, both in absolute terms and relative to domestic production. The increase in volume of imports is recent, sharp and significant.

7.7 De Minimis Import Volumes from Developing Countries

7.7.1 Major Country Suppliers of Imported STPP-TG

During the latter part of the five-year POI, the People's Republic of China (China), Vietnam, Spain, and Russia were the major sources/exporters of STPP-TG to the Philippines (Table 5).

China

Imports from China registered a high 83% share of the total Philippine imports of STPP in 2001.

In 2002, China's shares shrank to 17% and to less than 1% in 2003 due to the imposition of anti-dumping duties on Chinese STPP-TG.

China made a big comeback with 33% and 52% shares of imported STPP-TG in 2004 and 2005, respectively, when the anti-dumping duties were reduced following an expiry review.

Vietnam

Imports from Vietnam accounted for only 1% of total Philippine imports in 2001. In 2002, Vietnam's share increased to 5%. In 2003, imports from Vietnam obtained the second highest share at 38%. Dropping to 14% in 2004, imports from Vietnam in 2005 rebounded to 22%, the second biggest share of annual Philippine imports.

Spain

Exportation of STPP-TG by Spain started in 2003 amounting 1,390 MT or 15% of total Philippine imports. In 2004, Spain got the second highest share at 26%. Import volume dropped slightly in 2005 to 3,195 MT from 3,233 MT in 2004 or a decline to 16% import share.

Russia

Russia became a major source of STPP-TG in 2004 and 2005 when it contributed 15% and 10%, respectively, to annual Philippine imports.

Table 5. Imports of STPP-TG by Country of Origin

Country of Origin	2001		2002		2003		2004		2005	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
People's Republic of China	2,463.50	83.11	804.00	17.37	45.00	0.50	4,098.30	33.38	10,430.72	51.61
Vietnam	40.00	1.35	230.00	4.97	3,461.00	38.20	1,699.85	13.84	4,547.68	22.50
Thailand	230.66	7.78	3,425.17	73.99	4,037.04	44.56	652.00	5.31	2.98	0.01
Spain	---	---	---	---	1,390.00	15.34	3,233.00	26.33	3,195.00	15.81
Russia	---	---	---	---	110.00	1.21	1,816.55	14.80	2,000.41	9.90
South Africa	---	---	---	---	---	---	455.00	3.71	---	---
United States of America	152.41	5.14	91.44	1.98	7.26	0.08	52.61	0.43	0.05	0.00
Netherlands	---	---	---	---	---	---	198.00	1.61	---	---
Taiwan	---	---	---	---	10.00	0.11	54.39	0.44	22.00	0.11
Australia	49.20	1.66	---	---	---	---	9.05	0.07	---	---
Belgium	18.00	0.61	34.26	0.74	---	---	---	---	---	---
Hong Kong	---	---	44.00	0.95	---	---	---	---	---	---
France	8.40	0.28	---	---	---	---	9.00	0.07	---	---
Japan	---	---	---	---	---	---	---	---	11.66	0.06
Germany	0.60	0.02	0.20	0.00	---	---	---	---	0.72	0.00
Singapore	1.50	0.05	---	---	---	---	---	---	---	---
TOTAL	2,964	100.00	4,629	100.00	9,060	100.00	12,278	100.00	20,211	100.00

Sources of basic data: NSO, BIS/BOC, CAWC, import entries

7.7.2 De Minimis Import Volume

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

Based on 2005 import volume (the ending year of the POI), the volume of imports of two (2) developing countries, i.e., Thailand and Taiwan, was *de minimis* (Table 6).

Table 6. Developing Countries with De Minimis Import Volume

Exporting Country	Year 2005 Import Volume (MT)	Share to Total Imports (%)
Thailand	2.98	0.01
Taiwan	22.00	0.11
Total	24.98	0.12

The list of developing countries with *de minimis* import volumes will necessarily change depending on the most recent annual data available.

8 DETERMINATION OF SERIOUS INJURY

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

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

8.1 Domestic Industry Requirement

Section 4(f) of R.A. 8800, for purposes of determining injury and threat thereof, defines “domestic industry” as:

“domestic producers, as a whole, of like or directly competitive products manufactured or produced in the Philippines or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products”

Rule 4.1 of the IRRs of R.A. 8800 further provides that:

“(1) in the case of a domestic producer which also imports the product under consideration, only its domestic production of the like or directly competitive product shall be treated as part of the domestic production, or (2) in the case of a domestic producers which produces more than one product, only that portion of its production of the like or directly competitive product may be treated as part of such domestic production.”

CAWC, the sole manufacturer of STPP-TG in the Philippines, accounted for 100% of total domestic production during the POI.

8.2 Serious Injury Factors

8.2.1 Market Share

Total apparent consumption of STPP amounted to 36,330 MT in 2001. It dropped to 34,080 MT in 2002 but bounced back in 2003. Apparent consumption dropped again to 33,240 MT in 2004 and to 31,030 MT in 2005.

Total apparent consumption of STPP contracted over the POI by about 4% yearly from 36,330 MT in 2001 to 31,030 MT in 2005 (Table 7). The decrease in consumption from 2001 to 2005 totaled 5,300 MT.

The Philippine STPP market was predominantly supplied by the local industry for the first four years of the POI (Table 7). The industry enjoyed an average market share of 79% while the remaining 21% was captured by imports.

Table 7. Apparent Domestic Consumption and Market Shares (MT)

Year	Domestic Sales ^{1/}	Imports ^{2/}	Apparent Domestic Consumption	Market Share (%)	
				Domestic Industry	Imports
2001	33,370	2,960	36,330	91.85	8.15
2002	29,450	4,630	34,080	86.41	13.59
2003	26,935	9,060	35,995	74.83	25.17
2004	20,960	12,280	33,240	63.06	36.94
2005	10,820	20,210	31,030	34.87	65.13

^{1/} CAWC

^{2/} NSO, BIS/BOC, CAWC and Import Entries

The market share of CAWC steadily declined from a high of 92% in 2001 to 63% in 2004. Imports, on the other hand, started to eat up the domestic market as volume of STPP importation increased in 2002 despite the imposition of definitive dumping duty against Chinese STPP in 2001. From a low of 8% share in 2001, imports' market share progressively grew to 37% in 2004.

When imports increased significantly in 2005, a turn-around in market position took place. Capturing 65% of the market, imports took over market leadership from the domestic industry that was left with a record low of 35% share of the market.

8.2.2 Domestic Sales

Sales cover all forms or grades of STPP, i.e., STPP Technical Grade and Food Grade (FG). STPP FG comprised a small portion of the total STPP sales volume, i.e., 1% to 2% of total STPP production volume.

Table 8. Domestic Sales of STPP

Year	Volume	
	(MT)	% Change
2001	33,370	--
2002	29,450	(11.75)
2003	26,935	(8.54)
2004		
1 st Qtr.	4,120	--
2 nd Qtr.	4,080	(0.97)
3 rd Qtr.	7,200	76.47
4 th Qtr.	5,560	(22.78)
Total	20,960	(22.18)
2005		
1 st Qtr.	5,095	(8.36)
2 nd Qtr.	2,085	(59.08)
3 rd Qtr.	2,900	39.09
4 th Qtr.	740	(74.48)
Total	10,820	(48.38)

Source of basic data: CAWC

From 2001 to 2004, sales volume was on the decline from 33,370 MT to 20,960 MT, respectively (Table 8). Sales revenue likewise declined except in 2004 when sales revenue grew by 18% as CAWC raised its selling price due to the high cost of P4.

When imports increased significantly in 2005, volume of sales shrank drastically to its lowest level of 10,820 MT. On a quarterly basis, reduction in sales volume and revenue started in the 2nd quarter of 2005 as CAWC's customers stopped buying their STPP requirements from the company and shifted to low-priced imports. Sales fell to their lowest volume in the 4th quarter of 2005, prompting CAWC to temporarily shutdown its STPP operation.

The rate of decrease in sales experienced by the domestic industry in 2005 significantly exceeded the STPP-TG market contraction.

8.2.3 Domestic Production

Since STPP has a shelf life of a mere 1 ½ months, CAWC only produces STPP on the basis of the requirements of customers.

Table 9. Domestic Production of STPP (MT)

Year	Production	
	Volume	% Change
2001	33,365	--
2002	30,635	(8.18)
2003	26,700	(12.84)
2004		
1 st Qtr.	3,970	--
2 nd Qtr.	5,620	41.56
3 rd Qtr.	6,950	23.66
4 th Qtr.	5,040	(27.48)
Total	21,580	(19.18)
2005		
1 st Qtr.	4,870	(3.37)
2 nd Qtr.	2,830	(41.89)
3 rd Qtr.	2,680	(5.30)
4 th Qtr. ^{1/}	910	(66.04)
Total	11,290	(47.68)

Source of basic data: CAWC

^{1/} CAWC had no STPP production in October 2005 and plant operations were on definitive shutdown in November-December 2005.

Annual production volume declined starting 2002 as volume of sales decreased (Table 9). When imports increased significantly in 2005, production volume sank to its lowest level of 11,290 MT as customers shifted to imports. Since it could not sell, CAWC stopped production in October 2005 and declared a temporary shutdown in November to December 2006.

8.2.4 Ending Inventory

Finished good inventory refers to all grades of STPP production. STPP has a limited shelf life of only 1½ month. Thus, CAWC is precluded from maintaining a huge inventory.

Table 10. Ending Inventory (MT)

Year	Volume	% Change
2001	600	---
2002	1,040	73.33
2003	235	(77.40)
2004	410	74.47
2005	540	31.71

Source of basic data: CAWC

Ending inventory over the POI ranged from 1,040 MT in 2002 to 235 MT in 2003 (Table 10). Inventory levels increased in 2004 and 2005 although to levels lower than in 2001 and 2002.

8.2.5 Capacity Utilization

The plant production capacity of CAWC for STPP is more than 150 MT per day or 49,500 MT per annum.

Plant utilization was on a steady decline during the POI. CAWC's lowest capacity utilization was registered at 23% in 2005 (Table 11).

Table 11. Actual Production and Capacity Utilization (MT)

Year	Rated Capacity	Actual Production	Utilization Rate (%)
2001	49,500	33,365	67.40
2002	49,500	30,635	61.89
2003	49,500	26,700	53.94
2004	49,500	21,580	43.60
2005	49,500	11,290	22.81

Source of basic data: CAWC

8.2.6 Profit and Loss

8.2.6.1 Profitability

In its evaluation of profitability, the Commission attaches more weight to income (loss) from operations as this account reflects the company's operating performance, i.e., its ability to generate revenues after deducting all costs and expenses directly attributable to the production of STPP as in the instant case.

During the first year of the POI, CAWC generated an operating income from its STPP operations (Table 12). In 2002, in spite of the imposition of definitive anti-dumping duty on STPP imports from China, the company incurred a loss due to the entry of low-priced imported STPP-TG from Thailand and Vietnam. CAWC was forced to adopt an import parity pricing scheme and to sell STPP below cost to keep its share of the market. Gross losses were registered in 2003 and 2004, respectively, as cheap imports from Russia, Spain, Thailand and Vietnam entered the Philippine market resulting to the huge decline in sales volume. The increase in selling price was not sufficient to offset the rising cost to produce and sell which was higher than the sales revenue.

Table 12. Income Statement: STPP Operations (% Change)

Particulars	2001-2002	2002-2003	2003-2004	2004-2005
Sales	(13.90)	(1.89)	18.04	(45.69)
Cost of Sales	(10.06)	2.51	18.13	(38.24)
Gross Profit / Loss	(61.67)	-130.55	-27.08	-633.20
Selling and General Administrative Expenses (SAGE)	6.79	(7.08)	(8.35)	1.65
Income / Loss from Operations	-132.10	-291.96	-1.66	-155.71
Net Income / Loss	-152.53	-159.94	-51.82	-180.93

Source of basic data: CAWC

When imports increased significantly in 2005, CAWC's loss from operations increased by 156%. This was attributed to the continuous decline in sales volume and revenue combined with the rising cost of production and operating expenses. To avoid further losses, the company decided to temporarily shutdown its STPP operations in the last quarter of 2005.

The bottomline results of operations were unfavorable from 2002 to 2005.

8.2.6.2 Return on Sales

Due to losses from operations, negative returns on sales were registered from 2002 to 2005 (Table 13). It was in 2005 when the negative return on sales hit the highest point as STPP imports increased significantly.

Table 13. Return on Sales

Year	Return on Sales (%)
2001	3.66
2002	(1.37)
2003	(5.46)
2004	(4.55)
2005	(21.41)

Source of basic data: CAWC

8.2.6.3 Cost of Goods Manufactured

Production costs were steadily increasing in the first three (3) years of POI (Table 14). In 2004, production cost was 55% higher than the 2003 level. This was attributed to the high cost of imported yellow phosphorous (P4), CAWC's major raw material in the production of STPP, and the high cost as well of other inputs, i.e., power, bunker fuel oil and kerosene. P4 at an average cost of US\$2,004.00/MT, up by 90% from the 2003 level of US\$1,055/MT, accounted for 70% of CAWC's total production cost in 2004.

Table 14. Percentage Share to Costs of Good Manufactured

Particulars	2001*	2002*	2003*	2004		2005	
				100% P4	MGPA / P4 Blend	100% P4	MGPA / P4 Blend
Direct Raw materials	79.97	78.98	80.02	83.61	81.68	71.85	76.81
Indirect Raw Materials	8.23	8.00	7.55	6.89	10.55	9.09	12.81
Direct Labor	0.53	0.43	0.58	0.47	0.40	0.46	0.47
Manufacturing Overhead	11.27	12.59	11.85	9.03	7.37	18.60	9.91

Source of basic data: CAWC

* Using 100% P4

When imports increased significantly in 2005, production cost further shot up due to the escalating costs of power, bunker fuel oil, supplies, kerosene and to the allocation of fixed overhead expenses, such as depreciation, amortization, rent and insurances, to STPP production. The cost of P4 went up to US\$2,195/MT in 2005 or an increase of 10% from the 2004 level.

To deal with the high cost of imported P4 from China that translated to a corresponding increase in CAWC's selling price, the company embarked on a product research and development program to address its heavy dependence on P4. It started using MGPA in May 2004 to blend with P4.

With the usage of blended P4 and MGPA at the average ratio of 20:80, the dependence of CAWC on P4 wholly as the direct raw material declined as the volume of P4 was reduced for the total production of 21,580 MT in 2004 and 11,290 MT in 2005.

The blending of P4 and MGPA in 2004 and 2005 resulted to a lower production cost than that when P4 was used (Table 14). Priced at an average of US\$210/MT in 2004 and US\$250/MT in 2005, MGPA was cheaper by 90% than the price of P4.

With CAWC's establishment of a fertilizer facility as an integrated part of the MGPA - Fertilizer Project whereby the by-product of MGPA is mud cake which will be processed into fertilizer, additional income is forecast to be derived from the said project.

8.2.6.4. Prices

Domestic selling prices were consistently lower than the landed costs over the POI except in 2004 and 2005 when price of imported STPP-TG undercut the local product by 16% and 13% respectively, which made the imported STPP-TG more attractive in the domestic market (Table 15). The industry did not suffer any price depression since its selling prices continuously increased in 2003 to 2005. However, the industry still incurred losses indicating that the price increases were not sufficient to recover costs and expenses. Costs of production continued to be higher than the domestic selling prices in 2002 to 2005 indicating price suppression which ranged from 4% in 2004 to 19% in 2005.

Table 15. Price Undercutting and Price Suppression

Year	% Price Undercutting	% Price Suppression
2001	30.06	2.06
2002	4.97	(6.18)
2003	3.90	(8.54)
2004	(16.30)	(4.09)
2005	(13.85)	(18.73)

When imports started to increase in 2002, the industry was forced to adopt import parity pricing and sell below costs to produce and sell to keep its share of the market. To arrive at the cost to produce and sell, a 5% selling and general administrative expense (SAGE) was added to the cost of goods manufactured.

In 2004 and 2005, despite increases in its selling prices, CAWC still incurred losses indicating that the price increases were not sufficient to recover costs and expenses.

8.2.7 Employment and Labor Productivity

Labor complement in STPP production increased from 59 in 2003 to 62 in 2004 (Table 16). Employment fell to 58 in 2005 when the company went on shutdown mode.

Table 16. Employment and Labor Productivity

Year	Production (MT)	Number of Employees	Actual Increase / (Decrease)	Labor Productivity	% Change
2001	33,365	63	---	530	---
2002	30,635	61	(2)	500	(5.66)
2003	26,700	59	(2)	450	(10.00)
2004	21,580	62	3	350	(22.22)
2005	11,290	58	(4)	195	(44.28)

Source of basic data: CAWC

In terms of labor productivity, the ratio ranged from 1:530 in 2001 to 1:195 in 2005. When imports increased significantly in 2005 and the company went on shutdown, labor productivity declined markedly (by more than 40%) as output contracted by 48%.

8.3 Findings

The domestic industry's market share, output, sales, utilization, and labor productivity were on a downtrend over the POI and declined to their lowest levels in 2005, when imports of STPP-TG increased significantly and the domestic industry went on a three-month shutdown. Compared to the 27,000 MT volume attained midway through the POI, production and sales volumes were more than halved by 2005. Similarly, utilization and productivity levels were less than half the 2003 figures. The domestic industry's market share, which was about 75% in 2003, declined to 63% and 35% in 2004 and 2005, even as the market was contracting.

On a year-to-year basis, the changes in market share, sales, production, utilization, and productivity were biggest in 2005 when imports increased significantly and the domestic industry went on partial shutdown. Production, sales and utilization fell by 48% from their 2004 levels, significantly greater than the average decline of 13% for production and capacity utilization and 14% for sales posted in the preceding four (4) years. Likewise, market share shrank by 45% and worker productivity by 44% when their average rates of decline previously were 12% and 13%, respectively. While the domestic STPP-TG market did contract beginning 2004, the rate of decrease in production and sales experienced by the domestic industry in 2005 significantly exceeded said market contraction.

Following declining sales and high costs, the domestic industry suffered losses from operations in 2005, more than twice the losses in the two (2) prior years, and sales returns deteriorated to -21%.

8.4 Conclusion

The Commission finds that, in accordance with RA 8800, the domestic industry began to suffer injury in 2002 that developed into a significant impairment in its overall market position, production and sales, capacity utilization, profitability and return on sales, and labor productivity during the final year of the POI (2005).

9 CAUSATION

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

9.1 Serious Injury Factors

9.1.1 Market Share

During the first four years of the POI, CAWC dominated the market with an average market share of 79%. When imports increased significantly in 2005, the market share of the company fell to a low of 35% even as the market was contracting.

The decline in the market share of the domestic industry and the erosion of its competitive position are directly attributable to the steadily increasing imports starting in 2002 and to its significant increase in 2005.

9.1.2 Domestic Sales and Production

The decline in production and sales is directly attributable to the increasing imports starting in 2002 and to its significant increase in 2005.

Due to a very low sales volume in 2005, the industry stopped STPP production in October and declared a temporary shutdown in November to December resulting to a huge reduction in production volume.

9.1.3 Ending Inventory

Ending inventory over the POI ranged from 1,040 MT in 2002 to 235 MT in 2003. Inventory levels increased in 2004 and 2005 although to levels lower than in 2001 and 2002.

The increasing inventory level in 2004 and 2005 is not a factor that caused serious impairment of the domestic industry’s overall condition.

9.1.4 Capacity Utilization

Plant utilization was on a steady decline during the POI. CAWC's lowest capacity utilization was registered at 23% in 2005.

The significant increase in imports in 2005 contributed to the underutilization of capacity resulting in serious impairment of the industry's overall condition.

9.1.5 Profit and Loss

The domestic industry suffered losses from operations in 2005, more than twice the losses incurred in the two (2) prior years. Consequently, sales returns deteriorated from a positive 4% in 2001 to negative 21% in 2005.

The increasing imports starting in 2002 and their significant increase in 2005 forced the domestic industry to adopt an import parity pricing scheme and to sell at a price which did not allow the industry to recover its cost and expenses. The increased imports led to the significant impairment in the domestic industry's profitability as manifested by negative earnings from operations in 2002 to 2005.

9.1.6 Employment and Labor Productivity

Labor complement in STPP production increased from 59 in 2003 to 62 in 2004. Employment fell to 58 in 2005 when the company went on shutdown mode.

Labor productivity was on the decline ranging from 1:530 in 2001 to 1:195 in 2005. When imports increased significantly in 2005 and the company went on shutdown, labor productivity declined markedly (by more than 40%) as output contracted by 48%.

9.2 Other Factors

The Commission looked at factors other than the increased importation of STPP-TG in 2005 that might have also caused serious injury to the domestic industry.

9.2.1 Devaluation of Securities Investment

As early as 1990, CAWC invested in shares of stock of Petrochemical Corporation of Asia Pacific (Petrocorp). However, said investment did not reap the expected returns as Petrocorp incurred significant losses from operations in 1998 until it temporarily shut down in April 2000. Due to Petrocorp's continued financial difficulties, CAWC booked losses on decline in value of investment and charged the same from income from operations in 2001 and 2002. This less-desirable condition led to the total losses before income tax of ₱111.2 million in 2001 and ₱157.8 million in 2002 (Table 17).

Table 17. CAWC's Overall Financial Performance (₱'000)

Particulars	2001	2002	2003	2004	2005
Net Sales	1,080,890	891,130	848,085	950,820	499,340
Cost of Sales	981,840	841,470	839,835	957,450	598,650
Gross Profit (Loss)	99,050	49,660	8,250	(6,630)	(99,310)
Income (Loss) from Operations	55,850	5,510	(33,620)	(42,060)	(135,040)
Loss on decline in value of investment	(163,185)	(163,185)	--	--	--
Income (Loss) before income tax	(111,210)	(157,750)	(21,995)	(45,260)	(141,900)
% Return on:					
Net Sales	11.18	0.58	(3.96)	(4.72)	(12.50)
Total Assets	10.55	0.89	(5.28)	(6.56)	(18.90)
Stockholders' Equity	25.24	1.52	(7.13)	(8.42)	(29.26)

Source of basic data: CAWC's Audited Financial Statements

The devaluation of securities investment did affect CAWC's overall financial performance in 2001 and 2002. Starting 2003, however, CAWC's losses from operations cannot be attributed to losses arising from the decline in the value of investment as such losses were already written-off in 2001 and 2002. CAWC incurred gross losses in 2004 and 2005 due to the very low sales volume of its STPP production which comprised 87% of CAWC's overall operations during the POI. Even with the increasing cost of production inputs, CAWC was hard-pressed to sell its STPP-TG at a price lower than the cost of produce and sell to keep its share of the market.

9.2.2 Competition with Imported Laundry Detergents Using STPP-TG

Importation of laundry detergent bars and powders during the POI dropped from a high of 4,960 MT in 2003 to 1,975 MT in 2005 (Table 18). STPP content for detergent bar (440 grams for four-cut bar) ranged from 2.54% for low-end to 12.41% for high-end (or an average of 7.5%) while for detergent powder (30 gram sachet), STPP content ranged from 2.73% for low-end to 26.38% for high-end (or 12.44% average).

While imported laundry detergents could have posed stiff competition to the local STPP-TG industry, the impact on the STPP production is negligible, i.e., 1% to 2% annual reduction CAWC's STPP domestic sales.

Table 18. Importation of Laundry Detergents Using STPP-TG (MT)

Particulars	2001	2002	2003	2004	2005
Volume of Importation ^{1/}	3,090	3,930	4,960	3,345	1,975
Average STPP usage	360	450	560	385	240
Share of STPP usage to domestic sales	1.08%	1.53%	2.08%	1.84%	2.22%

^{1/} NSO

Although no data are available to support the allegation of smuggling of laundry detergent bars and powders, such parallel importation through the backdoor could be taking place that would have a significantly adverse impact on CAWC's STPP sales.

9.3 Conclusion

While there were other factors that contributed to the overall impairment of the condition of the domestic industry, the Commission finds that, in accordance with R.A. 8800, increased importation of STPP-TG was the substantial cause of serious injury to the domestic industry.

10 CONCLUSION

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

1. As the sole manufacturer of STPP-TG in the Philippines, petitioner CAWC accounted for the entire domestic production of subject article during the POI.
2. Locally produced STPP-TG is a like product to imported STPP-TG.
3. STPP-TG was imported into the Philippines in significantly increased quantities, both in absolute terms and relative to domestic production, during the final year of the POI.
4. The domestic STPP-TG industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; declining sales and production; underutilization of capacity; substantial loss in operations; and decline in productivity.
5. While there were other factors that contributed to the overall impairment of the condition of the domestic industry, increased importation of the product under consideration was the substantial cause of serious injury to the domestic industry.

11 DEFINITIVE SAFEGUARD MEASURE

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

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

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

The existence of a causal link between the increased imports of the product under consideration and serious injury to the domestic industry having been established, the Commission hereby recommends the appropriate definitive general safeguard measure to be imposed on imports of STPP-TG. The measure shall be effective for three (3) years counting from 06 July 2006 i.e., the date the provisional measure took effect.

11.1 Recommended Definitive Safeguard Measure

The Commission recommends a tariff rate quota as the form of the definitive safeguard measure. With this form of definitive measure, in-quota importation will be levied the regular tariff rate while out-quota importation will be levied the regular tariff plus the definitive safeguard duty.

11.1.1 In- Quota Allocation

Rule 13.1(c) of the IRRs of R.A. 8800 provides that “The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports. Provided, however, That when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

For purposes of setting the import in-quota allocations by country, the Commission initially determined that the three-year period (2003-2005), preceding the year when the petition for safeguard measure was filed in 2006, serves as the base period for computing the beginning in-quota volume.

Based on the market growth of 6% in 2003 (the only positive growth during the POI), allocation of in-quota volumes for the succeeding years is proportionately increased by such rate (6%) as presented in Table 19.

By computing the average imports for the three-year period preceding 2006 (the year of filing of the petition) as the base period, an average of 47% to total domestic consumption is derived. Such in-quota allocation is considered too huge a protected (exempted from the out-quota specific duty) share that the safeguard measure in the form of quantitative restrictions will not help CAWC but instead will make it difficult for the domestic industry to recover.

Seeing that the allocated quotas as expressed in terms of percent shares to total domestic consumption are at unreasonable and ridiculous level, the average imports of the first three (3) years of the POI (2001-2003) were calculated to arrive at a reasonable level of average 19% quota allocation that can be considered sufficient to prevent or remedy the serious injury suffered by the domestic industry (Table 19).

Table 19. In-Quota Allocations By Country (MT)

Country	Volume of Imports			Quota Allocation		
	2001	2002	2003	2006	2007	2008
People's Republic of China	2,464	804	45	1,104	1,170	1,241
Vietnam	40	230	3,461	1,244	1,318	1,397
Thailand	231	3,425	4,037	2,564	2,718	2,881
Spain	0	0	1,390	463	491	521
Russian Federation	0	0	110	37	39	41
United States of America	152	91	7	84	89	94
Taiwan	0	0	10	3	4	4
Australia	49	0	0	16	17	18
Belgium	18	34	0	17	18	20
Hongkong	0	44	0	15	16	16
France	8	0	0	3	3	3
Germany	1	0	0	0	0	0
Singapore	2	0	0	1	1	1
TOTAL	2,964	4,629	9,060	5,551	5,884	6,237
2005 Domestic Consumption				31,030	31,030	31,030
% to Total Domestic Consumption				18	19	20

Rule 13.1(c) of the IRRs to R.A. 8800 provides that *“The Secretary shall set up a transparent mechanism for the implementation of the above quota allocation under these IRRs.”*

11.1.2 Specific Duty on Out-Quota Imports

Specific duty is calculated by comparing the weighted average landed cost of imported STTP in 2005 with the cost of good manufactured of the domestic industry using MGPA/P4 blend plus three percent (3%) profit margin. The resulting price was factored in since the bulk of the STTP production was processed out of the blend. For the profit margin, the Commission adopted CAWC’s operating income margin for years 2001-2002 averaging at 3% since the said two years were the only profitable period over the POI.

For the imports exceeding the in-quota allocations, the definitive safeguard measure shall be a specific duty of ₱12,700/MT or ₱12.70/kg.

For new exporting countries, except developing countries covered by the *de minimis* rule, their exports shall automatically be levied the specific duty.

11.1.3 Ad Valorem Equivalents of the Specific Duties

Although the proposed specific duty of ₱ 12,700/MT shall be applied equally on all imports, regardless of source, the equivalent *ad valorem* rates will vary depending on the value of the shipment.

The specific duty on cheaper imports will have higher *ad valorem* equivalents than that for higher-priced STPP-TG (Table 20). Thus, the impact of the definitive safeguard measure on landed cost will be greater for lower-priced STPP-TG imports.

Table 20. Ad Valorem Equivalents of the Specific Duties

Country	CIF/Dutiable Value Per Country (Peso/MT)	Definitive Duty on Out-Quota Volume	
		Specific Duty (Peso/MT)	Ad Valorem Equivalent (%)
People's Republic of China	31,490.00	12,700	40
Spain	36,140.00	12,700	35
Weighted Average	31,775.00	12,700	40

11.1.4 Requirement of Certificate of Origin

All importers of STPP-TG, regardless of port of exportation, are required to secure a Certificate of Country of Origin issued by the authorized agency/office in the source country of manufacture as authenticated by the Philippine Embassy/Consulate thereat.

11.1.5 Application of the De Minimis Rule

The definitive safeguard measure shall not be applied to imports of STPP-TG originating from Thailand and Taiwan, developing countries whose volumes of imports are found to be *de minimis*. In the event that imports of STPP-TG originating from Thailand and Taiwan collectively account for more than nine percent (9%) of Total Philippine imports of STPP-TG, the definitive safeguard measure shall be applied on such imports.

The DTI Secretary shall draw up a list of the developing countries exempt from the definitive safeguard measure on STPP-TG for 2006. He shall conduct an annual review of the imports of STPP-TG from developing countries and draw up the appropriate exemption lists for 2007 and 2008.

11.1.6 Notification to the WTO Committee on Safeguards

Rule 17 of the IRRs of R.A. 8800 provides that *“The Secretary shall notify the Committee on Safeguards of the of the World Trade Organization when:*

- (a) initiating an action relating to serious injury or threat thereof and the reasons for it;*
- (b) adopting a provisional general measure following a positive preliminary determination; and*
- (c) applying or extending a definitive general safeguard measure following a positive final determination.”*

11.1.7 Article 6 and 8 of the Agreement on the CEPT Scheme for AFTA

Considering that STPP-TG is covered under the CEPT Scheme, the Philippines is required to notify the AFTA Council pursuant to Article 6 of the Agreement and, as provided under Article 8, to initiate and provide adequate opportunity for consultation with the government of the ASEAN Member State concerned, i.e., Vietnam, which may be affected by the application of the definitive safeguard measure on imports of STPP-TG.

11.2 Review of the Definitive Safeguard Measure

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

On the other hand, Rule 16.1 of the same IRRs 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.”*

The root cause of the domestic industry’s uncompetitiveness is the high cost of P4 which it sources from China, the major exporter of STPP. CAWC needs to reduce its heavy dependence on P4 from China. Unless it finds an alternative source of P4 or develops an alternative process in the production of STPP, its viability is doomed to be unachievable. Continued imposition of a safeguard duty will then prove to be a meaningless trade remedy measure.

12 EFFECTS OF THE AFFIRMATIVE RECOMMENDATION

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

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

12.1 On the Domestic STPP-TG Industry

- Significantly increased importations will be arrested and imports will be restored to normal levels.
- The industry will be provided sufficient time to put in place efficiency measures that will allow it to positively adjust to import competition and ultimately achieve global competitiveness.
- The imposition of definitive safeguard measure on STPP-TG would allow the domestic industry to adjust its price at a level that will enable it to recover its costs and expenses and generate reasonable margins.
- Lost market share will be recovered enabling the industry to benefit from the growth of the market.
- The industry will be provided sufficient time to find alternative supplier of P4 or develop an alternative raw material to P4.

12.2 On Consumer and Industrial Users

- Consumers and industrial users retain the option to choose between local and imported STPP-TG.
- Since the tariff-rate quota will allow the entry of significant volumes of STPP-TG without additional duty and will be progressively liberalized, the degree of competition between the domestic industry and imports will remain high such that unreasonable price increases are unlikely.

- The imposition of the definitive safeguard duty of ₱12.70/kg outside the quota allocation will have a very minimal impact on the prices of laundry soap and powder.

For detergent bar (440 grams for four-cut bars), the estimated increase in price would be ₱0.142 for low-end and ₱0.693 for high-end. Current prices of detergent bar average at ₱15.55 for low-end and ₱23.15 for high-end.

The estimated increase in price for a 30-gram sachet of detergent powder would be ₱0.010 for low-end and ₱0.10 for high-end. Current prices of detergent powder average at ₱3.10 for low-end and ₱7.65 for high-end.

- With the continued existence of a viable domestic industry, consumers are assured of on-time delivery of volume orders.

12.3 On Employment

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

12.4 On Regional Development

- The imposition of a definitive safeguard measure will ensure continuous operation of the domestic industry that, in turn, will contribute to sustainable community development.

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.

January 2007

EDGARDO B. ABON
Chairman

EDGARDO R. MARALIT
Acting Commissioner

MARILOU P. MENDOZA
Acting Commissioner