

# **FORMAL INVESTIGATION REPORT**

## **Philippine Steel Angle Bar Industry's Safeguard Action Against Imports (SG Investigation No. 01-2009)**



**(PUBLIC VERSION)**

**02 JULY 2009**

# 1. TERMS OF REFERENCE

## 1.1 The Application for General Safeguard Measure

On 06 August 2008, 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 steel angle bars under Republic Act (RA) No. 8800 (otherwise known as the “Safeguard Measures Act”). The domestic industry, represented by Cathay Metal Corporation (Cathay), Dragon Asia Rolling Mills, Inc. (Dragon Asia) and Lunar Steel Corporation (Lunar), alleged that increased imports of steel angle bars which began in 2003 and continued until 2007 had contributed significantly to the serious injury suffered by the domestic industry.

The petition covered imported steel angle bars from various countries classified under HS Heading Nos. 7216.21.00 (2007 AHTN Subheading No. 7216.21.00), 7216.50.11 (2007 AHTN Subheading No. 7216.50.10) and 7216.50.91 (2007 AHTN Subheading No. 7216.50.10).

## 1.2 The Preliminary Investigation

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 11 August 2008. 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 and productivity.

The DTI Secretary, following the BIS’ positive preliminary determination, issued on 12 January 2009 a Department Order (DO) imposing a provisional safeguard measure in the form of a cash bond amounting to ₱1.00/MT for a period of two hundred (200) days from the date of issuance of 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 comes earlier.

The Order covers specific sizes of imported steel angle bars (20mm x 20mm, 25mm x 25mm, 30mm x 30mm, 38mm x 38mm, 50mm x 50mm, 63mm x 63mm, 63.5mm x 63.5mm and 75mm x 75mm with thicknesses

ranging from 2.0mm to 12 mm) classified under AHTN Subheading Nos. 7216.21.00, 7216.50.10 and 7216.50.90. Excluded from the imposition of the provisional measure are imports from developing countries and separate customs territories listed in Annex A of said DTI Order and covered by Rule 8.8 of the Implementing Rules and Regulations (IRR) of RA 8800.

On 19 February 2009, the DTI Secretary endorsed the case to the Tariff Commission (hereinafter referred to as “Commission”) for the conduct of formal investigation to determine the merits of imposing a definitive duty on subject articles pursuant to Section 9 of RA 8800 and its IRR.

## 2. THE SAFEGUARD ACTION

### 2.1 The Safeguard Measures Act of 2000

RA 8800 (An Act Protecting Local Industries By Providing Safeguard Measures To Be Undertaken In Response To Increased Imports And Providing Penalties For Violation Thereof) was signed into law on 19 July 2000 and took effect on 09 August 2000. Its IRR (Joint Administrative Order No. 3) took effect on 11 October 2000. The Act provides for:

- i) general safeguard measures to afford relief to domestic industries suffering from serious injury or the threat thereof as a result of increased imports; and
- ii) 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

proforma respondent's questionnaire to all interested parties (e.g., domestic manufacturers, importers, 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 the 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 Commission with the request for the conduct of a formal investigation.

#### Formal Investigation

The Commission conducts the formal investigation to determine:

- i) if the domestic product is a like product or a product directly competitive to the imported product under consideration;
- ii) if the product is being imported into the Philippines in increased quantities (absolute or relative to domestic production);
- iii) the presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product; and
- iv) 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 twenty (120) calendar days from the receipt of the request from the Secretary, except when the Secretary certifies that the same is

urgent, in which case the Commission shall complete 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:

- i) monitor the domestic industry's progress and specific efforts to bring about a positive adjustment to import competition;
- ii) conduct investigation on the request for extension and re-application of safeguard measures;
- iii) conduct investigation on request for reduction, modification and termination of safeguard action; and
- iv) after the termination of the safeguard measure, evaluate 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 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 measures 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 (WTO) 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 other 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 WTO concessions and other obligations to affected WTO Members are 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 (steel angle bars) is not a subject of any Philippine obligation or tariff concession under the GATT 1994.

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

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

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:

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

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:

1. *Member States shall accord adequate opportunity for consultations regarding any representations made by other Member States with respect to any matter affecting the implementation of this Agreement. The Council referred to in Article 7 of this Agreement, may seek guidance from the AEM in respect of any matter for which it has not been possible to find a satisfactory solution during previous consultations.*
2. *Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullification or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the manner, make representations or proposals to the other Member States concerned, which shall give due consideration to the representations or proposals made to it.*
3. *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.”*

Considering that steel angle bars are included in the CEPT Scheme, immediate notice of the safeguard action shall be given to the AFTA Council and adequate opportunity for consultation shall be accorded the governments of the affected ASEAN Member States.

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

Section 9 of RA 8800 provides the legal basis for the Commission to conduct formal investigation to determine the merit of the imposition of a definitive safeguard measure. The provision states that:

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

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

#### **3.1 Notifications**

In compliance with the public notice requirements of the IRR of RA 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 24 February 2009 in *The Manila Times* and *Manila Standard Today* (Annexes “A-1” and “A-2”). Individual notices were sent to all identified interested parties (Annex “B”). The same parties were advised to attend the Preliminary Conference on 04 March 2009.

##### **3.1.2 Schedule of Public Hearing**

On 22 April 2009, the Commission published a Notice of Public Hearing in *The Manila Times* and *Manila Standard Today* (Annexes “C-1” and “C-2”). Individual notices were sent on 23 to 30 April 2009 to the concerned parties (Annex “C-3”).

#### **3.2 Preliminary Conference**

Preliminary Conference was held on 04 March 2009 to discuss 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. Attendees to the conference were listed in Annex "D".

The agreements reached during the Preliminary Conference were contained in an Order (Annex "E") issued by the Commission on 05 March 2009.

### **3.3 Staff Report**

Prior to the scheduled public hearing, the Commission issued a Staff Report containing its findings on product comparability and increased volume of imports as well as the preliminary data to determine the presence of serious injury. All concerned parties were provided a copy of said report.

### **3.4 Public Hearing**

Marathon public hearings were held at the Tariff Commission's Conference Room on 04-06 May 2009 to allow 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. Attendees to the said hearing were listed in Annex "F".

### **3.5 Plant Visit and/or Verification of Data**

The Commission conducted ocular inspection and/or verification of data to the following: Lunar on 11 March and 03 April 2009, Dragon Asia on 16 March and 01 April 2009, Cathay on 19 March 2009 and Jocelyn Forge, Inc. on 18 March 2009.

PISTA member-companies did not allow the Commission to conduct data verification on their submissions.

## 4. PARTICIPANTS' POSITIONS

During the course of the investigation, the Commission received submissions from various parties (Annex "G"). All non-confidential submissions, including non-confidential portions of confidential submissions, were made publicly available at the Commission.

### 4.1 The Domestic Industry's Case

Petitioners claimed and prayed that:

- ✓ locally manufactured and imported angle bars are manufactured using the same process, have the same application, commercially substitutable and are sold through the same channel of distribution
- ✓ imported angle bars were imported in increased quantities from 221.89 MT in 2003 to 23,116.87 MT in 2007. The surge of imports started to taper-off only in the last quarter of 2008
- ✓ increased importations caused serious injury to the Philippine steel angle bar industry particularly in terms of market loss, reduced production and sales volume, decreased profitability and financial losses
- ✓ imported angle bars were imported and sold domestically at prices lower than the selling price of Philippine produced angle bars, forcing the industry to adopt import parity pricing or even sell angle bars at a price below cost to defend its market share
- ✓ significant reduction in the overall demand for steel angle bars forcing more foreign steel companies to export and/or dispose of their excess or surplus production of angle bars to the Philippines at cheap prices. The Philippines has the lowest tariff rates for steel angle bars in the ASEAN Region
- ✓ safeguard measure be imposed to bridge the gap between the landed cost of imported angle bars and Philippine industry's cost to produce and sell or a price difference of at least ₱ 14,000/MT

## **Adjustment Plan**

Rule 4.1 of the IRR of RA 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 Commission’s directive contained in the Order dated 05 March 2009, the petitioner submitted on 07 April 2009 its adjustment plan for 2009-2012. The following are the priority measures they will adopt to facilitate positive adjustment to import competition:

### **Cathay**

- ◆ Providing better and wider range of product choices
- ◆ Adopt more aggressive marketing strategy
- ◆ Enforce a more stringent quality control monitoring in the production process to ensure good quality bar outputs
- ◆ Minimize cost and maximize production output
- ◆ Upgrade plant facilities

### **Dragon Asia**

- ◆ Improve plant automation
- ◆ Introduce additional product line
- ◆ Achieve economies of scale by optimizing the production capacity of the machineries; shifting schedule; increase sales and competitive pricing; and ISO alignment

### **Lunar**

- ▲ Increase product awareness
- ▲ Upgrade plant facilities
- ▲ Reduce electricity cost and fuel consumption
- ▲ Invest in billet manufacturing facility

## 4.2 The Opposing Case

The following oppositors to the petition submitted arguments to support their positions.

### Philippine Iron and Steel Traders Association (PISTA)

- ✓ PISTA is a non-profit organization duly registered with the Securities and Exchange Commission (SEC) made up of companies engaged in the trade of iron and steel bar products. Among its members that imported steel angle bars were: Regan Industrial Sales Incorporated (Regan), Power Construction Supply Company, Linton Incorporated (Linton), Thompson Marketing Corporation, Marketing Proponents Incorporated and He-Max Industrial Corporation
- ✓ imported angle bars are less expensive and better in terms of quality. Most contractors used imported angle bars because they are assured of the thickness
- ✓ prices of the local steel products vary from time to time causing instability and uncertainty in the market forecast
- ✓ alleged injury is not caused by the import surge of steel angle bars. Protestants incurred huge overhead and interest expenses in 2007 to 2008
- ✓ protestants controlled the domestic market from 2003-2006 indicating no serious injury
- ✓ importation of steel angle bars drastically went down in 2008 following the implementation of the Philippine National Standard (PNS) 657 (Hot rolled steel sections – Equal-leg angles-Specifications) in July 2008. Said regulation already provides the petitioner protection from the influx of imported angle bars
- ✓ not all imports were destined for resale in the domestic market nor directly compete with the locally produced angle bars
- ✓ protestants partly contributed to the import surge of steel angle bars having admitted during the conduct of public hearing that they resorted as well to the importation of angle bars

- ✓ protestants' claim has no basis and therefore imposition of provisional safeguard measure should be terminated

#### Jocelyn Forge, Inc.

- ✓ manufacturer of pole line hardware and meter sockets used by electric and telephone utility company like Meralco. The company moved for the exclusion of its importations of angle bars from the imposition of safeguard measure
- ✓ most importations were sourced from Chinese Taipei and China for use in the manufacture of pole line hardware ordered by clients based on their required specifications
- ✓ locally produced angle bars are not the size and quality required by the company. It is unfair to the local end-product manufacturers to force them to use angle bars that are below their standard requirements and specifications
- ✓ company's importation is not sold in the local market and thus do not compete with the local manufacturers
- ✓ average importation from Chinese Taipei in 2003 to 2007 is less than 3% and therefore should be exempted from the imposition of safeguard duty under the *de minimis* rule
- ✓ proposed a detailed comparison, i.e., per heading basis, to determine which size of angle bars caused injury to the domestic industry, not produced locally and produced locally but insufficient quantity to supply local demand

#### Linton

- ✓ importer, wholesaler and retailer of steel products for sale either to dealers who distribute to the end-users or directly to a limited number of end-users
- ✓ imported and locally produced angle bars are different in terms of quality, specifically the thickness. End-users preferred imported angle bars because the locally produced angle bars are normally undersized
- ✓ Lunar's sister company Midland Steel Corporation (Midland) imported substantial volume of angle bars during the POI. Maxima

Steel Mills (Maxima) and 21st Century Steel Mills (21<sup>st</sup> Century) also import which presents a conflict of interest

- ✓ petitioners' financial losses were attributed to high overhead and interest expenses incurred from too much importation of billets and angles. Price undercutting was caused by the rampant smuggling of angle bars
- ✓ Lunar and Cathay have their own smelting operations which produced billets out of scrap metal. Production costs of angle bars presented were based on imported billets and not on billets taken from their own smelting facilities which cost lesser than the imported
- ✓ section sizes and thickness which the local manufacturers do not produce i.e. 80mm x 80mm, 90mm x 90mm, 125mm x 125mm, 150mm x 150mm, 200mm x 200mm as well as tonnages imported by end-users and other importers that do not directly compete with the petitioners should be excluded from the investigation

#### Regan

- ✓ importer of steel products for direct sale to its customers ranging from end-users to retailers
- ✓ locally produced angle bars have very wide tolerance (thickness and leg length) unlike imported angle bars with narrow tolerance
- ✓ petitioners are themselves respondents to the petition, which show a conflict of interest. Midland imported significant volume of angle bars that harmed its mother company Lunar. Other local manufacturers, e.g., Maxima and 21st Century, have switched into importing angle bars
- ✓ Petron Corp (oil refinery business), San Miguel Corp. (food and packaging business) and Grandspan Development Corporation (steel fabricator) imported angle bars for their own consumption only

#### 4.3.1 Other Submissions

##### Global Nexus Corporation

- ✓ company is not a representative nor in any way connected to Primary Steel Corporation, one of the identified domestic producers of steel angle bars. It is not engaged in the importation of said product

##### Grandspan Development Corporation

- ✓ company is engaged in the fabrication and assembly of steel structures for the construction industry. It does not compete with local steel mills and resellers since its importations of angle bars are not for resale in the domestic market
- ✓ sourced its material requirements in the construction of steel components from local suppliers also in case clients do not provide the materials

##### Taipei Economic and Cultural Office (TECO)

- ✓ informed the Commission that Partsline Co., Ltd, one of the Chinese Taipei exporters involved in the investigation, exported to the Philippines wall angle under HS Hdg. No. 7222.30.00-2 and not the steel angle bars subject of the investigation

## 5. THE DOMESTIC INDUSTRY AND MARKET

### 5.1 The Domestic Product

Subject angle bars or simply angles are right angle-shaped solid steel that is L-shaped in cross section, used for trusses, roof frames, steel frames, steel structures of billboards, transmission towers, bridges, sheds and other structures. They may have equal or unequal legs/sides. The DTI- Bureau of Product Standards (BPS) provides for the PNS 657 for equal-leg angle bars having sizes ranging from 20mm x 20mm up to 180mm x 180mm, of varying thickness (2mm to 12mm).

The locally available angle bars are of equal legs with sizes of 20mm x 20mm, 25mm x 25mm, 30mm x 30mm, 38mm x 38mm, 50mm x 50mm, 63mm x 63mm, 63.5mm x 63.5mm and 75mm x 75mm; thicknesses ranging from 2mm to 12mm. These are classified under 2004 AHTN subheadings 7216.21.00 (2007 AHTN 7216.21.00); 7216.50.11 and 7216.50.91 (2007 AHTN 7216.50.10).

The local steel angle bars are produced from steel billets by the hot-rolling process.

### 5.2 Tariff Profile

**Table 1. Rates of Duty on Steel Angle Bars**

AHTN (2004)	AHTN (2007)	Description	2009 Rates of Duty (%)					
			MFN	GATT-WTO *	CEPT	ACFTA**	AKFTA**	JPEPA***
	72.16	Angles, shapes and sections of iron or non-alloy steel.						
		- L or T sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of less than 80mm:						
7216.21.00	7216.21.00	-- L Sections	7	Unbound	3	0	0	7
	7216.50	- Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded:						
7216.50.11 7216.50.91	7216.50.10	-- of a height of less than 80mm	7	Unbound	3	0	0	7

\* GATT-WTO, Philippine Schedule LXXV

\*\* Subject to the issuance of implementing Executive Order(s)

\*\*\* Until 2012

## **5.3 Market Participants**

### **5.3.1 Local Manufacturers**

#### **Cathay Metal Corporation**

Cathay was organized and authorized to operate by the SEC on 16 February 1967. All incorporators and board of directors of the company are Filipino citizens. The company's manufacturing plant is located at Barrio San Bartolome, Novaliches, Quezon City.

Cathay is engaged primarily in the manufacture of articles or products made of steel, iron, copper, zinc, brass and other metals, such as but not limited to angle bars, flat bars, square bars, plain round bar, steel bars, nails, barbed wires, steel matting, bolts and nuts, wire rods, and any products made or partly made of metal, wood, and other materials. It imports iron and steel materials for its own use. The company's annual installed capacity for steel angle bars is 48,000 MT.

#### **Dragon Asia Rolling Mills**

Dragon Asia is registered with the SEC since 14 June 2000. Its incorporators and board of directors are all Filipino citizens. The company's office and plant is located in Mandaluyong City.

The company is engaged in the manufacture and trade, on wholesale or retail basis, of all kinds and sizes of steel bars and by-products.

Dragon Asia stopped its angle bar operations in January 2007 and resumed in January 2009. Its annual installed capacity for steel angle bars is 24,000 MT. It produces angle bars with sizes 3mm to 5mm. The company is currently operating a semi-automated production line.

#### **Lunar Steel Corporation**

Lunar is registered with SEC since 06 August 1974. Its incorporators and board of directors are comprised of Filipino and Chinese citizens. The company's office and plant is located in Maybunga, Pasig City. It started commercial operation in 1979.

The company is engaged in the manufacture of all kinds of steel bars (round, flat, angle, channel, I-beam, Z, square and all other steel sections), machine bolts, carriage bolts, stove bolts, machine screws,

wood screws, lag screws, roofing nails, boat spikes, rivets, wiring rods, and other steel products.

Lunar has three (3) production lines for steel angle bars with an annual installed capacity of 192,000 MT. During the plant visit, however, only one (1) line was operating on a single shift per day. It produces equal-leg angle bars with sizes less than 80mm.

The company is an active member of Philippine Iron and Steel Institute (PISI), Philippine Steel Rolling Manufacturers Association (PSRMA) and Steel Angles, Shapes, Sections Manufacturers Association of the Philippines, Inc. (SASSMAPI).

### **5.3.2 Importers and/or Exporters**

Importers and/or exporters of steel angle bars identified during the POI were listed in Annex "H".

### **5.3.3 Users**

The major users of steel angle bars are companies engaged in the construction of private and public housing, condominiums, malls and infrastructure projects as well as direct purchasers at the retail level.

## **6. DETERMINATION OF LIKE OR DIRECTLY COMPETITIVE PRODUCT**

A comparison of the imported steel angle bars with the domestic product is necessary to determine whether they are like or directly competitive products. This is important in establishing whether the domestic industry can rightly claim relief or protection from the application of safeguard measures under the provision of RA 8800.

Section 4(h) of RA 8800 states that *“like product” shall mean a domestic product which is identical, i.e., alike in all respects to the imported product under consideration, or in the absence of such a product, another domestic product which, although not alike in all respects, has characteristics closely resembling those of the imported product under consideration.*

Section 4(e) of RA 8800 defines *“directly competitive product” as domestically-produced substitutable products.*

### **6.1 Product Under Consideration**

The product under consideration, as determined by the DTI in its preliminary investigation, is a right angle steel bar (hereinafter referred to as “steel angle bars”), which is L-shape in cross section, that is normally intended for bolted, riveted, or welded iron structures in forming the corners, or connecting or sustaining the sides of said structures.

The steel angle bars under investigation are limited to equal and unequal leg steel angle bars, of a height of less than 80mm. Unequal leg bars are included in the investigation since they have the same application and are directly competitive to domestically-produced products.

Marine grade steel angle bars are excluded from the instant safeguard case.

### **6.2 Characteristics**

#### **6.2.1 Chemical Composition**

**Table 2. Chemical Composition for Grade 250**

Grade	Chemical Composition, percent, maximum				
	C	Mn	P	S	Si
250	0.26	-	0.05	0.05	-

Based on PNS 657, the standard chemical composition requirement for Grade 250 hot-rolled equal-leg angle steel bars, whether local or imported product, should conform to the specified values shown in Table 2.

### 6.2.2 Mechanical Properties

**Table 3. Mechanical Properties of Equal-Leg Angle Bars**

<b>Grade</b>	<b>Yield strength MPa, minimum</b>	<b>Tensile strength MPa, minimum</b>	<b>*Elongation Percent, minimum</b>
250	250	390	20

\* 200mm gauge length for > 5mm thick; 50mm gauge length for < 5mm thick

### 6.3 Manufacturing Process

#### Locally Produced Steel Angle Bar

Local steel angle bars are produced by the hot-rolling process. It starts with the steel billets being cut to a desired length and then fed into the reheating furnace at a temperature of 1,200 °C to 1,250 °C. The red-hot billets are then pushed out of the furnace and fed into the roughing mills, then to the intermediate mills with rollers adjusted to obtain the desired size and thickness of the steel angle bars. The bars are then fed to the finishing mill section where they are further reduced in size to meet the desired dimensional requirements in accordance with the PNS 657. Water is constantly sprayed on the rollers to prevent cracks due to heat expansion. On the last pass to the finishing roller, the company logo and size markings are imprinted on each product. Finally, the finished steel bars are then guided onto the cooling bed before they are cut to standard lengths.

The conversion of steel billets to steel angle bars is energy intensive.

#### Imported Steel Angle Bar

Imported and local steel angle bars both undergo the same hot-rolling process.

### 6.4 Uses

The locally produced and imported steel angle bars are used as frames, braces and stiffeners for the following applications: pet cages, roof for jeepneys, street sign, chairs, tables, kerosene/gas stove, shelves, shovel handle, electrical panel, steel door, canopy frame, hand tractor,

aluminum van, signage, ceiling joints, platforms, steel fences, lamp post, trusses top and bottom cord, pallet, distribution substation, ladder, power substation cubicle, LRT rail support, steel rack/tank, hollow block mold, high tension transmission line, billboards, structural trusses, portable cement mixer, water tank and small sea vessel and barge.

## **6.5 The Philippine Product Standards on Steel Angle Bars**

The PNS 657 issued by the DTI-BPS requires all local manufacturers of steel angle bars to secure a Philippine Standard (PS) license while importers must secure an Import Commodity Clearance (ICC) prior to distribution and sale of said products. The main objective of the standards is to ensure the safety of the consuming public since angle bars are vital components used for construction. The implementation of the mandatory certification and market monitoring started on 01 July and 01 October 2008, respectively. Hence, angle bars found without the necessary PS or ICC license during the market monitoring shall be considered uncertified.

Under PNS 657, steel angle bars should pass the mandatory specifications for size, weight, thickness, chemical composition and tensile strength and should bear the embossed manufacturer's logo, leg length dimension and grade.

Local producers and importers of steel angle bars with approved PS Mark License from BPS are listed in Annex "I".

## **6.6 Findings**

The locally produced steel angle bar and the imported counterpart are made of the same material, have the same description, serve the same purpose, cater to the same end-users, and classified under the same tariff heading.

## **6.7 Conclusion**

The Commission finds that, in accordance with RA 8800, the locally produced steel angle bar is a like product to the imported counterpart.

## 7. DETERMINATION OF INCREASED VOLUME OF IMPORTS

Rule 9.4(b) of the IRR of RA 8800 states that the Commission shall determine *“if the product is being imported into the Philippines in increased quantities whether absolute or relative to domestic production.”*

### 7.1 Period of Investigation (POI)

The DTI-BIS, in its preliminary investigation, determined the period of investigation (POI) to be the five-year interval from 2003 to 2007. The DTI-BIS followed Rule 7.2.a of the IRR of RA 8800 which states that import data covering the last five (5) years preceding an application for safeguard measure should be evaluated for purposes of substantiating claims of surge in imports.

For purposes of the Commission’s formal investigation, the POI was extended up to the most recent past period, i.e., up to December 2008, for which data is available. This is in accordance with the requirement of the WTO Agreement on Safeguards that the investigating authorities should examine the recent data on imports, and not simply data for the past five (5) years.

### 7.2 Increased Imports in Absolute Terms

**Table 4. Import Volume of Steel Angle Bars: 2003-2008**

Year	Volume (MT)	Growth Rate (%)
2003	154	-
2004	338	119
2005	1,551	359
2006	15,193	880
2007	38,767	155
2008	19,088	(51)
<b>Average Annual Growth Rate (2003-2007): 378%</b>		

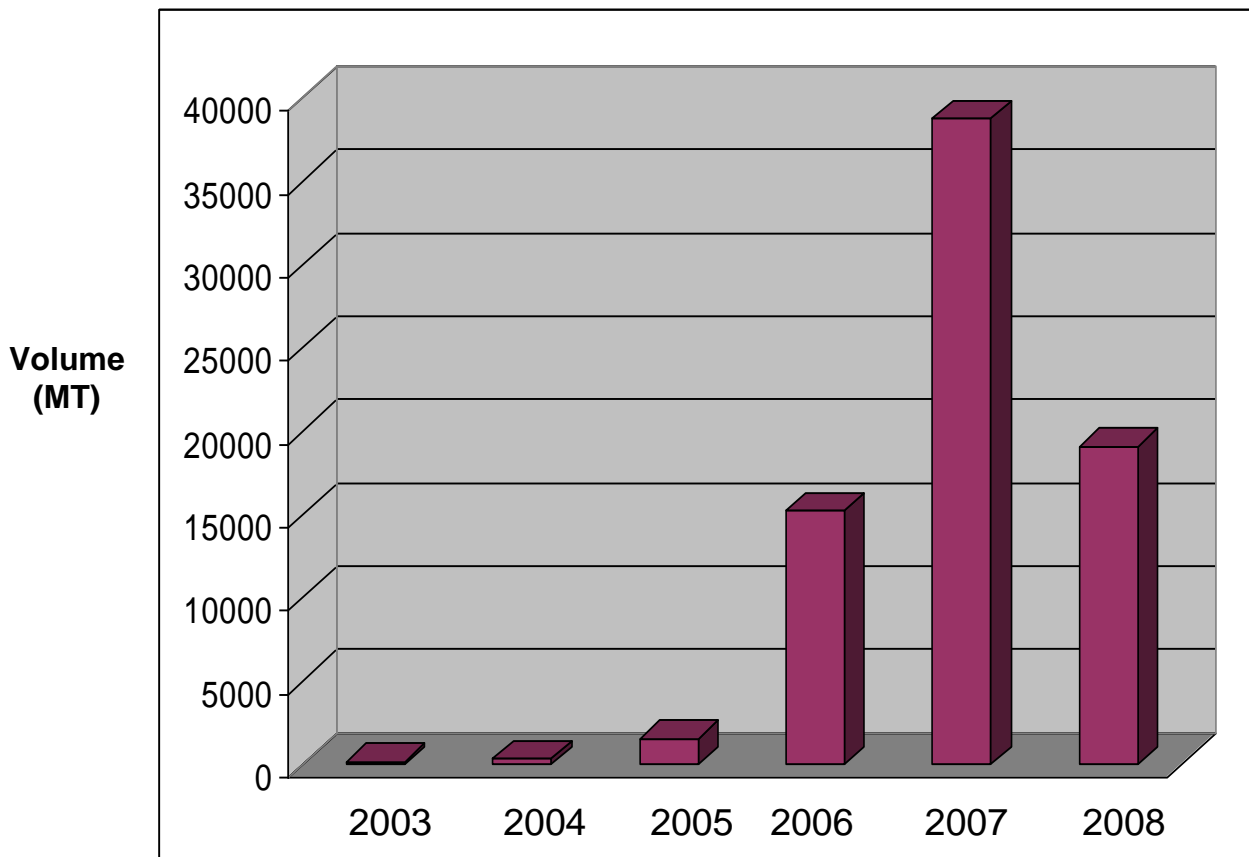
Source: BOC- EIED (Annex “J-1”)

In its determination of the volume of imports, the Commission used the Bureau of Customs - Electronic Import Entry Declarations (BOC-EIED). Transactions that were not covered within the definition of the subject product as well as imports of the applicant companies and other local steel angle bar manufacturers during the POI were excluded in the determination of import surge.

Import volumes of steel angle bars were on an uptrend during the POI with an average annual growth rate of 378%. In 2003 and 2004, import volumes of steel angle bars were minimal at less than 500 metric tons (MT). In 2005, imports more than tripled to 1,551 MT. The trend continued in 2006 with the volume increasing by 880% to more than 15,000 MT. In 2007, imports peaked at 38,767 MT.

With the implementation of PNS 657 in July 2008, import volumes diminished. Importation of steel angle bar in July to December 2008 totaled 3,731 MT as against 17,577 MT during the same period in 2007 or a decline of 79%. While imports were halved to about 19,000 MT in 2008, said level remains significantly higher (by 25%) than the volume reached in 2006 when the rate of increase in imports was largest.

**Figure 1. Actual Increase/Decrease in the Volume of Imports of Steel Angle Bars: 2003-2008**



Source: BOC-EIED

### 7.3 Increased Imports Relative to Domestic Production

**Table 5. Share of Imports Relative to Domestic Production <sup>1/</sup>  
of Steel Angle Bars: 2003-2008**

Year	Imports * (MT)	Domestic Production ** (MT)	Share of Imports to Total Production (%)
2003	154	88,240	0.17
2004	338	83,195	0.41
2005	1,551	86,900	1.78
2006	15,193	71,030	21.39
2007	38,767	20,740	186.92
2008	19,088	37,730	50.60

<sup>1/</sup> Production volume in 2003 comprised of Cathay and Lunar only. Dragon Asia started producing steel angle bars in 2004 but ceased operation in 2007-2008.

Sources: \* BOC-EIED

\*\* Applicant Companies

Relative to total domestic production, imports of steel angle bars amounted to less than 1% in 2003-2004 and less than 2% in 2005. In 2006 when imports surged, production declined by 15,870 MT more than the increase in imports of 13,642 MT. Hence, the share of imports to total production rose to 21%. The following year, share of imports to total production was highest at 187% when imports peaked and production volume was at its lowest. In 2008, imports' share to total domestic production was 51%.

### 7.4 Findings

The surge in imports started in 2006. From an aggregate of 2,043 in 2003 to 2005, import volume grew in 2006 to 15,193 MT or an increase of 880% compared to the 2005 volume. The surge continued in 2007 as imports expanded by another 155% from the 2006 volume.

These import surges were further confirmed in the movement of imports *vis-à-vis* domestic production. From a negligible level in 2003 to 2005, share of imports increased to 21% in 2006. Imports further increased its share to 187% in 2007.

### 7.5 Conclusion

The Commission finds that, in accordance with RA 8800, steel angle bar was imported into the Philippines in increased quantities starting 2006 which continued in 2007, both in absolute terms and relative to domestic production. The increase in the volume of imports is recent, sharp and significant.

## 7.6 De Minimis Import Volumes from Various Countries

### 7.6.1 Major Country Suppliers of Imported Steel Angle Bars

**Table 6. Imports of Steel Angle Bars by Origin (MT): 2003-2008**

Origin	2003	2004	2005	2006	2007	Total	% Share to Total	Rank	2008
China	-	218	1,100	15,124	34,929	51,371	91.73	1	11,901
Chinese Taipei	3	21	-	-	2,992	3,016	5.38	2	7,187
Japan	99	99	169	21	261	649	1.16	3	-
Ukraine	-	-	148	-	-	148	0.26	5	-
Russia	-	-	110	-	-	110	0.20	7	-
Philippines*	52	-	24	48	23	147	0.26	6	-
Hongkong	-	-	-	-	561	561	1.00	4	-
Korea	-	-	-	-	1	1	0.01	8	-
<b>Total</b>	154	338	1,551	15,193	38,767	56,003	100.00		19,088

\* Manufacturer(s) registered with PEZA - Hi-Precision Steel Center Inc.

Source: BOC-EIED

China ranked first at 92% in the importation of steel angle bars to the Philippines during the POI. In 2008, its share of imports declined to 62%.

Chinese Taipei ranked second at 5% import share during the POI. Share to total imports in 2008 accounted for 38%.

Other country suppliers of steel angle bars during the POI were Japan, Ukraine, Russia, Hong Kong and Korea.

### 7.6.2 De Minimis Import Volume

Rule 13.1(d) of the IRR of RA 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.”*

**Table 7. Developing Countries with *De Minimis* Import Volume**

<b>Exporting Country</b>	<b>2007 Import Volume (MT)</b>	<b>% Share to total Imports</b>
Philippines*	23	0.06
Hong Kong	561	1.45
<b>Total</b>	<b>584</b>	<b>1.51</b>

\* Manufacturer(s) registered with PEZA - Hi-Precision Steel Center Inc.  
Source: BOC-EIED

Using the import data in 2007 when importation of steel angle bars peaked, imports from the Philippines (PEZA) and Hong Kong were *de minimis*.

## 8. DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF

Rule 9.4(c) of the IRR of RA 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 RA 8800 defines “serious injury” as “*a significant impairment in the position of a domestic industry after evaluation by competent authorities of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry concerned, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in levels of sales, production, productivity, capacity utilization, profits and losses, and employment.*”

### 8.1 Domestic Industry Requirement

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

Rule 4.1 of the IRR of RA 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.*”

**Table 8. Domestic Production of Steel Angle Bar: 2003-2007**

Year	Actual Production (MT)			Share to Total Production (%)	
	Applicant Companies	Other Local Manufacturers	Total	Applicant Companies	Other Local Manufacturers
2003	88,240	24,675	112,915	78.15	21.85
2004	83,195	27,275	110,470	75.31	24.69
2005	86,900	31,665	118,565	73.29	26.71
2006	71,030	32,945	103,975	68.31	31.69
2007	20,740	2,130	22,870	90.69	9.31
<b>Total</b>	<b>350,105</b>	<b>118,690</b>	<b>468,795</b>	<b>74.68</b>	<b>25.32</b>

Source: Applicant Companies

Applicant companies, Cathay, Dragon Asia and Lunar, satisfied the domestic industry requirement as they accounted for 75% of the total domestic production of steel angle bars during the POI.

## 8.2 Serious Injury Factors

### 8.2.1 Market Share

**Table 9. Apparent Domestic Consumption and Market Shares: 2003-2008**

Year	Domestic Sales * (MT)	Imports ** (MT)	Apparent Domestic Consumption		Market Share (%)	
			(MT)	% Change	Domestic	Imports
2003	91,230	154	91,384	-	99.83	0.17
2004	84,415	338	84,753	(7.25)	99.60	0.40
2005	80,510	1,551	82,061	(3.18)	98.11	1.89
2006	75,640	15,193	90,833	10.69	83.27	16.73
2007	28,965	38,767	67,732	(25.43)	42.76	57.24
2008	30,670	19,088	49,758	(26.54)	61.64	38.36

Sources: \* Applicant Companies

\*\* BOC-EIED

The local industry dominated the steel angle bar market from 2003-2005 at an average market share of 99%.

The competitiveness of the domestic industry started to erode in 2006 when domestic demand grew by 11% and imports surged resulting to a drop in industry's market share to 83%.

The domestic industry lost its market leadership in 2007 when the importation was at its highest at 38,767 MT. The significant drop in domestic sales reflected the difficulties faced by the domestic industry that was beset not only by the increasing importation of cheap steel angle bars but also by the high prices and difficult supply of billets and a shrinking domestic market.

The domestic industry regained some market share in 2008 as import volume decreased following the implementation of PNS 657. The sale of domestic industry, however, remained low at 30,670 MT which is just two-fifths of the sales in 2005. Recovery of the domestic market does not augur well due to the financial crisis with all its ramifications in late 2008.

The apparent domestic consumption seems on the low side if the allegations on technical smuggling that may have started in 2007 have basis. The BOC may want to look into this allegation and address it to alleviate the plight of the domestic industry.

## 8.2.2 Production, Sales and Ending Inventory

**Table 10. Production, Sales and Ending Inventory: 2003-2008**

Year	Production		Sales		Ending Inventory	
	Volume (MT)	% Change	Volume (MT)	% Change	Volume (MT)	% Change
2003	88,240	-	91,230	-	13,550	-
2004	83,195	(5.72)	84,415	(7.47)	14,125	4.24
2005	86,900	4.45	80,510	(4.62)	20,115	42.41
2006	71,030	(18.26)	75,640	(6.05)	17,260	(14.19)
2007	20,740	(70.80)	28,965	(61.70)	15,315	(11.27)
2008	37,730	81.92	30,670	5.88	16,670	8.84

Source: Applicant Companies

Production held steady from 2003-2005 while sales volume showed some weakening resulting to an increase in ending inventory in 2005. Production started to decline in 2006 despite growth in the market as importations gained inroad into the domestic market and the industry brought down its inventory level to save on cost.

Dragon Asia ceased operation while Cathay and Lunar slowed down their production in 2007 as importation more than doubled resulting to the domestic industry's lowest level of production during the POI. With sales higher than the volume produced, ending inventory was brought back close to the 2004 level.

Both production and sales volume improved in 2008 but remained well below the levels reached prior to the surge in imports. Implementation of PNS 657 in July 2008 enhanced quality awareness and gave strong motivation to retool to produce quality steel angle bars for sale in a market that is getting to be increasingly competitive and quality conscious.

## 8.2.3 Capacity Utilization

**Table 11. Capacity Utilization: 2003-2008**

Year	Rated Capacity (MT)	Actual Production (MT)	Utilization Rate (%)	% Change
2003	240,000	88,240	36.77	-
2004	264,000	83,195	31.51	(14.30)
2005	264,000	86,900	32.92	4.47
2006	264,000	71,030	26.90	(18.28)
2007	264,000	20,740	7.85	(70.82)
2008	264,000	37,730	14.29	82.04

Source: Applicant Companies

Combined rated capacity of Cathay and Lunar in 2003 totaled 240,000 MT. Dragon Asia started producing steel angle bars in 2004 with an annual rated capacity of 24,000 MT.

Capacity utilization in 2003 to 2005 ranged from 32% to 37%. The industry reduced production in 2006 when imports began flooding the market and captured fully the growth of the market. In 2007, Dragon Asia ceased operation while Cathay and Lunar slowed down their production. As a result, capacity utilization sank to its lowest level at 8%.

Capacity utilization improved in 2008 although still below the 2003-2006 levels.

Low capacity utilization at 8% in 2007 and 14% in 2008 can indicate a business difficulty. Efforts must be directed towards improving capacity utilization to achieve economies of scale.

#### 8.2.4 Financial Performance

**Table 12. Profit and Loss: 2003-2008 (In ₱ '000)**

Particulars	2003	2004	2005	2006	2007	2008
Sales	1,913,645	2,066,100	2,257,310	2,031,380	1,030,470	1,261,655
Cost of Sales	1,770,170	1,951,585	2,109,405	1,929,100	947,020	1,192,485
Gross Profit(Loss)	143,475	114,515	147,905	102,280	83,450	69,170
Operating Expenses	49,625	54,560	56,325	57,805	45,890	40,580
Income/(Loss) from Operation	93,850	59,955	91,580	44,475	37,560	28,590
Other Income/(Expenses) Net	340	175	(2,275)	(1,350)	315	(930)
Interest Expenses	81,860	54,510	83,690	84,485	67,085	54,830
Income/(Loss) Before Income Tax	12,330	5,620	5,615	(41,360)	(29,210)	(27,170)
Provision for Income Tax	3,945	4,005	2,505	150	10	0
Net Income (Loss)	8,385	1,615	3,110	(41,510)	(29,220)	(27,170)

Source: Applicant Companies' Audited Financial Statements

The industry felt the adverse effect on its financial performance in 2006 when imports started to gain market share. In 2007, sales dropped sharply by 49% to ₱ 1.03 billion from ₱ 2.031 billion in 2006. Although sales slightly improved in 2008, it is still way below the pre-surge level.

The industry's income from operations prior to the import surge ranged from ₱ 94 million in 2003 to ₱ 60 million in 2004. When imports started to rise in 2006, income from operations fell to ₱ 44 million and

continued to do so in 2007 and 2008 at ₱ 38 million and ₱ 29 million, respectively, primarily due to the decline in sales revenue. With the presence of imports in the market, the industry could not increase its prices thus the applicant companies had to sell its steel angle bars at cost or even price below cost to maintain existence in the market.

Applicant companies incurred net losses commencing 2006 when imports surged.

### **Return on Sales**

**Table 13. Return on Sales: 2003-2008**

<b>Year</b>	<b>Income from Operations (₱ '000)</b>	<b>Sales Revenue (₱ '000)</b>	<b>Return on Sales (%)</b>
2003	93,850	1,913,645	4.90
2004	59,955	2,066,100	2.90
2005	91,580	2,257,310	4.06
2006	44,475	2,031,380	2.19
2007	37,560	1,030,470	3.64
2008	28,590	1,261,655	2.27

Source: Applicant Companies

Annual average return on sales prior to the import surge was 4%. In the succeeding years, due to the reduced sales revenue and income from operations, lower returns were posted.

### **Costs to Produce and Sell (COPS)**

**Table 14. % Change on Cost to Produce and Sell: 2003-2008**

<b>Factors of Production</b>	<b>2003-2004</b>	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>	<b>2007-2008</b>
Raw Materials	12.82	15.26	(3.41)	29.08	13.33
Direct Labor	5.60	(20.82)	(11.34)	125.58	4.64
Manufacturing Overhead	47.78	(19.05)	32.97	0.81	67.90
Selling & Admin Expenses	37.65	(26.92)	(3.51)	100.61	3.02
Cost to Produce & Sell (COPS)	17.87	6.03	0.73	29.84	19.18

Source: Applicant Companies

COPS were steadily increasing during the POI. In 2007, COPS was 30 % higher than the 2006 level. This was attributed mainly to the increase in price of billets, the major raw material in the production of angle bars, and the high cost of other cost components, i.e., direct labor,

selling and general administrative expenses. Billets at ₱ 24,440/MT was up by 28% from the average landed cost of ₱ 19,050/MT in 2003 to 2006.

In 2008, COPS further rose by 19% due to escalating costs of gas, fuel, oil, electricity and water. Price of billets also went up to ₱ 39,640/MT or an increase by 63% from the 2007 level.

### 8.2.5 Employment and Labor Productivity

**Table 15. Labor Complement and Productivity: 2003-2008**

Year	No. of Employees	Increase/ (Decrease)	Production (MT)	Labor Productivity (MT/Employee)	% Change
2003	505	-	88,240	175	-
2004	520	15	83,195	160	(8.57)
2005	550	30	86,900	158	(1.25)
2006	475	(75)	71,030	150	(5.06)
2007	390	(85)	20,740	53	(64.67)
2008	355	(35)	37,730	106	100.00

Source: Applicant Companies

Prior to the import surge, labor force was increasing mainly due to the additional employment of Dragon Asia which started commercial operation in 2004.

Reduction in employment occurred in 2006 and 2007 when imports started to flood the market. Dragon Asia stopped operation in 2007 while Lunar and Cathay slowed down production. A total of 160 employees were terminated in 2006 and 2007, and 35 more in 2008.

Labor productivity was also declining during the POI. The lowest ratio (1:53) was in 2007 due to the significant reduction in production and employment as Dragon Asia ceased its steel angle bar operation. In 2008, with the improvement in production volume and decline in the number of employees, labor productivity rose by 100% but still way below the pre-surge level.

### 8.3 Findings

When imports surged in 2006, domestic industry's market share contracted from 98% to 83%. The lost market share of the domestic industry was taken over by imports when it grew to 17% from a negligible share of 2%. All indicators showed negative effects on the industry.

In 2007 when imports peaked, imports took over market leadership at 57% share. This was attributed to the 62% decline in sales volume. Production followed the same trend but at a more significant rate (71%).

The tremendous drop in production volume resulted to a very low utilization at 8%. The domino effect of the increased imports was evident when COPS increased, escalating by 30%. The domestic industry, in order to defend market share to imports, adopted a pricing strategy of selling below cost.

Employment and labor productivity were both on a decline from the time of import surge and onwards.

Domestic industry's financial performance suffered when its income from operations deteriorated by more than half of the previous year's operating income.

#### **8.4 Conclusion**

The Commission finds that, in accordance with RA 8800, the domestic industry from 2006 to 2008 suffered serious injury which resulted to a significant impairment to its overall market position, production, sales, capacity utilization, return on sales, employment, labor productivity and profitability.

## 9. CAUSATION

Rule 12.5 of IRR of RA 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

- Share of imports relative to the apparent demand significantly increased from a negligible market share in 2003 - 2005 to 17% in 2006. Imports dominated the market at 57% in 2007.
- Market share of locally produced angle bars dropped from 99% in 2003 - 2005, to 83% in 2006 and further dropped to 43% in 2007.
- The decline in the market share of the domestic industry and the erosion of its competitive position during the period of import surge were substantial as to constitute significant impairment.

#### 9.1.2 Production and Sales

- Production and sales volume declined in 2006 despite a growth in domestic demand for steel angle bars. In 2007, production and sales volume sank to their lowest levels.
- Due to domestic industry's difficulty to compete with cheap imports, Dragon Asia temporarily ceased operation in January 2007 while Cathay and Lunar slowed down production.
- The reduction in production and sales during the period of import surge was huge as to constitute significant impairment.

#### 9.1.3 Ending Inventory

- Ending inventory during the POI was within the pre-surge level.

#### **9.1.4 Capacity Utilization**

- Capacity utilization declined from an average rate of 34% in 2003 - 2005, to 27% in 2006. In 2007, Dragon Asia temporarily ceased operation while Cathay and Lunar slowed down production. As a result, capacity utilization sank to its lowest level at 8%.
- The import surge in 2006 and 2007 led to the underutilization of rated capacity resulting in significant impairment of the industry's position.

#### **9.1.5 Profitability**

- The marked increase in the volume of imports beginning 2006 negatively impacted on sales revenue resulting to the deterioration of income from operations. Income from operations dropped from ₱ 92 million in 2005 to ₱ 44 million in 2006 and to ₱ 38 million in 2007.
- The significant increase in imports in 2006-2007 forced the applicant companies to adopt a pricing strategy of selling below cost to regain market share. The domestic selling price was 5% below the COPS in 2007.
- The increased imports in 2006-2007 led to the significant impairment in the domestic industry's profitability.

#### **9.1.6 Employment and Labor Productivity**

- Before the surge in 2006, labor complement averaged 525 employees. Employment declined in 2006 and 2007 when imports surged.
- Lowest labor productivity was posted in 2007 resulting from the significant reduction in production and employment when Dragon Asia ceased operation and Cathay and Lunar slowed down production.
- The decrease in employment as well as in labor productivity during the period of import surge was substantial as to constitute significant impairment.

## 9.2 Other Factors

The Commission considered factors other than increased importation of steel angle bars in 2006 and 2007 that might have caused serious injury to the domestic industry.

### 9.2.1 Price and Availability of Billets

**Table 16. Price of Billets: 2003-2008 (₱ / MT)**

Particular	2003	2004	2005	2006	2007	2008
Landed Cost of Imported Billet *	15,020	17,560	22,560	21,070	24,440	39,640 **
Local Price of Billet ***	16,890	24,890	24,300	23,930	28,120	42,180
Price Difference	(660)	(6,650)	(2,420)	(2,680)	(2,690)	(2,540)

Source: \* Import Entries on file with the Commission

\*\* NSO Foreign Trade Statistics

\*\*\* Applicant Companies

Billets comprise 76% - 84% of the total production cost. Billets are locally produced but the industry preferred imported billets because of cheaper prices and reliability of supply. Applicant companies import billets from China, India, Russia and Ukraine. Usage of local billets is less than 5% of the total annual consumption.

Historical prices of imported billets from 2003 to 2005 averaged ₱ 18,380/MT. In 2006, prices of imported billets dropped by 7% from the 2005 level but rose in 2007 and 2008 to ₱ 24,440/MT and ₱ 39,640/MT or an increase of 16% and 62%, respectively.

Prices of imported billets were consistently lower compared with local billets.

While contributory to the impairment in profitability of the domestic industry, price and availability of imported billets were not factors that caused serious injury to the industry.

### **9.2.2 Interest Expense**

The high interest expense, although contributory to the impairment in profitability of the domestic industry, was not the substantial cause of the serious injury to domestic industry.

### **9.3 Conclusion**

While there are other factors that contributed to the impairment of the position of the domestic industry, the Commission finds that, in accordance with RA 8800, increased importation of steel angle bars was the substantial cause of serious injury to the domestic industry.

## 10. CONCLUSION

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

1. Applicant companies, Cathay, Dragon Asia and Lunar, accounted for 75% of the total domestic production of steel angle bars during the POI.
2. Locally produced steel angle bar is a like product to imported steel angle bar.
3. The product under consideration was imported in significantly increased quantities, both in absolute terms and relative to domestic production, in 2006 and 2007.
4. The domestic steel angle bar industry suffered and is suffering significant impairment in its position particularly in terms of shrinking market share; declining production and sales; diminishing employment and productivity; underutilization of rated capacity and deterioration of operating income.
5. While there were other factors that contributed to the impairment of the position 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 RA 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-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 RA 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 steel angle bars. The measure shall be effective for three (3) years counting from 12 January 2009, i.e., the date the provisional measure took effect.

### 11.1 Recommended Definitive Safeguard Measure

Rule 13.1(c) of the IRR of RA 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....”*

The Commission recommends a specific safeguard duty of ₱ 7,700/MT. The duty is calculated by comparing the average landed cost of imported steel angle bars with the average domestic selling prices of the locally produced counterpart. The Commission took into consideration the data for 2005-2008.

**Table 17. Estimated Definitive Safeguard Duty (₱ / MT)**

Year (1)	Average Domestic Selling Price* (2)	Average Landed Cost** (3)	Price Difference (4) = (2) – (3)
2005	28,580	26,790	1,790
2006	27,385	22,850	4,535
2007	37,380 <sup>a/</sup>	22,525	14,855
2008	41,270	31,655	9,615
<b>Average</b>	<b>33,655</b>	<b>25,955</b>	<b>7,700</b>

<sup>a/</sup> COPS plus margin of profit

Sources: \* Applicant Companies

\*\* BOC-EIED

The estimated *ad valorem* equivalents of the recommended specific duty of ₱ 7,700/MT are shown below:

**Table 18. Ad Valorem Equivalents of the Specific Duties**

Origin	Dutiable Value/Country	Definitive Safeguard Duty	
		Specific Duty (₱/MT)	Ad Valorem Equivalent (%)
China	20,065	7,700	38
Chinese Taipei	23,765	7,700	32
Japan	36,090	7,700	21
Philippines (PEZA)	40,565	7,700	19
Hong Kong	20,580	7,700	37
Korea	13,375	7,700	58
<b>Weighted Average</b>	<b>20,180</b>	<b>7,700</b>	<b>38</b>

Source: BOC-EIED

Although the proposed specific duty of ₱ 7,700/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 steel angle bars (Table 19). Thus, the impact of the definitive safeguard measure on landed cost will be greater for lower-priced steel angle bar imports.

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

### **11.1.1 Requirement of Certificate of Origin**

All importers of steel angle bar, regardless of port of exportation, are required to secure a Certificate of Origin issued by the authorized agency/office in the source country of manufacture as authenticated by the Philippine Embassy/Consulate.

### **11.1.2 Application of the *De Minimis* Rule**

The definitive safeguard measure shall not be applied to imports of steel angle bars originating from Philippines (PEZA) and Hong Kong, developing countries whose volumes of imports are found to be *de minimis*. In the event that imports of steel angle bar originating from the Philippines (PEZA) and Hong Kong collectively account for more than nine percent (9%) of the total Philippine imports of steel angle bar, the definitive safeguard measure shall be applied.

The DTI shall draw up a list of the developing countries exempt from the definitive safeguard measure of steel angle bar for 2009. DTI shall conduct an annual review of the imports of steel angle bar from developing countries and draw up the appropriate exemption lists for 2009 and 2010.

### **11.1.3 Notification to the WTO Committee on Safeguards**

Rule 17 of the IRR of RA 8800 provides that "*The Secretary shall notify the Committee on Safeguards 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."*

### **11.1.4 Notification and Consultation under Articles 6 and 8 of the CEPT-AFTA Agreement**

Considering that steel angle bars are included in the CEPT Scheme, the Philippines is required to notify the AFTA Council and to accord adequate opportunity for consultations with the governments of the ASEAN Member States that may be affected by the application of the definitive safeguard measure.

## 11.2 Review of the Definitive Safeguard Measure

Rule 15.6 of the IRR to RA 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 IRR 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 Commission shall, pursuant to Rules 15.6 and 16.1 of the IRR to RA 8800, review the application of the definitive safeguard measure at regular intervals. The domestic industry shall be required to show positive adjustment on the efforts committed to adjust to import competition.

## **12. EFFECTS OF THE AFFIRMATIVE RECOMMENDATION**

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

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

### **12.1 On Competition**

- ✓ Consumer welfare is not prejudiced since users have the option between local and imported steel angle bars.
- ✓ As definitive safeguard duty is only temporary and will progressively be liberalized, market access will improve and competition will be enhanced.

### **12.2 On the Domestic Steel Angle Bar Industry**

- ✓ Significantly increased importations will be brought to a level that will not seriously injure the domestic industry.
- ✓ 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 steel angle bar 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.
- ✓ Imposition of the definitive safeguard measure will assist the domestic industry to adjust to the effects of the present global economic crisis.

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

- ✓ With the continued existence of a viable domestic industry, consumers are assured of reliability of supply.
- ✓ With the industry's commitment to upgrade facilities to improve production efficiency, consumers are assured of a better and wider range of products at competitive prices.

### **12.4 On Employment**

- ✓ The expected increase in production and sales will generate additional employment in the steel angle bar industry and its allied industries.

### **12.5 On Regional Development**

- ✓ The imposition of the definitive safeguard measure will ensure continuous operation of the local steel angle bar industry. This will bring continuing community development in areas where these industries are located. The increase in activity in the industry will spur economic activity within the community.

**02 July 2009**

**EDGARDO B. ABON**  
Chairman

**EDGARDO R. MARALIT**  
Acting Commissioner

**MARILOU P. MENDOZA**  
Acting Commissioner