

Department Administrative Order No. 19 - 02
Series of 2019

**IN THE MATTER OF THE PRELIMINARY
DETERMINATION OF THE SAFEGUARD
MEASURES CASE AGAINST THE IMPORTATION
OF CEMENT FROM VARIOUS COUNTRIES
(AHTN Codes 2523.2990 and 2523.9000)
(Safeguard Measures Case No. 01-2018)**

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ORDER

The Department of Trade and Industry (DTI) initiated, motu proprio, a preliminary investigation to determine whether increased imports of cement is causing or threatening to cause serious injury to the domestic industry. The cement covered by the investigation is classified under AHTN Codes 2523.2990 and 2523.9000. The period covered by the investigation (POI) are the years 2013 to 2017.

Pursuant to Section 7 of the Safeguard Measures Act (RA 8800), "*x x x the Secretary shall, on the basis of the evidence and submission of the interested parties, make 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. x x x*"

A review of the evidence made available to DTI shows:

1. that the volume of cement imports
 - in absolute terms, increased continuously from 2013 to 2017, the period of investigation (POI);
 - the increases compared with the previous years are: in 2014 - 70%, in 2015 - 4,401%, in 2016 - 550%, in 2017 - 72%.
 - in relative terms, the share of imports also increased during the POI, from 0.02% in 2013 to 15% in 2017.
2. that the domestic industry has suffered serious injury caused by increased imports based on the following:
 - during the POI, despite significant increases in market size, the market share of domestic manufacturers declined;
 - from having a small share in the domestic market from 2013 to 2015, the share of imported cement grew to 8% and 13% in 2016 and 2017, respectively;
 - while the domestic industry's sales revenues increased from 2013 to 2016, it went down by P11.1 billion in 2017, a decline of 12% over the previous year;
 - as earnings before interest and taxes increased from 2013 to 2016 by 6%, 15%, and 8%, respectively, the industry experienced a sharp decline in earnings of 49% in 2017;
 - the weighted average landed cost of imports is lower than the average selling price of the domestic product indicating a price undercutting of 14%;
 - cement manufacturers have been forced to reduce prices by almost 10% to compete with lower-priced imported cement.

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3. that increased imports were the substantial cause of threat of serious injury to the domestic industry based on the following:
- the significant increase in the volume of imported cement preceded the serious injury to the industry in 2017;
 - the conditions of competition show that the market share of locally produced cement was essentially displaced during the POI as the share of imports in the domestic market significantly increased.

WHEREFORE, IN VIEW THEREOF, the DTI, acting under Section 7 of RA 8800, the "Safeguard Measures Act", found after preliminary determination that increased imports of cement have caused serious injury to the domestic industry.

Further, pursuant to Section 8 of RA 8800 which provides that "*in critical circumstances where a delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination that increased imports are the substantial cause of serious injury to the domestic industry*", provisional safeguard measures in the form of a cash bond amounting to ₱210/MT shall be imposed on imported cement classified under AHTN Codes 2523.2990 and 2523.9000 for a period of 200 days from the date of 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 comes earlier. The shipments of cement that are in transit prior to the effectivity of this Order shall be exempted from the imposition of the provisional safeguard measure.

Imports originating from developing countries listed in Annex A covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the provisional safeguard measure.

Importers of cement originating from a country that is exempt from the provisional safeguard duty shall submit a Certificate of Origin (CO) issued by the authorized agency/office in the source country of manufacture authenticated by the Philippine Embassy/Consulate General.

Moreover, Rule 5.2 of the Implementing Rules and Regulations (IRR) of RA 8800 provides that "***the Secretary when establishing that the application of a safeguard measure will be in the public interest shall take into consideration the following factors; among others: x x x (ii) the extent to which such imposition will cause a shortage of a product under consideration in the domestic market***".

Pursuant to the aforementioned provision, the DTI will require local manufacturers to maintain suggested retail price (SRP) while the hearing at the Tariff Commission is ongoing. Unreasonable price increases are indications of supply shortages. A review will be concluded to determine if the continued imposition of the provisional measure would be in the public interest.

The case records will be transmitted to the Tariff Commission for formal investigation to determine whether or not there is a need to impose a definitive safeguard measure.

The non-confidential report of the preliminary safeguard measures investigation can be accessed at this link: <https://www.dti.gov.ph/media/advisories/12593-department-order-preliminary-determination-of-the-safeguard-measures-case-against-the-importation-of-cement-from-various-country>.

The notification and consultation requirements under Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with. Imports originating from ASEAN member states shall be governed by the provisions of Articles 11 and 23 of the ASEAN Trade in Goods Agreement (ATIGA).

Let this Order be published in two (2) newspapers of general circulation and let individual notices be sent to all interested parties including the country members concerned.

This Order shall take effect fifteen (15) days after publication or from the date of the issuance of relevant BOC-CMO, whichever comes earlier.

SO ORDERED.

17 January 2019



RAMON M. LOPEZ
Secretary



ANNEX A**List of Developing Countries and Separate Customs Territories
Excluded from the Imposition of Provisional Safeguard Measure on
Cement**

East & Southern Africa	West Africa	North Africa	South Asia
Angola	Benin	Algeria	Afghanistan
Botswana	Burkina Faso	Egypt, Arab Rep.	Bangladesh
Burundi	Cameroon	Libya	Bhutan
Comoros	Cape Verde	Morocco	British Indian Ocean Territory
Congo, Dem. Rep.	Central African Rep.	Tunisia	East Timor
Djibouti	Chad		India
Eritrea	Congo, Rep.		Maldives
Ethiopia	Cote d' Ivoire		Nepal
Kenya	Equatorial Guinea		Pakistan
Lesotho	Gabon		Sri Lanka
Madagascar	Gambia, The		
Malawi	Ghana		
Mauritius	Guinea		
Mozambique	Guinea, Bissau		
Namibia	Liberia		
Reunion	Mali		
Rwanda	Mauritania		
Seychelles	Niger		
Somalia	Nigeria		
South Africa	Sao Tome & Principe		
Sudan	Senegal		
Swaziland	Sierra Leone		
Tanzania	Togo		
Uganda			
Zambia			
Zimbabwe			

Europe & Central Asia	Middle East	Americas	East Asia & Pacific
Albania Armenia Azerbaijan Belarus Bosnia & Herzegovina Bulgaria Croatia Cyprus Czech Republic Estonia Georgia Greenland Hungary Kazakhstan Kyrgyz Republic Latvia Lithuania Macedonia, FYR Malta Moldova Poland Romania Russian Federation Slovakia Slovenia Tajikistan Turkey Turkmenistan Ukraine Uzbekistan Yugoslavia, Fed. Rep.	Bahrain Iran, Islamic Rep. Iraq Israel Jordan Kuwait Lebanon Oman Qatar Saudi Arabia Syrian Arab Rep. United Arab Emirates West Bank & Gaza Yemen, Rep.	Anguilla Antigua & Barbuda Argentina Aruba Bahamas Barbados Belize Bermuda Bolivia Brazil British Virgin Is. Cayman Is. Chile Colombia Costa Rica Cuba Dominica Dominican Rep. Ecuador El Salvador Falkland Is. (Malvinas) French Guiana Grenada Guadaloupe Guatemala Guyana Haiti Honduras Jamaica Martinique Mexico Montserrat Netherland Antilles Nicaragua Norfolk Is. Panama Paraguay Peru Puerto Rico St. Helena St. Kitts & Navis St. Lucia St. Pierre & Miquelon St. Vincent & the Grenadines Suriname Trinidad & Tobago Turks & Caicos Is. Uruguay US Virgin Is. Venezuela	American Samoa Brunei Darussalam Cambodia Christmas Is. Cocos (Keeling) Is. Cook Is. Fiji French Polynesia Guam Hong Kong, China Indonesia Johnston Is. Kiribati Korea, Dem. Rep. Korea, Rep. Lao PDR Macau, China Malaysia Marshall Islands Micronesia, Fed. Sts. Midway Is. Mongolia Myanmar Nauru New Caledonia Niue Northern Marianas Is. Palau Papua New Guinea Pitcairn Is. Samoa Singapore Solomon Islands Taiwan, (R.O.C.) Tokelau Tonga Tuvalu Vanuatu Wake Is. Wallis & Futuna Is.