

"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, 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."

Further, in the case of Southern Cross Cement Corporation vs. Cement Manufacturers Association of the Philippines (CEMAP), et. al (G.R. No. 158540, Aug. 03, 2005), the Supreme Court held that "x x x At the same time, nothing in the Safeguard Measures Act (SMA) obliges the DTI Secretary to adopt the recommendations made by the Tariff Commission. In fact, the SMA requires that the DTI Secretary establish that the application of such safeguard measures is in the public interest, notwithstanding the Tariff Commission's recommendation on the appropriate safeguard measure upon its positive final determination. Thus, even if the Tariff Commission makes a positive final determination, the DTI Secretary may opt not to impose a general safeguard measure, or choose a different type of safeguard measure other than that recommended by the Tariff Commission."

Accordingly, the DTI has reviewed the Commission's findings, taking into consideration the measures recommended by the Commission. Recognizing the need to first establish the condition that the imposition of the definitive measure will be in the public interest, we analyzed recent data and developments in the domestic industry and found that there was no significant improvement in the sales performance and production level of STPP. Principal users and importers of STPP were still able to source their STPP requirements from other countries which were exempted from the imposition of the provisional safeguard measure. Others imported 4A Zeolite, a substitute product to STPP in the manufacture of soap and detergents. The imposition of a definitive safeguard measure at this time will have more adverse effects on the downstream industries resulting to loss of employment to more people and potential loss of investment opportunities. Considering that STPP is an input to detergents which is an essential commodity used by consumers, it is extremely sensitive to any price fluctuation. Thus, the application of a definitive safeguard measure will not be in the public interest.

IN VIEW THEREOF, and in accordance with Section 5 of RA 8800, the application for general safeguard measures against the importation of Sodium Tripolyphosphates-Technical Grade (STPP-TG) (classified under HS Code No. 2835.3100) from various countries is hereby dismissed for public interest.

All cash bonds that may have been imposed on shipments originating from countries listed above which entered in or are withdrawn from warehouses in the Philippines for consumption starting 28 July 2006, the date of the effectivity of CMC 170-2006, shall be immediately returned to the concerned importers.

The notification requirements of Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with.

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.

SO ORDERED.

06 February 2007

PETER B. FAVILA
Secretary



IN THE MATTER OF THE APPLICATION FOR GENERAL SAFEGUARD MEASURES AGAINST THE IMPORTATION OF SODIUM TRIPOLYPHOSPHATES-TECHNICAL GRADE (STPP-TG) (CLASSIFIED UNDER HS CODE NO. 2835.3100) FROM VARIOUS COUNTRIES (SAFEGUARD CASE NO. 01-2006)

CAWC, INC.

Protestant

X=====X

ORDER

On 13 February 2006, the Department of Trade and Industry (DTI) accepted a properly documented application from the Philippine Sodium Tripolyphosphates-Technical Grade (STPP-TG) industry, represented by CAWC, Inc. alleging that STPP-TG is being imported into the Philippines in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry within the meaning of Republic Act 8800 (RA 8800), otherwise known as the "Safeguard Measures Act." The application sought the imposition of provisional and definitive general safeguard measures on imports of STPP-TG classified under HS or AHTN Code No. 2835.3100 of the Tariff and Customs Code.

The DTI made a positive preliminary determination in accordance with Section 8 of RA 8800 and the imposition of provisional measures not exceeding 200 days from the date of the issuance by the Bureau of Customs (BOC) of the implementing 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. The BOC issued CMC No. 170-2006 on 28 July 2006 to implement the said DTI Order. The DTI's report was forwarded to the Tariff Commission as required by Section 7 for formal investigation.

On 05 January 2007, DTI received the Tariff Commission's Formal Investigation Report on the said application and in accordance with RA 8800 and the WTO Agreement on Safeguards held that:

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.

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 recommends the imposition of the definitive general safeguard measure in the form of a tariff-rate quota and a specific duty on imported STPP-TG.