



**THE SAFEGUARD MEASURES ACT: MORE SG CASES FILED  
BUT AMENDMENTS STILL NEEDED**

**I. Introduction**

Republic Act (RA) 8800<sup>1</sup> was enacted in July 19, 2000 to lessen the negative impact of surges in fairly traded imports to local producers. It allowed the government to apply safeguard (SG) measures to industrial and non-tariffed goods, and special safeguard (SSG) measures to tariffed<sup>2</sup> agricultural products. These measures adjust tariffs or impose import quotas on goods, the importation of which, have been found to be injurious to the domestic industry. The law's enactment completed the set of safety net measures promised by the Philippine government to local producers to help them adjust to a freer trade regime as a result of the country joining the World Trade Organization (WTO) in 1994. The other safety net measures are the law against countervailing<sup>3</sup> and dumping practices<sup>4</sup>.

EGTA reviewed RA 8800's implementation and impact on the local economy in September 2002 and found that two years after its enactment, the law had only been applied in two cases. The ceramic tile industry was awarded a definitive SG measure and the cement industry was granted a provisional SG measure (Appendix 1). The Department of Agriculture (DA) had yet to apply any SSG measure and as of September 2002, had yet to finish the list of trigger volumes needed in applying RA 8800 (see Appendix 2).

According to the Tariff Commission ("Commission") and the Department of Trade and Industry (DTI), safeguard measures cases were infrequently pursued because of industries' unfamiliarity with the mechanics of RA 8800. The cost associated with filing a case was also deemed too high even by larger and organized industries<sup>5</sup>. The Commission said that building a case to prove "serious

<sup>1</sup> RA 8800: Safeguard Measures Act or "An Act Protecting Local Industries by Providing Safeguard Measures to be Undertaken in Response to Increased Imports and providing Penalties for Violation Thereof"

<sup>2</sup> Tariffed agricultural goods are those whose import quantitative restrictions have been converted into tariffs.

<sup>3</sup> RA 8751: "An Act Strengthening the Mechanism for the Imposition of Countervailing Duties on Imported Subsidized Products, Commodities or Articles of Commerce in Order to Protect Domestic Industries from Unfair Trade Competition, Amending for the Purpose Section 302, Part 2, Title 2, Book 1 of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, as Amended".

<sup>4</sup> RA 8752: "An Act Providing the Rules for the Imposition of an Anti-Dumping Duty, Amending for the Purpose Section 301, Part 2, Title 2, Book 1 of the Tariff and Customs Code of the Philippines, as Amended by RA 7843, and for Other Purposes.

<sup>5</sup> Anecdotal evidence suggests that the Philippine Cement Manufacturers Corp. (PHILCEMCO), the cement industry association comprised by about eighty (80%) of the country's cement manufacturing companies, and the petitioner in the cement case, may have spent more than P12 million in legal fees alone without yet receiving a final decision.

injury or threat" required by RA 8800 under a free trade scenario usually entails getting expensive research and technical support (see Appendix 3).

The DTI and the Department of Agriculture (DA), while mandated to initiate safeguard measures cases *motu proprio* to assist smaller industries, were unable to fulfill their tasks due to manpower constraints and the difficulty in initiating cases for which they themselves were the investigating authorities.

EGTA revisited RA 8800 in this paper to see if after three years of implementation, there had been any increase in safeguard measures cases. It may be noted that while writing the September 2002 EGTA report, the DTI informed the Project of a number of industries inquiring about RA 8800 and how it could be invoked. The DA, on the other hand, was in the process of improving its capacity to handle SSG cases. In this paper, EGTA also gives an update on the two safeguard measures cases and tries to find out whether the ceramics and cement industries are following their respective adjustment plans.

## **II. Status of the Implementation of RA 8800**

### **1. Four additional SG measures cases filed since September 2002**

There have been four additional SG cases filed since the EGTA review in 2002. All these cases are, however, related to a petition filed by Asahi Glass Philippines, Inc. on 08 April 2003, for the imposition of SG measures on the importation of glass mirrors, figured glass and clear and tinted float glass. Mr. Luis Catibayan, officer-in-charge at the Bureau of Import Services (BIS), said that the DTI submitted the petition to the Commission after finding reasonable grounds to initiate an investigation.

The case is still pending with the Commission but according to Dir. Emmanuel Cruz, even if it is already at the final stages of investigation, the case could not be finalized due to lack of quorum among the Commissioners. Since January 2004, the Commission has been operating with only one Commissioner, Chairman Edgardo Abon, because Comm. Tolentino left for the private sector in September 2003 and Comm. Nazareth retired in December 2003. The president failed to appoint a new commissioner since then, and with the election ban on presidential appointments already in force, a new Commissioner could not be appointed. The lack of quorum implies that the government would not be able to act upon the SG measures case within the next few months<sup>6</sup>.

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<sup>6</sup> The Tariff Commission announced on 1 April 2004 that Dr. George Manzano was appointed as new Tariff Commissioner by the president last 5 March 2004, or before the 11 March 2004 election-related deadline for presidential appointments.

## **2. Two SSG measures have also been applied**

The DA has imposed two SSG measures since September 2002. Additional tariffs were imposed on onion imports in October 2002 but the SSG measure was removed in December when the supply of onions fell considerably. SSG measures were also imposed on chicken imports in November 2002. The measure is currently in force.

According to Dir. Magdalena Casuga of the Trade Remedies Office (TRO), the TRO has yet to apply additional SSG measures despite some imports already breaching the computed trigger prices and volumes such as coffee and some vegetable products. Apparently, the TRO does not implement SSG measures *motu proprio* as it assumes that the inaction of domestic producers implies the absence of injury import surges.

## **3. Provision against anti competitiveness is still being overlooked**

The September 2002 EGTA report showed that the government may be improperly applying the law by overlooking Section 36 of RA 8800 and neglecting the issue of anti-competitive behavior. This has not changed, as shown by the fact that the DTI, after conducting an initial investigation on the case filed by Asahi Glass Philippines, Inc. (AGPI), still found reasonable grounds to submit the case to the Tariff Commission. AGPI has a market share of 75 percent and, at its dominant level, controlled 90 percent of the market.

Section 36 of RA 8800 states that in the application of any safeguard measure the following conditions must be observed:

- (1) All actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise; and
- (2) Pursuant to the non-impairment clause of the Constitution, nothing in this Act shall impair the obligation of existing supply contracts.

### III. The Ceramics and Cement Industry Cases

#### 1. Background

- Ceramic Tile industry cases**

The Ceramic Tile Manufacturers' Association (CTMA) filed an SG measure petition on 22 March 2001 with the DTI. After finding *prima facie* evidence to pursue the petition, the DTI forwarded the case to the

Commission and at the same time, directed the Bureau of Customs (BoC) to impose a P5.40 per kilogram provisional tariff on all imported ceramic wall and floor tiles. The Commission, after establishing a causal link between increased imports of ceramic tiles and serious injury to the domestic industry, recommended the imposition of a tariff on imported ceramic floor and wall tiles. The DTI then directed the BoC to replace the provisional measure with a general safeguard of P 2.29 per net kg. According to Dir. Cruz, the SG measure on ceramic imports would expire in December 2004.

**Table 1. Equivalent Ad Valorem Duty of Definitive Measure Imposed on Out-quota Imports from Major Suppliers**

Country	CIF/Definitive Value/Country (Peso/Kg.)	Definitive Duty on Out-Quota Volume	
		Specific Duty (Peso/Kg.)	Ad Valorem Equivalent (%)
China	5.71	2.29	40.11
Taiwan	7.22	2.29	31.72
Indonesia	7.46	2.29	30.70
Hong Kong	8.04	2.29	28.48
Spain	10.48	2.29	21.85
Malaysia	11.77	2.29	19.46
Italy	22.75	2.29	10.07

Source: Tariff Commission

- Cement industry case**

On 22 May 2001, the BIS received an application from the Philippine Cement Manufacturers Corporation (PHILCEM COR) on behalf of 12 of its member-companies, seeking the imposition of provisional and definitive general safeguard measures on imports of cement. The DTI found *prima facie* evidence to proceed on the application and forwarded the case to the Commission. The DTI also directed the BoC to impose a provisional tariff of P20.60 per 40-kg. bag on imported gray Portland cement, which was about 18% of wholesale price back then.

On 13 March 2002, after deliberating on the case, the Commission found that the element of serious injury and imminent threat of serious injury had not been established by PHILCEM COR, and recommended against the imposition of definitive general safeguard measures on gray Portland cement imports. PHILCEM COR made an appeal for reconsideration. The DTI attempted to reverse the decision of the Commission, but was prevailed upon by the opinion of the Department of Justice (DoJ). The DOJ, on 4 April 2002, said that the DTI did not have the power to reverse the Commission's order. Before the DTI could act on the DoJ's opinion, PHILCEM COR succeeded in getting a writ of preliminary injunction, preventing the DTI from removing the provisional safeguard measure on cement imports, while the court was

still deciding on whether or not the DTI had the final authority to impose SG measures.

The Court of Appeals (CA) finally decided on the petition in June 2003, empowering the DTI to remove the provisional measure and to replace it with a definitive safeguard in the form of a duty of P20.6 per bag on all cement imports until the end of 2004. Right after the June decision, the cement importers made an appeal to the Supreme Court to reverse the CA decision. Such appeal is still pending for resolution with the court's second division.

## 2. Status

- **Adherence to adjustment plans**

RA 8800 mandates the petitioners to submit an industry adjustment plan<sup>7</sup> before allowing the Commission to decide on the merits of a safeguard measures case (Appendix 5). The Commission is mandated to monitor how the industry adheres to the adjustment plan if a definitive SG measure is imposed. The Commission's monitoring reports on the cement and ceramic tiles industries, unfortunately, are not yet official and can not be made public until they have been certified as such by the Tariff Commissioners. This is not possible at this point due to lack of quorum among the Commissioners.

Based on the Commission's monitoring, and on the report that they are about to submit to the DTI, Dir. Cruz said the cement and ceramic tiles industries have been complying with the provisions of their respective adjustment plans and are becoming more competitive against imports. The industries have made improvements in quality and efficiency. The cement industry in particular has reduced its fuel consumption and has started to use cheaper raw materials.

- **DTI reduced the definitive SG measure by P5.00**

According to the Subdivision and Housing Developers' Association (SHDA), the Philippine Constructors' Association (PCA) and several consumer groups, the imposition of the P20.60 tariff allowed cement producers to raise local prices to the prejudice of the economy in general<sup>8</sup>. While insufficient data prevents this report from making a more definite conclusion, it appears from Figure 1 that the imposition of the provisional SG measure made prices in 2002 and 2003 more unstable than in previous years. The imposition of the more permanent definitive SG measure in July 2003, on the other hand, may

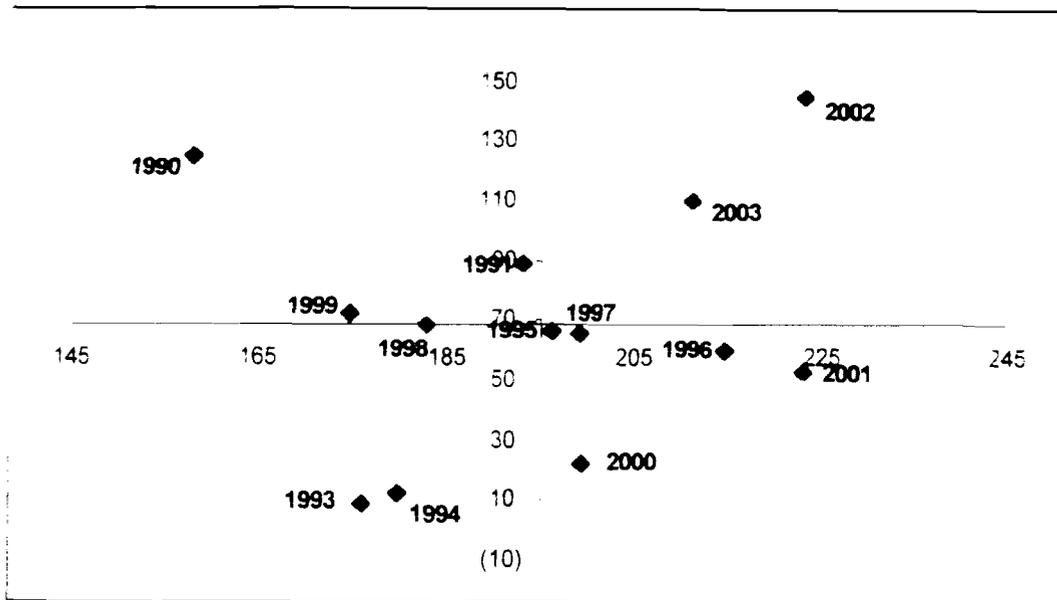
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<sup>7</sup> An "adjustment plan" is the industry's action plan indicating a set of quantified goals, specific programs, and timetables that a concerned industry commits to undertake in order to facilitate the industry's positive adjustment to import competition (e.g., adoption of improve technology, rationalization of production structures).

<sup>8</sup> Cement is a major raw material used by the housing sector, which has a GDP multiplier of 16.6, and the construction industry, which supports 11 other industries and which directly employs 1.5 million workers.

have caused the cement wholesale price index (WPI) to increase at a time when prices should be falling.

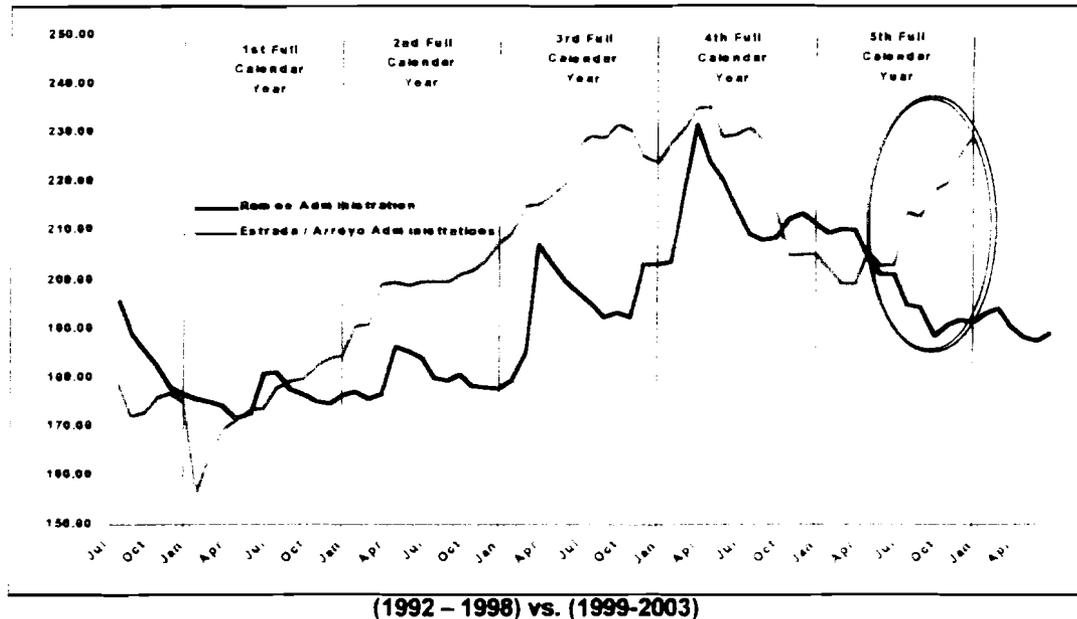
**Figure 1**  
**Mean and Variance of Cement WPI (1990 – 2003)**



**Source:** NSCB

**Note:** The mean-variance chart shows the mean WPI per year on the horizontal axis and the annual variance of WPI on the vertical axis. In 2002, for example, the mean WPI was 223 while the WPI variance was 145.

**Figure 2**  
**Comparison of the Monthly Cement WPI under the Ramos and Estrada/Arroyo Administrations:**



**Source:** NSCB

**Note:** We can note from the ringed portion in Figure 2 that until July 2003, when the DTI imposed the definitive SG measure on cement, the WPI trend under the Ramos and Estrada/Arroyo administrations were almost identical. A more formal empirical study is needed however, to show that the two trends were significantly identical, and whether the imposition of the SG measure caused the trends diverge.

The increasing cement prices prompted the DTI to review the industry price structure in December 2003. After finding that the increase in cement prices was not commensurate to the increase in costs, the DTI reduced the SG measure by P5.00 to P15.60 on 19 March 2004. To further encourage imports, the DTI also reduced the inspection period for cement imports from 28 days to 7 to 14 days.

It will be recalled that the Bureau of Product Standards of the DTI issued a circular in November 2001 compelling all cement samples to undergo up to 28 days of strength testing before they were sold. This is a non-tariff barrier that penalized imports not only because of the additional cost of undergoing the test, but also because of the cost of delay. With a three months shelf life, the 28-day holding period, in addition to the transit period from the source country, increases the possibility of spoilage.

- **Possibility of extension**

According to Dir. Cruz, the definitive SG measures applied on ceramic tiles and cement imports will expire in December 2004. Both industries may apply for an extension of up to six years within 90 days prior to the expiration of the SG measures; which, according to Dir. Cruz is likely. The law lists two requirements for granting an extension:

- the measure remains necessary to prevent or remedy the serious injury, and
- there is evidence that the domestic industry is making positive adjustments to import competition.

It is not clear how the DTI will respond to a petition for extension at this point, but with the Commission informally saying that the two industries are making positive changes towards competition, such an extension is highly probable.

#### **IV. Conclusion and Recommendation**

We have noted an increase in the number of SG and SSG measure cases investigated by the government from the EGTA report in September 2002. EGTA was also told that the BIS has been receiving more inquiries about how RA 8800 could be invoked by local producers. This is a good indication that local industries have started to realize the law's importance to them as a safety net against a surge of fairly traded imports. The Tariff Commission also said that the two industries that have been given definitive SG measures are adhering to their respective adjustment plans and are becoming more competitive against imports. This may be an indication that the law is achieving some of its objectives.

EGTA is, however, concerned about the continued misapplication of RA 8800. As regards the implementation of Section 36, while the law was meant to provide local producers relief against the surge of fairly traded imports, such relief was only allowed for competitive industries. The law did not intend to reward anti-competitive industries and penalize consumer welfare and the economy in general.

For greater fairness in the application of the law, the government may want to consider enforcing Section 36 by including it among the elements to be established during the deliberation of SG measures cases. It may eventually want to enact a law defining the meaning of anti competitive practices and outlining penalties associated with anti-competitive behavior. Since a legislative remedy would take considerable time, the government may want to mandate all applicants to get a pre-qualification certification from the NEDA or the DTI that it is not operating under anti-competitive practices, before initiating safeguard measures cases.

The TRO's inaction in imposing SSG measures on coffee and vegetable products should also be looked into as it clearly violates RA 8800. Unlike SG measures, the imposition of SSG measures does not require the element of serious injury, hence breaching the trigger price or trigger volume should have been enough to compel the TRO to impose SSG measures (Appendix 2). The TRO could therefore be liable for gross neglect of duty under Sec. 309 of RA 8800.

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<sup>9</sup> Sec. 30. Penalty Clause. Any government official or employee who shall fail to initiate, investigate, and implement the necessary actions as provided in this Act and the rules and regulations to be issued pursuant hereto, shall be guilty of gross neglect of duty and shall suffer the penalty of dismissal from public service and absolute disqualification from holding public office.

## **Appendix 1: Definitive and Safeguard Measures**

### **1. Definitive Safeguard Measure.** Section 13 of RA 8800 states 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 on the importation of the product into the Philippines;
- d. One or more appropriate adjustment measures, including the provision of trade adjustment assistance; and
- e. Any combination of actions described in subparagraphs (a) to (d).” ...

### **2. Provisional Safeguard Measure.** Section 8 or RA 8800 states 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 a substantial cause of, or threaten to substantially cause, serious injury to the domestic industry, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the imposition of a provisional general safeguard measure.

Such measure shall take the form of a tariff increase, either ad valorem or specific, or both, to be paid through a cash bond set at a level sufficient to redress or prevent injury to the domestic industry. ...”

## **Appendix 2: Salient points of RA 8800**

1. **Scope of Application.** RA 8800 is applied to products being imported into the country, irrespective of source. Safeguard measures apply to industrial and non-tariffed goods while special safeguard measures apply to tariffed agricultural products. Tariffed goods are those whose import quantitative restrictions (QRs) have been converted into tariffs.
2. **Elements for the Application of RA 8800 and its General Safeguards and Special Safeguards Measures.**
  - i. The safeguard measures provided in the law are applicable only if
    - (a) All actions leading to their application are transparent,
    - (b) These actions would not result in anti-competitive business devices,  
and
    - (c) They shall not impair the obligation of existent supply contracts.
  - ii. General safeguard measures are applied upon positive final determination of the following elements:
    - (a) The product being imported is the same as the product being produced by the applicant domestic industry,
    - (b) There was a surge in imports during the period of investigation,
    - (c) The domestic industry suffered from serious injury or threat thereof during the period of investigation, and
    - (d) That there is a causal link between (b) and (c).

For non-agricultural goods, it must also first be established that the application of safeguard measures will be in the public interest.
  - iii. Special safeguard, on the other hand, are applied upon positive final determination of the following elements:
    - (a) The product being imported is the same as the product being produced by the applicant domestic industry,
    - (b) cumulative volume of imports in a given year exceeds a base trigger level, or
    - (c) The landed cost of imports falls below a trigger price level.
3. **Adoption of Safeguard Measures.** In case of an affirmative finding and decision that a domestic industry has been "injured," tariff adjustments or import quota allocations may be resorted to as safeguard measures.
4. **Monitoring.** So long as any safeguard action remains in effect, the TC shall monitor developments in the domestic industry concerned, including the progress and specific efforts made by workers and firms in the domestic industry to adjust to import competition.

### **Appendix 3: Determination of Serious Injury**

1. **Economic factors to be considered.** Injury is not an element in the imposition of special safeguard measure. In determining whether or not a general safeguard measure shall be applied on a given imported product, however, the TC shall need to determine the presence of serious injury based on all relevant economic factors, including the following variables:
  - i. The rate and amount of the increase in imports of the product under consideration in absolute or relative terms.
  - ii. The share of the domestic market taken by the increased imports.
  - iii. Changes in the level of sales, prices, production, productivity, capacity utilization, inventories, profits and losses, wages and employment of the domestic industry.
  - iv. Significant idling of productive facilities in the domestic industry including the closure of plants or under-utilization of production capacity.
  - v. Inability of a significant number of firms to carry out domestic production at a profit.
  - vi. Significant unemployment or underemployment within the domestic industry.
  
2. **Considerations in determining the existence of serious injury.** In making a determination of the existence of a threat of serious injury, the following factors should be considered:
  - i. Significant rate of increase in imports into the Philippines, indicating the likelihood of substantially increased importation as evidenced inter alia by the existence of letters of credit, supply or sales contracts, awards of tender, irrevocable offers, or other similar contracts.
  - ii. Sufficient freely disposable, or an imminent, substantial increase in production capacity of the foreign exporters, including access conditions they face in third country markets, indicating the likelihood of substantially increased exports to the Philippines.
  - iii. Decline in sales or market share, and a downward trend in production, profits, wages, productivity or employment (or increasing underemployment) in the domestic industry and its inability to generate capital for modernization or to maintain existing levels of expenditures for research and development.
  - iv. Growing inventories of the product being investigated, whether maintained by Philippine producers, importers, wholesalers or retailers.

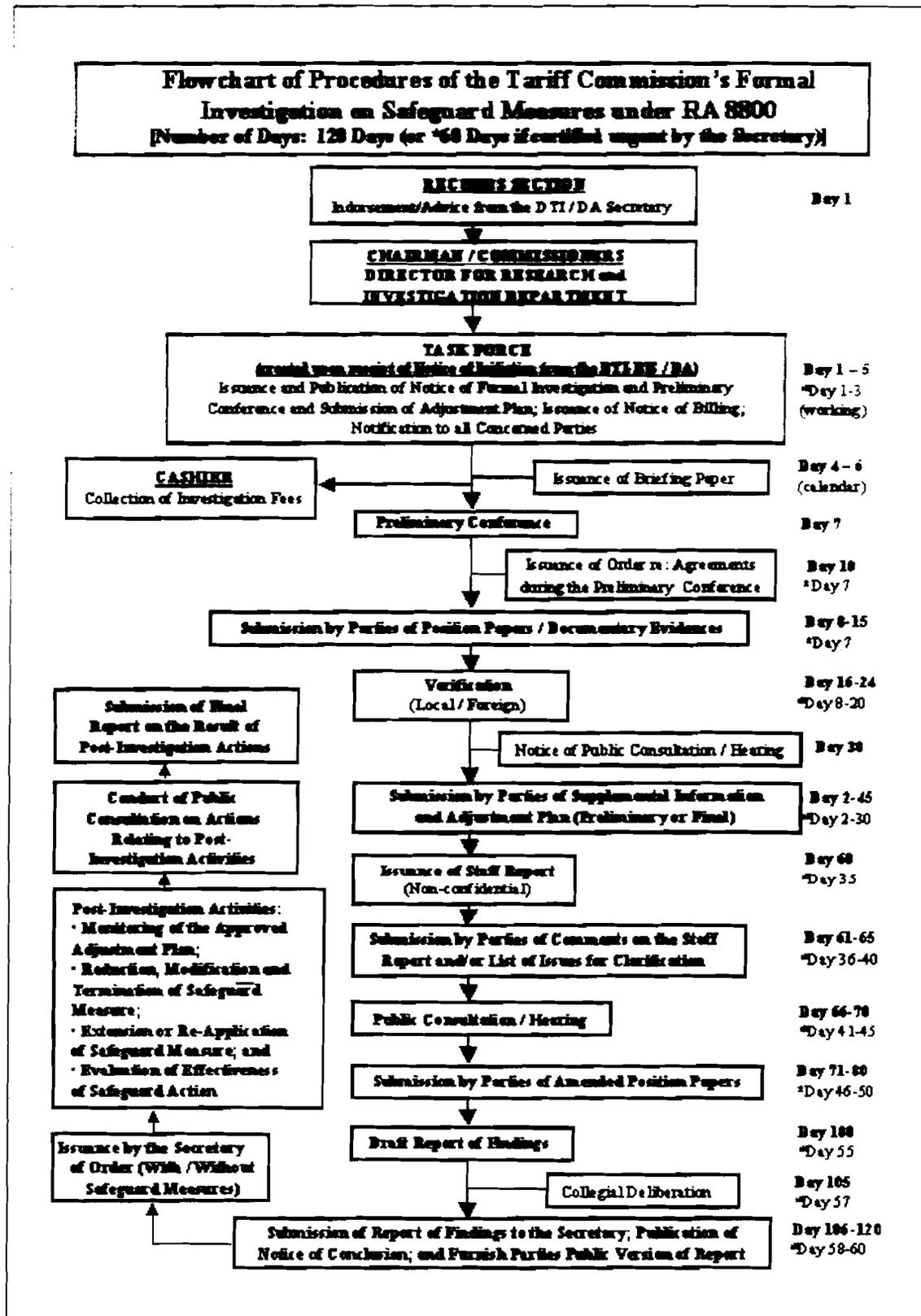
#### **Appendix 4: Quote from the Executive Summary of the Cement Industry Case**

The following quote was taken from the cement industry case's executive summary. This shows that the Tariff Commission has limited its investigation to finding whether or not the elements enumerated under Section 6 of RA 8800 are present. This view was also taken during the investigation of the ceramic tiles industry.

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

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

**Appendix 5: Flowchart of Tariff Commission's Formal Investigation**



Source: <http://www.tariffcommission.gov.ph/safeguar.html>