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RA 8800 OR THE SAFEGUARD MEASURES ACT: Infrequently-Used and Misused

I. Introduction

Republic Act (RA) 8800 or the Safeguards Measures Act (SMA) was enacted in July 19, 2000 to complete the set of trade remedies promised by the government to domestic industries to help them cope with the dislocations caused by the country's accession to the World Trade Organization (WTO). It was to protect local producers, against the negative effects of surges in fairly traded imports, while at the same time ensuring that such protection would not greatly undermine consumer welfare.

Since its enactment in 2000, the law had been applied in only two cases. It was used for the ceramic tile industry, which was eventually awarded a definitive safeguard (SG) measure, and the cement industry, which has been enjoying a provisional safeguard measure since November 2001. According to the Tariff Commission (TC), local producers have scarcely invoked the law's provision because this process is expensive and tedious. Proving that an applicant industry had been seriously injured by a surge in imports is naturally difficult under a free and fair trade regime. The Department of Trade and Industry (DTI) and the

Department of Agriculture (DA), on the other hand, while allowed by the law to pursue safeguard measures *motu proprio*, deem exercising this option as awkward since they too, are the investigating authorities.

RA 8800's infrequent use has limited the benefits it has been expected to deliver.

Aside from being infrequently used, the law had also been misused in the two cases just mentioned. Sec. 36 of RA 8800 prohibits application of the law on anti-competitive industries. The DTI and the TC, however, proceeded to apply safeguard measures in favor of the cement and ceramic tile industries, despite these industries' tacit anti-competition practices. Consumer welfare, and probably even the country's economic prospects, had therefore been prejudiced to a greater degree than what is conceivable under the law. This problem is magnified in the cement industry case, because cheaper cement imports benefit 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.

To mitigate the law's infrequent use, the government should conduct

the appropriate information campaign that would target even the marginalized domestic producers. The DTI and the DA should also exercise their mandate to initiate safeguard measures cases *motu proprio*, because this action was provided for in the law precisely to assist the smaller and less organized industries. To address its misuse, RA 8800 ought to be amended, with the amendment focusing on outlining the procedures for the implementation of its Sec. 36. Since amending a law requires some time, however, government should, in the interim, mandate any applicant to get a pre-qualification certification from the National Economic Development Authority (NEDA) or the DTI that it is not anti-competition, before initiating safeguard measures cases.

II. Background and Assessment Rationale

RA 8800 was enacted to protect local industries from the negative impact of surges in imports. It completes the set of safety nets promised by the government to local producers to help them adjust to a freer trade regime as a result of the country joining the WTO. The set also includes laws against dumping and countervailing practices.

RA 8800 combines General Safeguard and Special Safeguards provisions provided for under the WTO Agreement on Safeguards, and the WTO Agreement on Agriculture, respectively. It contains the following salient points:

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 or 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 (*Please refer to Appendix 1 for details on the determination of "serious injury."*), 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) The 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.

Almost two years after its enactment, an assessment of RA 8800's impact on the Philippine economy in general, and its industries and consumers in particular, is in order. This assessment will determine whether or not the law has achieved the purposes for which it was enacted, and determine areas that may need to be refined or improved.

III. Assessment of the Impact of RA 8800

RA 8800 has made little positive impact on producers' welfare because of the limited number of times that it had been applied in the country. Moreover, the misuse of the law in these few cases may even have had a negative impact on consumers, thereby impinging on economic growth.

1. Application of RA 8800. The remedies available under the SMA have been applied in only two cases - 1) for the ceramic tiles industry and 2) the cement industry. In both cases, the applicant industries have received the trade remedies provided for under the law. The TC recommended the application of a definitive safeguard measure on ceramic tile imports. In the cement industry case, the DTI first granted a provisional measure for cement imports. On the strength

of a TC finding that no "injury" was inflicted on the cement industry by imports, it then ordered the removal of this provisional measure. However, the industry secured a court order on June 21, 2002 preventing it from removing the provisional tariff.

The Cement Industry Case

- On May 22, 2001, the DTI received an application from the Philippine Cement Manufacturers Corporation (PHILCEMCO) on behalf of 12 of its member-companies, seeking the imposition of provisional and definitive general safeguard measures on imports of cement.
- On June 27, 2001, the DTI Bureau of Import Services (BIS) initiated a preliminary investigation to determine the existence of sufficient prima facie evidence to proceed on the application.
- On November 7, 2001, after finding the existence of such evidence, and concluding that critical circumstances exist to merit the imposition of provisional safeguard measures, the DTI directed the Bureau of Customs (BOC) to impose a provisional tariff equivalent to P20.60 per 40-kg. bag on imported gray Portland cement.
- On December 10, 2001, the BOC issued a Customs Memorandum Order (CMO) implementing the DTI directive. As mandated by RA 8800, the provisional tariff was made applicable for a maximum period of 200 days, or until June 28, 2002.
- On November 19, 2001, the TC received a request from the DTI to conduct a formal investigation into the merits of imposing a general safeguard measure on imports of gray Portland cement, pursuant to RA 8800.
- On March 13, 2002, after finding that the elements of serious injury and imminent threat of serious injury had not been established, the TC recommended against the imposition of definitive general safeguard measures on gray Portland cement imports.
- The DTI attempted to reverse the decision of the TC, but was prevailed upon by the opinion of the Department of Justice, which on April 4, 2002, said that the DTI did not have the power to reverse the TC order.
- On June 21, 2002, the PHILCEMCO succeeded in getting a writ of preliminary injunction, preventing the DTI and the TC from removing the provisional safeguard measures on cement imports, pending a court decision on PHILCEMCO's petition to keep them.
- Since the imposition of the provisional tariff measure, the market share of imported cement has dropped dramatically. Meanwhile,

producers continue to sell cement in the local market at a price far higher than their marginal cost.

- Up to this day, or the provisional safeguard measure applied by the DTI is still in effect, in violation the express provision of RA 8800.

The Ceramic Tile Industry Case

- On May 22, 2001, the DTI accepted an application from the Ceramic Tile Manufacturers, Association (CTMA), for the imposition of safeguard measures on imported ceramic tiles. The CTMA, which was represented by Mariwasa Siam Ceramics, Inc. (Mariwasa) and Lepanto (Guoco) Ceramics, Inc. (Lepanto), alleged that an influx of imported ceramic tiles since 1998 had negatively affected domestic producers.
- On June 27, 2001, the DTI-BIS initiated a preliminary investigation into the existence of sufficient prima facie evidence to proceed on the application.
- On November 26, 2001 the DTI directed the BOC to issue a CMO imposing a provisional tariff equivalent to P5.40 per kilogram on all imported ceramic wall and floor tiles.
- On January 2, 2002, the BOC issued a CMO implementing the DTI directive. In accordance with RA 8800, the provisional tariff was made applicable for a

maximum period of 200 days, or until July 21, 2002.

- On December 3, 2001, the TC received a request from the DTI to conduct a formal investigation into the merits of imposing a definitive general safeguard measure on imported ceramic wall and floor tiles, pursuant to RA 8800.
- On March 26, 2002, after establishing a causal link between increased imports of ceramic tiles, and serious injury to the domestic industry, the TC recommended the imposition of a definitive general safeguard on imported ceramic floor and wall tiles.
- The general safeguard tool took the form of an additional specific duty of P 2.29 per net kg. The specific duty was computed by comparing the weighted average cost of production and marketing of the two applicant companies in 2001 vis-à-vis the weighted average ex-warehouse selling price of the imported tiles for the same year.

Both of these cases fall under the safeguard provisions of RA 8800.

The DA has yet to apply special safeguard measures, mainly because of limited budget and manpower. The Department's Trade Remedies Office (TRO) is insufficient to handle all trade remedy cases in the agriculture sector. It employs two regular employees, and is administered by officers who were seconded from the Agricultural Credit and Policy Council

(ACPC), an attached agency of the DA. Consequently, the DA has only been able to finish the list of trigger prices in August 7, 2002 and is still in the process of determining trigger volumes.

According to the TC, few industries are using the safeguard measures because of the:

- Huge legal expense of pursuing a case. Anecdotal evidence suggests that the PHILCEM COR may have spent more than P12 million for legal services, without yet receiving a final decision.
- Difficulty of proving the existence of "serious injury or threat thereof" as distinguished from the "material injury or threat thereof" in RA 8751 and RA 8752. The "serious" injury element in safeguard cases under a free trade scenario requires a more stringent test than the "material" injury element required under a regime of unfair trade practices.
- Unfamiliarity of concerned industries with the mechanics of RA 8800 and the WTO Agreement on Safeguards.
- Perception that the TC is very strict in its application of RA 8800.

2. Impact on Producers. Safeguard measures were granted to the cement industry and the producers of ceramic tiles as recently as November 2001, making any empirical measurement of the impact of RA 8800 on these industries

moot. Anecdotal evidence, however, suggests that both industries have benefited from the measures, albeit in different degrees.

According to the TC, the ceramic tiles producers, after being granted a definitive trade relief, even complained about the low tariff imposed on imported ceramic tiles (*Please refer to Table 1*), which is less than half of the provisional measure. On the other hand, the cement industry is content with the provisional tariff on imported cement, which reduced the latter's market share from 16.4% to 4.3% in the first half of 2001 and 2002, respectively (*Please refer to Table 2*). In fact, according to the PHILCEM COR, the reduction in cement imports would have been more dramatic had it not been for the requirements of some foreign

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

Country	CIF/Dutiable 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

funded projects, which specifically requires the procurement of cement from Japan.

3. Negative Impact on Consumer Welfare and Economic Prospects. While it is accepted that RA 8800 was

Table 2. Market Share Local Producers vs. Importers

Country	Definitive Duty on Out-Quota Volume	
	Specific Duty (Peso/Kg.)	Ad Valorem Equivalent (%)
China	2.29	40.11
Taiwan	2.29	31.72
Indonesia	2.29	30.70
Hong Kong	2.29	28.48
Spain	2.29	21.85
Malaysia	2.29	19.46
Italy	2.29	10.07

Source: Tariff Commission

enacted to protect the interest of producers, it is clear from Sec. 36 that this protection was not meant to create anti-competitive conditions. If it is shown to be anti-competitive, an applicant industry would naturally be ineligible to apply for safeguard measures. This prohibition is based on the Philippine Constitution, which in Article 12, Section 19, prohibits combinations in restraint of trade or unfair competition.

In pursuing the ceramic tile and cement industries' complaints without first determining the extent of competition in each industry, the DTI and the TC have violated Sec. 36 of RA 8800, and may have harmed consumers. Moreover, they have, in effect, undermined due process by implicitly accepting that these two industries have sufficient competition, without the benefit of any hearing.

In the cement industry case, consumers have been harmed by higher prices and reduced choice. The Subdivision and Housing Developers' Association

(SHDA) and the Philippine Constructors' Association (PCA), two of the largest consumers of cement in the country, point this out in interviews. According to the SHDA, cement accounts for 15% to 20% of the cost of building an average house.

The DTI may have also affected the country's economic growth by granting provisional relief to the cement industry without first determining the existence of competition in the industry. The housing sector has a GDP multiplier of 16.6. The construction sector supports at least 11 other industries, and employs over 1.5 million workers directly.

The TC implicitly considers the cement industry to be oligopolistic, finding that it is characterized by limited competition and collusive behavior. The November 2000 report of the Philippine Institute for Development Studies also stated that the domestic cement industry exhibited "tacit price collusion".

A quick analysis of the concentration ratios (CRs) of each industry is instructive in this regard. The CR measures the market share of the largest *i* firms in an industry, where *i* is a predetermined number of firms. Normally, the market share of the top four firms is computed. Small CRs are indicative of competitive conditions. Large CRs suggest concentrated industries.

Market share estimates for the ceramic tiles industry were based on sales volume data published in the TC case report. For the cement industry, market share was based on total production for the year.

Both industries have high CRs as shown in Table 3.

Table 3. CRs of the Cement and Ceramic Tile Industries, 1996-2000, in %

Concentration Ratio	1996	1997	1998	1999	2000
Cement Industry	77	85	84	83	76
Ceramic Tile Industry	72	63	66	57	47

IV. Constitutional Questions on RA 8800

According to the TC, the Filipino Metals Corporation (FMC), an importer of steel products, filed a petition before the Valenzuela Regional Trial Court (RTC) on February 18, 2001 for declaratory relief and/or for certiorari and prohibition seeking to declare RA 8800 and its IRRs unconstitutional on the following grounds:

1. The enactment of RA 8800 constitutes undue delegation of taxation power by the President to the Secretaries of the DTI and DA.
2. The law is inconsistent with the WTO Agreement on Safeguards.
3. The law does not provide for prior consultations among the

concerned WTO-member countries.

4. The law impairs the petitioners' right to due process by affording petitioners only a very short period of five days to respond to a previous application for safeguard measure.

The TC, on the other hand, maintains the validity and constitutionality of the law, based on the following reasons:

1. The doctrine of "qualified political agency" postulates that all executive offices are adjuncts of the Executive Department. This implies that the acts of the Secretaries of such departments are presumptively the acts of the Chief Executive.
2. RA 8800's inconsistency with the WTO Agreement on Safeguards, specifically with regard to the quantitative restriction as a form of a provisional safeguard measure, does not render the law invalid and unconstitutional.
3. While admittedly, the law failed to provide adequate opportunity for prior consultations with concerned WTO Members upon talking the decision to apply or extend a safeguard measure, such absence does not render the law invalid and unconstitutional.
4. The five-day period allowed the opposing parties to reply to the petition is already in compliance with the essence of due process.

On September 4, 2001, the Valenzuela RTC issued a writ of preliminary injunction restraining the DTI from enforcing RA 8800 and its IRRs. Consequently, the preliminary investigations by the DTI-BIS of the ceramic tiles industry and cement industry safeguard cases were put on hold. On October 25, 2001, however, through an appeal by the DTI, the CA issued a Temporary Restraining Order (TRO) restraining the Valenzuela RTC from enforcing its preliminary injunction. As of this writing, the decision on this case has yet to be handed down by the respective court. Thus, it is not clear how the new law will stand against its first legal challenge.

V. Conclusion and Recommendation

The effectiveness of RA 8800 as a reasonable trade remedy that balances the needs of producers with those of consumers has been undermined by various factors that have led to the law's misuse and infrequent use. The law's misuse has been detrimental to consumers and the economy in general, and has made the law, its IRRs and its prior implementations vulnerable to legal and constitutional questions. Its infrequent use, on the other hand, has prejudiced the welfare of producers, and has deprived them of the needed lead-time to institute structural adjustment programs. This is unfortunate considering that the SMA is a special safety net that was specifically provided by the government to address the domestic industries' adjustment problems under a free and fair trade regime.

To rectify its misuse, RA 8800 or its IRRs should ultimately be amended. This amendment should reinforce Sec. 36, and expound on its intent by outlining the procedures for its implementation. Since an amendment to the law is unlikely for some years, the government should, in the interim, mandate all applicants to get a pre-qualification certification from the NEDA or the DTI that it is not oligopolistic, before initiating safeguard measures cases.

To ensure that the law's application is consistent with its intent, the government should improve the effectiveness of its implementing agencies by increasing the number and competency of implementing staff. This would, of course, involve thorough training in the law and the necessary steps to be taken in assessing the validity of applications for protection under the law. This is important considering that the ability of the government to evaluate anti-dumping and countervailing cases is far ahead of its ability to handle safeguard cases.

Government should also clearly delineate the duties and responsibilities of the various departments tasked to implement RA 8800. This should help avoid conflicting interpretations of the law, and a repetition of the incident between the TC and the DTI, which both claimed final jurisdiction in the safeguard measures case of the cement industry. That confusion allegedly resulted in the filing of the case by the cement industry before

the Court of Appeals, which prevented the government from fully applying the law.

To increase the number of times that the law is applied, the government should initiate an accelerated information campaign that would target domestic producers. It should focus more attention to the smaller and less organized domestic industries, which are often

marginalized and are therefore in greater need of empowerment. Furthermore, the DTI and the DA should already comply with their respective obligations to initiate safeguard measures cases on their own. This mandate was included in the law precisely to assist smaller producers, who are normally financially incapable of pursuing safeguard measures claims.

Appendix 1: 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:
 - The rate and amount of the increase in imports of the product under consideration in absolute or relative terms.
 - The share of the domestic market taken by the increased imports.
 - Changes in the level of sales, prices, production, productivity, capacity utilization, inventories, profits and losses, wages and employment of the domestic industry.
 - Significant idling of productive facilities in the domestic industry including the closure of plants or under-utilization of production capacity.
 - Inability of a significant number of firms to carry out domestic production at a profit.
 - 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:
 - 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.
 - 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.
 - 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.

- Growing inventories of the product being investigated, whether maintained by Philippine producers, importers, wholesalers or retailers.

Appendix 2: Steps in Carrying-Out Safeguard Measures Investigations

I. General Safeguard Measures

Prima Facie Determination

- The DTI-BIS or DA, upon acceptance of the properly documented petition, has five (5) calendar days to decide whether a prima facie case exists to merit the initiation of a preliminary investigation. In its determination, the BIS or DA undertakes an in-depth evaluation of the data submitted or provided, together with information obtained independently.
- If no *prima facie* case exists, the application is denied.

Preliminary Determination

- Once a prima facie case has been established, the DTI-BIS or DA initiates the preliminary determination.
- Within two calendar days after the decision to initiate the preliminary investigation is made, the DTI-BIS or DA notifies all known interested parties and the government of the exporting country, about the initiation of the investigation. The agency sends a pro-forma respondent's questionnaire to all the interested parties.
- The DTI or DA Secretary, whoever is concerned, shall make a preliminary determination on whether or not increased imports of the product under consideration are a substantial cause of, or threaten to substantially cause serious injury to the domestic industry. He should make this determination within 30 calendar days from receipt of the properly documented petition.
- In a preliminary determination under critical circumstances, the Secretary concerned shall establish that the substantial increase in the volume of imports would warrant the imposition of a provisional relief, to prevent further irreparable injury to the industry.
- In case of preliminary affirmative findings under critical circumstance, the Secretary of either the DTI or the DA advises, within three calendar days from making a decision, the Secretary of Finance to instruct the Bureau of Customs to impose the provisional safeguard measure. Such measure shall take the form of a tariff increase, either *ad valorem*, specific, or both, to be paid through a cash bond. In the case of agricultural products, where the tariff increase may not be sufficient to redress or to prevent serious injury to the domestic producers, a quantitative restriction may be applied.
- The preliminary affirmative findings by the DTI-BIS or DA, together with the records of the case, shall be transmitted to the TC for its immediate formal investigation of the case within three (3) calendar days from adopting the decision. However, if the preliminary findings are negative, the DTI or DA Secretary shall terminate the investigation.

Formal Investigation

- The TC shall conduct the formal investigation to determine:

- a. If the domestic product is a like product or a product directly competitive to the imported product under consideration;
 - b. If the product is being imported in increased quantities;
 - c. If there exists serious injury or threat thereof to the domestic industry that produces like or directly competitive product, and the extent of such injury; and
 - d. If there exists a causal relationship between the increased imports of the product under consideration and the serious injury or threat thereof to the affected industry.
- The TC shall conclude its investigation and submit a report of its findings and conclusions to the Secretary concerned within 120 calendar days from receipt of the request from the Secretary. When the Secretary certifies that the same is urgent, the TC shall complete the investigation and submit the report within 60 calendar days. Upon its positive determination, the TC shall recommend to the Secretary an appropriate definitive measure.

Decision

- Within 15 calendar days from receipt of the report of the TC, the Secretary concerned shall make a decision, taking into consideration the measures recommended by the TC.
- If the determination is affirmative, the Secretary shall issue, within two calendar days after making his decision, a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure.
- In case of a negative final determination or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately instruct the Commissioner of Customs to return the provisional safeguard measure within 10 days from the date the final decision had been made.

II. Special Safeguard Measures

Verification

- The DA Secretary shall verify if the cumulative import volume of an "SSG"-denominated agricultural product in a given year has exceeded its trigger volume or if its actual landed cost is less than its trigger price.

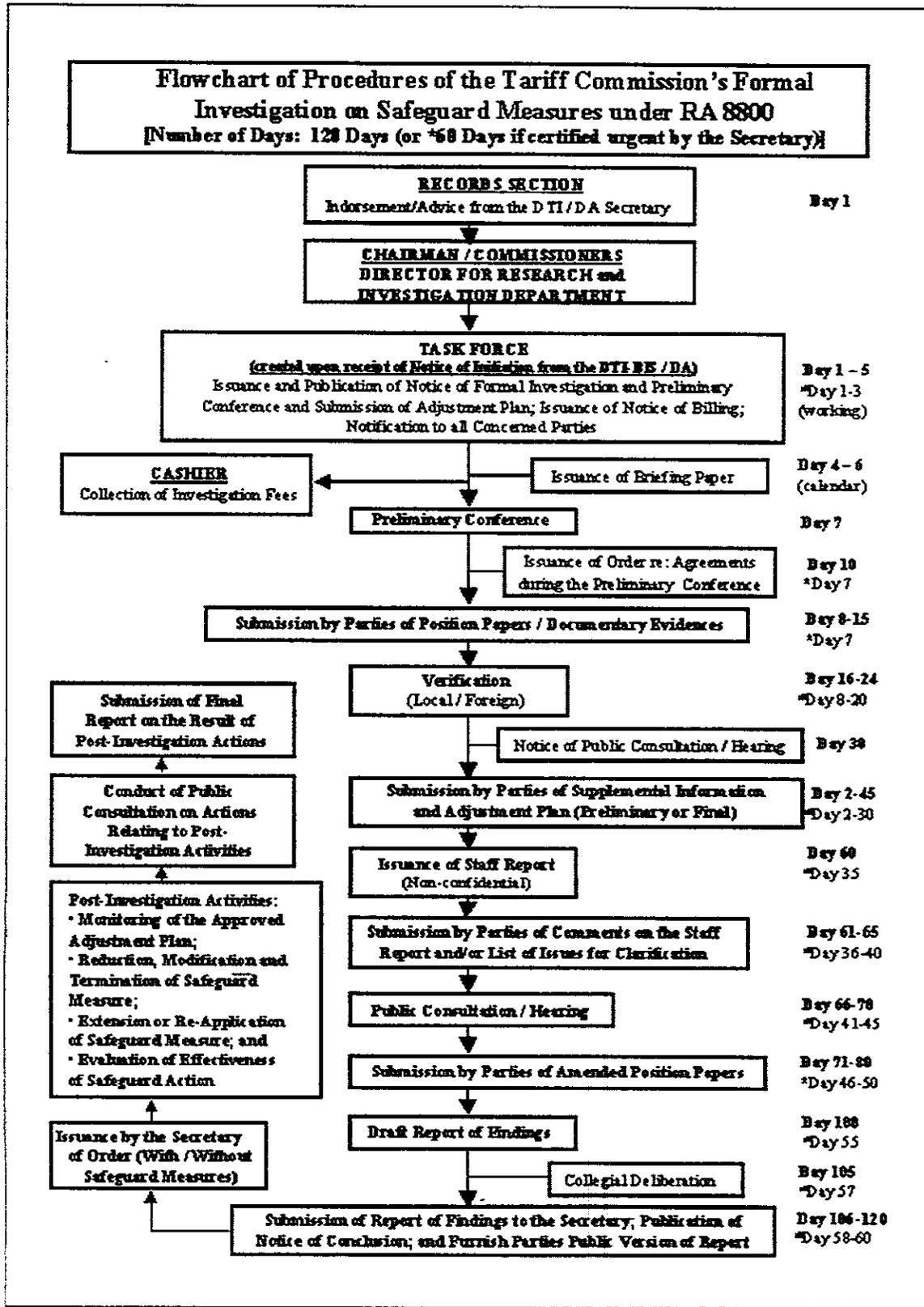
Findings

- The Secretary shall come up with a finding within five working days from the receipt of a request.

Imposition of special safeguard measure

- The Secretary shall issue a Department Order requesting the Commissioner of Customs through the Secretary of Finance to impose an additional SSG duty.

Appendix 3: Flowchart of TC's Formal Investigation



Appendix 4: Market Share Between Locally Produced and Imported Cement

Summary Data (2001)	Local Sales	Imports	Demand	Market Share	
				Local	Imports
January	1,000,458	142,970	1,143,428	87.50	12.50
February	1,043,259	178,240	1,221,499	85.41	14.59
March	1,175,436	204,100	1,379,536	85.21	14.79
April	1,004,558	197,849	1,202,407	83.55	16.45
May	1,106,604	259,017	1,365,621	81.03	18.97
June	992,070	254,879	1,246,949	79.56	20.44
July	729,444	307,729	1,037,173	70.33	29.67
August	726,754	165,454	892,208	81.46	18.54
September	790,021	155,077	945,098	83.59	16.41
October	972,908	144,000	1,116,908	87.11	12.89
November	824,937	133,185	958,122	86.10	13.90
December	978,784	90,680	1,069,464	91.52	8.48
Total 2001	11,345,233	2,233,180	13,578,413	83.55	16.45

Summary Data (2002)	Local Sales	Imports	Demand	Market Share	
				Local	Imports
January	917,395	42,200	959,595	95.60	4.40
February	919,156	48,900	968,056	94.95	5.05
March	1,057,882	41,400	1,099,282	96.23	3.77
April	1,135,393	80,700	1,216,093	93.36	6.64
May	1,177,794	45,000	1,222,794	96.32	3.68
June	1,032,131	22,900	1,055,031	97.83	2.17
Total Jan to June, 2002	6,239,751	281,100	6,520,851	95.69	4.31

2001 vs. 2002	Local Sales	Imports	Demand	Market Share	
				Local	Imports
Jan to Jun 2001	6,322,385	1,237,055	7,559,440	83.64	16.36
Jan to Jun 2002	6,239,751	281,100	6,520,851	95.69	4.31

Source: PHILCEMCOR

Appendix 5: Safeguard Measures vs. Anti-Dumping and Countervailing Measures

Anti-Dumping and Countervailing Measures	General/Special Safeguard Measures
1. Relevant Agreement <ul style="list-style-type: none"> WTO Anti-Dumping Agreement (GATT Article VI) WTO Agreement on Subsidies and Countervailing Measures (GATT Article XVI) 	<ul style="list-style-type: none"> WTO Agreement on Safeguards (GATT Article XIX) WTO Agreement on Agriculture
2. Nature of Measure Address <u>unfairly</u> traded imports: <ul style="list-style-type: none"> Export price is lower than the normal value Subsidized production or exportation of the foreign merchandise 	Address <u>fairly</u> traded imports: <ul style="list-style-type: none"> Export price at the level of normal value Increased level of imports absolute or relative to production (general safeguards) Volume of imports exceed a base trigger level or price falls below a trigger price level (special safeguards)
3. Coverage of Measure <ul style="list-style-type: none"> Limited to "like" products Country specific and exporter specific 	<ul style="list-style-type: none"> All "like" or "directly competitive" products All countries exporting "like" or directly "competitive product." General safeguards apply to industrial and non-tariffed goods Special safeguards apply to tariffed agricultural products denominated with the acronym "SSG" in the GATT Schedule of Concessions
4. Minimum Threshold of Support of Industry for Application <ul style="list-style-type: none"> A domestic industry which is supported by domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by other domestic producers that are expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of the production of the like product produced by the domestic industry. 	<ul style="list-style-type: none"> Industry filing the case should be a producer of the like or directly competitive product whose collective output constitutes a major proportion of the total domestic production – general safeguards Department of Agriculture (motu proprio) – special safeguards
5. Objective <ul style="list-style-type: none"> Dumping/countervailing duty seeks to provide a remedy to level the playing field To protect the domestic industries against the unfair trade practices of dumping and/ or subsidization. 	<ul style="list-style-type: none"> General safeguards will remove injury and facilitate structural adjustments for the industry to be competitive Special safeguards will assist farmers whose products were previously protected by quantitative restrictions (QR's), but have been tariffed.
6. Elements to be Established <ul style="list-style-type: none"> Product comparability ("like" product) Price difference/subsidy Material injury or threat of material injury Causal link 	General Safeguards: <ul style="list-style-type: none"> Product comparability ("like" or "directly competitive" product) Increased imports Serious injury or threat of serious injury to local industry players

Anti-Dumping and Countervailing Measures	General/Special Safeguard Measures
	<ul style="list-style-type: none"> • Causal link between increased imports and serious injury or threat of serious injury to local industry players <p>Special Safeguards:</p> <ul style="list-style-type: none"> • Product comparability ("like product") • Volume of imports exceed a base trigger level, or • Price falls below a trigger price level
<p>7. Forms of Measure</p> <ul style="list-style-type: none"> • Provisional measure – dumping/countervailing bond • Definitive anti-dumping/countervailing duty 	<p>General Safeguards:</p> <ul style="list-style-type: none"> • Provisional measure – tariff increase • Definitive safeguard measure: <ul style="list-style-type: none"> (a) tariff increase (b) quantitative restrictions (e.g., import quota; import licensing) <p>Special Safeguards:</p> <ul style="list-style-type: none"> • Additional duty not exceeding one-third of the level of the ordinary customs duty in effect during the year in which the action is taken
<p>8. Imposition of Provisional Measure</p> <ul style="list-style-type: none"> • Requires the conduct of a preliminary investigation (affirmative preliminary determination) prior to imposition of a dumping or countervailing bond for a duration of four (4) months or 120 days. 	<p>General Safeguards:</p> <ul style="list-style-type: none"> • In critical circumstances where delay may cause damage that is difficult to repair, safeguard measure in the form of tariff adjustment may be imposed for 200 days pursuant to a preliminary determination. <p>Special Safeguards:</p> <ul style="list-style-type: none"> • Not provisionally applied.
<p>9. Duration of Definitive Measure</p> <ul style="list-style-type: none"> • Five (5) years, subject to sunset review to determine whether or not to extend the effectivity of the dumping/ countervailing duty 	<p>General Safeguards:</p> <ul style="list-style-type: none"> • Four (4) years, extendable for another 4 years provided the industry can show that structural adjustment is being implemented with an extension for another two (2) years for developing countries. <p>Special Safeguards:</p> <ul style="list-style-type: none"> • Shall only be maintained until the end of the year in which it has been imposed.