

**IN THE MATTER OF THE APPLICATION FOR A
DEFINITIVE GENERAL SAFEGUARD MEASURE
ON THE IMPORTATION OF NEWSPRINT FROM
VARIOUS COUNTRIES**

(AHTN Codes 4801.0010 & 4801.0090)

(Safeguard Measures Case No. 01-2013)

**Philippine Newsprint Industry Represented by
Trust International Paper Corporation (TIPCO)**

Petitioner

X-----X

ORDER

On 25 February 2015, the Department of Trade and Industry (DTI) received the Tariff Commission's (Commission) Formal Investigation Report on the application for general safeguard measure against the importation of newsprint from various countries classified under ASEAN Harmonized Tariff Nomenclature (AHTN) Code Nos. 4801.0010 and 4801.0090.

The Commission, in accordance with the Republic Act 8800, otherwise known as the Safeguard Measures Act (RA 8800), concluded that:

1. Petitioner TIPCO accounted for 87% of the total domestic production of newsprint in 2013, thus satisfying the domestic industry¹ requirement.
2. Locally produced newsprint is a "like product" to imported newsprint.
3. There was an abrupt and notably sharp increase in the volume of newsprint imported into the Philippines, particularly in 2012, both in absolute terms and relative to domestic production. Therefore, the increase in imports is recent, sudden, sharp and significant enough.
4. The domestic newsprint industry suffered and is suffering significant impairment in its overall condition in terms of loss of market share, declining domestic production and domestic sales, mounting losses in profitability, and reduction in employment and labor productivity.
5. While there were other factors that contributed to the impairment of the overall condition of the domestic industry, increased importation of newsprint was the substantial cause of serious injury to the domestic industry.
6. The circumstance of "unforeseen developments"² need not be demonstrated. Nonetheless, the speed in the innovation and adoption of mobile technologies is a development that was unforeseen.

¹ Section 4(f) of RA 8800 defines domestic industry as "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".

² GATT 1994 Article XIX: Emergency Action on Imports of Particular Products

1. (a) 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

Enabling Business, Empowering Consumers

OFFICE OF THE SECRETARY

5/F Industry and Investments Building, 385 Senator Gil J. Puyat Avenue, 1200 Makati City, Philippines

Telephone: (+632) 899.7450 Fax: (+632) 896.1166 E-mail: secretary@dti.gov.ph

www.dti.gov.ph

Having established the existence of a causal link between increased imports of newsprint and serious injury to the domestic industry, the Commission recommended the imposition of a definitive general safeguard measure on imports of newsprint for a period of three (3) years, i.e. from 2015 to 2018. The Commission recommended the amount of P2,470.00/MT

DTI has taken note of the findings of the Commission and reviewed its recommendations.

Under RA 8800, the power of the Secretary of Trade and Industry to apply a safeguard measure hinges on a "positive final determination" of the Commission.

Section 5 provides:

"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 xxx"

The Supreme Court clarified the extent of the power of the Secretary in the case of Southern Cross Cement Corp. vs. Cement Manufacturers Association of the Philippines, et. al. (G.R. No. 158540, 08 July 2004). The Court held that:

"The DTI Secretary does not have the power to review the findings of the Tariff Commission for it is not subordinate to the Department of Trade and Industry (DTI). It falls under the supervision, not of the DTI nor of the Department of Finance (as mistakenly asserted by Southern Cross), but of the National Economic Development Authority, an independent planning agency of the government of co-equal rank as the DTI. As the supervision and control of a Department Secretary is limited to the bureaus, offices and agencies under him, the DTI Secretary generally cannot exercise review authority over actions of the Tariff Commission. Neither does the (Safeguard Measure Act) SMA specifically authorize the DTI Secretary to alter, amend or modify in any way the determination made by the Tariff Commission."

The Court subsequently stated in its en banc resolution of 05 August 2005 on the motion for reconsideration filed on the same case that:

"There is no question that Section 5 of the SMA operates as a limitation validly imposed by Congress on the presidential authority under the SMA to impose tariffs and imposts. That the positive final determination operates as an indispensable requisite to the imposition of the safeguard measure, and that it is the Tariff Commission which makes such determination, are legal propositions plainly expressed in Section 5." (emphasis supplied)

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.

Clearly, the law and jurisprudence on safeguard measure limits the power of the DTI Secretary to determine if the economic conditions affecting a particular industry would warrant or justify the extraordinary remedy of safeguards. The TC is an independent technical body and its findings, accorded great weight, are binding on the DTI Secretary.

However, on the matter of public policy, the law gives the DTI Secretary sufficient leeway to view safeguard measures and its effects from a broader societal perspective.

From a public policy standpoint, it is unquestionable that the imposition of a safeguard measure is one of the legitimate means by which the State can promote the competitiveness of its domestic industries.

Section 2 of RA 8800. Declaration of Policy, provides:

"The state shall promote the competitiveness of domestic industries and producers based on sound industrial and agricultural development policies, and the efficient use of human, natural and technical resources. In pursuit of this goal and in the public interest, the State shall provide safeguard measures to protect domestic industries and producers from increased imports which cause or threaten to cause serious injury to those domestic industries and producers."

The findings of the Commission show that increased importation of newsprint during the period of investigation was the substantial cause of serious injury to the domestic producer of newsprint. The Commission's findings also show that in spite of the growth of the domestic market, the market share of the domestic producer continued to decline as its share was taken up by increased imports. This situation led to financial losses forcing the domestic producer to reduce its labor force. The petitioner has clearly established the need for safeguard measures to protect it from increased imports. Inasmuch as increased imports have undermined the competitiveness of the domestic producer, imposition of the safeguard measure is expected to enhance its competitiveness consistent with the avowed policy of RA 8800.

Although petitioner was able to prove its case before the Commission for the application of safeguard measures on imported newsprint, the law requires the Secretary to first establish that the application of such measures will be in the public interest. Section 5 of RA 8800 states:

"Section 5. xxx 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."

In determining the public interest, the Implementing Rules and Regulations of RA 8800 provide some guidance:

"Rule 5.2 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: i) whether the imposition of the provisional measure will result in a political or economic crisis; and ii) the extent to which such imposition will cause a shortage of the product under consideration in the domestic market."

Public interest refers to the “common-well being” or “general welfare” in which the whole has a stake and which warrants recognition, promotion and protection by the government and its agencies. It is approximated by comparing expected gains and potential costs or losses associated with a decision, policy, program or project.³ It is an important consideration in determining the necessity of imposing safeguard duties. Public interest takes into account the welfare of consumers including downstream industries that use newsprint as input to production.

On the possible impact on other sectors, the amount of safeguard duty recommended by the Commission will increase the cost of imported newsprint to a point where some downstream industries and businesses will be adversely affected. According to the downstream industries, locally produced newsprint has qualities that differ from imported newsprint. Some downstream users purchase imported newsprint that meet certain quality requirements of their end products.

DTI has taken into account the Commission’s finding that the average landed cost of imported newsprint are substantially lower than the domestic producer’s average ex-factory price. While this may initially show a considerable price discrepancy, it is not uncommon for traders of imported newsprint to shadow the prices of the domestic producer. The more appropriate price comparison therefore is between the price offered by traders in the domestic market and the selling price of the domestic producer. Further, the amount of the safeguard duty should be sufficient to raise the price of imported newsprint to a level that redresses serious injury to the domestic industry without stifling competition between imported and locally produced newsprint.

DTI also recognizes that the education of the country’s citizens is a matter imbued with public interest and that access to knowledge by way of books plays an important role in educating the people. For this reason, Republic Act 8047, The Book Publishing Industry Development Act, was passed to “ensure an adequate supply of affordable, quality produced books” since “books are the most effective and economical tools for achieving educational growth”. This is the reason RA 8047 provided for fiscal and non-fiscal incentives in book publishing including the tax-and-duty-free importation of books or raw materials to be used in book publishing.

The Department of Education (DepEd) raised a concern that the imposition of a safeguard duty on imported newsprint will raise the cost of newsprint and such an increase in cost will lead to an increase in the costs of textbooks that are printed on newsprint. DTI is aware that DepEd has started implementing the K+12 basic education program which added two senior high school years to what was formerly a 10-year education program. This would necessitate the procurement by government of more textbooks for the extra two years of education as required under K+12. As the imposition of a safeguard duty on newsprint for use in the printing of textbooks will affect the costs of textbooks used in public schools, the imposition of a safeguard duty on newsprint to be used for the printing of textbooks will not be in the public interest. As such, newsprint imported as raw material for the printing of textbooks to be procured by DepEd shall be exempt from payment of the safeguard duty. Such an exemption is also in line with the policy enunciated under RA 8047, which provides for the tax- and duty-free importation of raw materials used in book publishing.

³ Business Dictionary

DTI, likewise, evaluated the impact of the safeguard measure on newsprint on the price of notebooks and pads that use newsprint⁴. According to the notebooks and pad paper companies, manufacturers of pads and notebooks no longer use newsprint, or if there are still such notebooks or pad papers in some markets, the volume is minimal. They further stated that newsprint is mostly used for mimeographing needs of schools for test papers, school handouts and the like. Other uses of newsprint are newspapers, comic books and low priced children's coloring books. Therefore, the imposition of safeguard measures on newsprint will not affect the price of locally manufactured pads and notebooks.

Nevertheless, these products are useful channels – though by no means the only channels – of information and learning. Although there are other sources of newsprints which, under the principle of “de minimis”, will not be affected by this safeguard measure, the DTI finds the recommended amount of duty excessive.

Hence, DTI computed the amount of the definitive safeguard duty by comparing the purchase prices (including VAT) of locally produced newsprint with that of imported newsprint in 2014, i.e. P33,500.00/MT for locally produced and P32,520.00/MT for imported newsprint with a price difference of P980.00/MT. Thus, the appropriate definitive safeguard duty is equivalent to P980.00/MT.

WHEREFORE, IN VIEW THEREOF, and in accordance with Section 13 of RA 8800, the following is hereby issued:

1. A definitive safeguard duty effective for three years shall be imposed on newsprint imported from various countries. The duty shall be applied to newsprint classified under AHTN Codes 4801.0010 and 4801.0090
2. The amount of the safeguard duty to be imposed for the first year shall be P980.00/MT (May 2015 to April 2016), for the second year - P800.00/MT (May 2016 to April 2017), and for the third year - P640.00/MT (May 2017 to April 2018).
3. The safeguard measure shall be reviewed yearly with a view to further liberalizing the measure to prod the domestic industry to adjust to import competition.
4. Imported newsprint which will be used for the printing of textbooks for elementary and secondary schools to be procured by accredited printers under the DepEd projects are exempt from the definitive general safeguard measure. To avail of exemption, importers shall present to the Bureau of Customs a certification from DepEd stating that the shipment of newsprint will be used for printing DepEd textbooks.
5. Pursuant to Section 13 of RA 8800 and Rule 13.1.d of its IRR, “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

⁴ Letter of United Print Media Group, Inc. dated 12 March 2015

nine percent (9%) of the total Philippine imports of the product concerned". The countries and separate customs territories listed in Annex A are therefore excluded from the imposition of the definitive general safeguard measure on newsprint. The composition of the developing countries on the *de minimis* list may change based on a review of the most recent data available as part of the annual review which will be conducted by the DTI during the implementation period.

6. To avail of exemption from payment of the safeguard duty, importers of newsprint originating from a WTO member developing country shall submit a Certificate of Country of Origin (CO) issued by the authorized agency/office in the country of origin. The said CO shall be authenticated by the Philippine Embassy/Consulate.

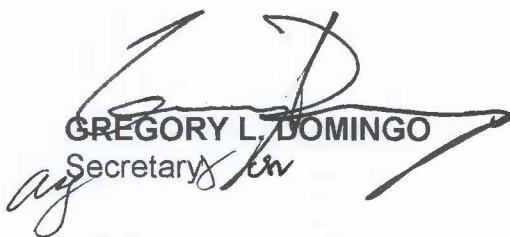
The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Sections 15 and 16 of RA 8800. The applicant, which is the newsprint industry is also directed to comply with its adjustment plan.

This Order shall take effect upon the issuance of the relevant Memorandum Order by the Bureau of Customs or 15 days after the publication of this Order in two (2) newspapers of general circulation, whichever comes earlier.

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.

05 May 2015


GREGORY L. DOMINGO
Secretary

ANNEX A

List of Developing Countries and Separate Customs Territories Excluded from the Imposition of Definitive Safeguard Measure on Newsprint

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

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 Guadeloupe Guatemala Guyana Haiti Honduras Jamaica Martinique Mexico Montserrat Netherlands Antilles Nicaragua Norfolk Is. Panama Paraguay Peru Puerto Rico St. Helena St. Kitts & Nevis 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. Chinese Taipei Cocos (Keeling) Is. Cook Is. Fiji French Polynesia Guam Hong Kong, China Indonesia Johnston Is. Kiribati Korea, Dem. 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. People's Republic of China Samoa Singapore Solomon Islands Thailand Tokelau Tonga Tuvalu Vanuatu Vietnam Wake Is. Wallis & Futuna Is.