



REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
**BUREAU OF CUSTOMS**  
MANILA 1099

16 April 2002

CUSTOMS MEMORANDUM ORDER  
NO. 19-2002

ALL DISTRICT COLLECTORS OF CUSTOMS  
AND ALL OTHERS CONCERNED

SUBJECT : Letter of Secretary Mar Roxas, Department of Trade and Industry  
dated 15 April 2002 re: Safeguard Case No. 02-2001.

In view of the letter of Secretary Mar Roxas, Department of Trade and Industry dated 15 April 2002, which states, "We are furnishing you a copy of the Decision issued by the Department of Trade and Industry (DTI) denying the application for safeguard measures filed by PHILCEMCOR against the importation of gray Portland cement from various countries (Safeguard Case No. 02-2001)", and further quoting Section 13 of RA 8800 which provides, viz:

**"In the event of a negative final determination, or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made: Provided, that the government shall not be liable for any interest on the amount returned, "**

you are hereby directed to effect the return of the cash bond posed by the importers of gray Portland cement, pursuant to CMO No. 38-2001 dated December 10, 2001.

For compliance.

  
ANTONIO M. BERNARDO  
Commissioner



CMO-19-02

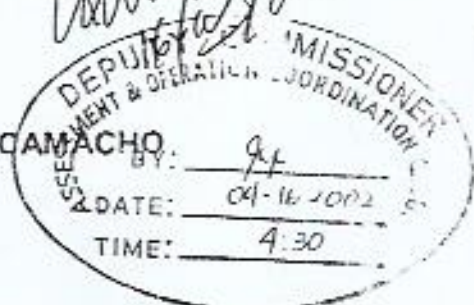
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URGENT

15 April 2002

Atty. ANTONIO M. BERNARDO  
Commissioner  
Bureau of Customs  
Port Area, Manila

*Dep Com Lerson*  
*PLC - prepare CMO ASAP*  
*[Signature]*

Thru : Secretary JOSE ISIDRO N. CAMACHO  
Department of Finance



Dear Commissioner Bernardo:

We are furnishing you a copy of the Decision issued by the Department of Trade and Industry (DTI) denying the application for safeguard measures filed by PHILCEMCOR against the importation of gray Portland cement from various countries (Safeguard Case No. 02-2001)

The decision takes into consideration the Tariff Commission's Formal Investigation Report which recommended that no definitive safeguard measure be imposed on the importation of gray Portland cement considering that the elements of serious injury and imminent threat of serious injury were not established.

Section 13 of RA 8800 provides that "in the event of a negative final determination, or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made: Provided, that the government shall not be liable for any interest on the amount returned."

In view thereof and consistent with the ten (10) day period prescribed by law, we herewith formally request the Bureau of Customs (BOC) to issue the relevant Memorandum Order. // ✓

With all my best wishes for you and our country.

Sincerely,  
*[Signature]*  
MAR Roxas  
Secretary



**IN THE MATTER OF THE APPLICATION FOR  
GENERAL SAFEGUARD MEASURES AGAINST  
THE IMPORTATION OF GRAY PORTLAND CEMENT  
FROM VARIOUS COUNTRIES  
(SAFEGUARD CASE NO. 02-2001)**

Philippine Cement Manufacturers Corp. (PHILCEMCOR)  
Protestant

X-----X

**DECISION**

On 22 May 2001, the Department of Trade and Industry (DTI) accepted a properly documented application from the Philippine Cement Manufacturers Corporation (PHILCEMCOR) alleging that cement 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 (R.A.) 8800, otherwise known as the "Safeguard Measures Act." The application sought the imposition of provisional and definitive general safeguard measures on imports of cement.

The DTI made a positive preliminary determination on the application and in accordance with Section 8 of RA 8800, found that the "critical circumstances" existed which justified the imposition of provisional measures equivalent to ₱20.60 per 40 kg. bag not exceeding 200 days from the date of issuance by the Bureau of Customs (BOC) of the implementing Customs Memorandum Order (CMO). The BOC issued CMO No. 38-2001 on 10 December 2001 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 14 March 2002, DTI received the Tariff Commission's Formal Investigation Report on the said application.

The Tariff Commission found that:

1. The circumstances provided in Article XIX of GATT 1994 need not be demonstrated since the product under consideration (gray Portland cement) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (RA 8800) and the terms and conditions of the Agreement on Safeguards.



2. The collective output of the twelve (12) applicant companies constitutes a major proportion of the total domestic production of gray Portland cement and blended Portland cement.
3. Locally produced gray Portland cement and blended Portland cement (pozzolan) are "like" to imported gray Portland cement.
4. Gray Portland cement is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, starting in 2000. The increase in volume of imports is recent, sudden, sharp and significant.
5. The industry has not suffered and is not suffering significant overall impairment in its condition, i.e. serious injury.
6. There is no threat of serious injury that is imminent from imports of gray Portland cement.
7. Causation has become moot and academic in view of the negative determination of the elements of serious injury and imminent threat of serious injury.

Concluding that the elements of serious injury and imminent threat of serious injury not having been established, the Commission recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.

After reviewing the Commission's report, the DTI has determined that it disagrees with the Commission's conclusions, specifically its failure to determine serious injury to the local cement industry and that a surge of imports was the cause thereof.

In view of this disagreement, the DTI sought to clarify the extent of the DTI Secretary's scope of options in acting on the Commission's recommendations. Thus, the DTI requested an opinion from the Department of Justice. The Department of Justice opined that the DTI is bound by the findings of the Tariff Commission:

*"The categorical and prohibitory language of the penultimate paragraph of section 13 (re negative final determination of the Commission), to our mind, precludes a review by the Secretary of a negative finding of the Commission.*

The DTI has no alternative but to abide by the Commission's recommendations.

IN VIEW OF THE FOREGOING, and in accordance with Section 13 of RA 8800 which states:

*"In the event of a negative final determination, or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final*

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5.

**decision has been made: Provided, that the government shall not be liable for any interest on the amount to be returned. The Secretary shall not accept for consideration another petition from the same industry, with respect to the same imports of the product under consideration within one (1) year after the date of rendering such a decision."**

The DTI hereby issues the following:

The application for safeguard measures against the importation of gray Portland cement filed by PHILCEMCOR (Case No. 02-2001) is hereby denied.

Let this Order be published in two (2) newspapers of general circulation.

SO ORDERED.

05 April 2002

  
MAR ROXAS  
Secretary

asf.