

Department Administrative Order No. **23-01**
Series of 2023

**IN THE MATTER OF THE IMPOSITION OF
ANTI-DUMPING MEASURE AGAINST
IMPORTATIONS OF ORDINARY PORTLAND
CEMENT TYPE 1 (AHTN 2017 SUBHEADING
NO. 2523.29.90) AND BLENDED CEMENT
TYPE 1P (AHTN 2017 SUBHEADING NO.
2523.90.00) FROM VIET NAM**

X-----X

RESOLUTION

WHEREAS, on 11 October 2022, the Department of Trade and Industry (DTI) received the Tariff Commission's (Commission) Final Report on the Formal Investigation on the Application for Imposition of Definitive Anti-Dumping Duty Against Importations of Ordinary Portland Cement Type 1 (AHTN 2017 Subheading No. 2523.29.90) and Blended Cement Type 1P (AHTN 2017 Subheading No. 2523.90.00) from Viet Nam;

WHEREAS, upon receipt of the said Final Report, the DTI issued DAO No. 22-17 on 16 December 2022 with updated dumping margin covering the period 01 July 2019 to 31 December 2021;

WHEREAS, following the issuance of DTI-DAO No. 22-17, Motions for Reconsideration (MRs) were filed by certain exporters and importers to which comments were submitted by the affected parties;

WHEREAS, on 19 January 2023, DTI endorsed the MRs to the Commission including the initial Comments and on 27 January 2023, DTI endorsed the final additional Comments to the MRs;

WHEREAS, on 13 February 2023, the DTI received the Commission's Report on the resolution of the Motions for Reconsideration on the Imposition of Definitive Anti-Dumping Duty Against Importations of Ordinary Portland Cement Type 1 (AHTN 2017 Subheading No. 2523.29.90) and Blended Cement Type 1P (AHTN 2017 Subheading No. 2523.90.00) from Viet Nam, filed against DTI DAO No. 22-17 and the Commission Final Report;

WHEREAS, the Commission, in accordance with Section 20 of the Implementing Rules and Regulations (IRRs) of RA No. 8752 (Anti-Dumping Act of 1999) and Section 27 of Commission Order No. 2021-01 (TC Revised Rules of Procedure for the Conduct of Formal Investigation) resolved the issues raised by the Movants as follows:

OFFICE OF THE SECRETARY

“Resolution of Issues Raised Against the TC Final Report

x x x

It bears stressing that in so far as the TC Final Report is concerned, there is nothing novel in the above issues raised by the Movants in their respective Motions for reconsideration.

In the case of *Ortigas & Company Limited Partnership v. Hon. Velasco*¹, the High Court ruled:

“The filing of a motion for reconsideration xxx does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant xxx”

Applying the foregoing principle, and considering that the points raised against the TC Final Report are mere repetitions of comments/position papers earlier submitted and were already exhaustively passed upon and duly resolved during the evaluation of the instant investigation, the TC finds no reasonable justification to reverse or modify the conclusions reached in its Final Determination/Decision (Chapter 10.2) of its Final Report.”

Resolution of issues Raised Against the DTI-DAO 22-17

x x x

The TC emphasizes that these issues are not related to the Final Determination/Decision as provided for in its Final Report.

x x x

These are questions of law, which may only be resolved by a forum other than that of the Tariff Commission.”

WHEREAS, the Commission concluded as follows:

“Given the extensive evaluation and analysis made by the TC in deriving its findings, and considering that the arguments raised by the Movants are mere rehash of previously submitted arguments, the TC finds no cogent reason to deviate from its Final Determination/Decision as stated *in toto* in Chapter 10.2 of its Final Report dated 11 October 2022. x x x”

WHEREAS, while we respect the recommendation of the Commission, the DTI in DAO No. 22-17, updated the period of investigation (POI) and recalculated the dumping margin considering that the Commission’s period of injury determination is from 2017-2021. Thus, DTI adjusted the normal value and export price.

WHEREAS, Section 20(e) of the IRR of RA 8752 provides that “x x x, The Secretary shall issue a formal resolution on the motion for reconsideration based on the report of the Commission.”

¹ G.R. No. 109645, 04 March 1996, *Narvasa, J.*

WHEREFORE, IN VIEW THEREOF, the DTI hereby resolves the MR as follows:

1. Definitive anti-dumping duties shall be imposed for a period of five (5) years on imports of Ordinary Portland Cement Type 1 (AHTN 2017/2022 Subheading No. 2523.29.90) and Blended Cement Type 1P (AHTN 2017/2022 Subheading No. 2523.90.00) originating from Viet Nam in accordance with Annex "A."

The "All Others' Rates" shall be applied to foreign exporters who (1) did not make themselves known to the Commission, (2) did not cooperate sufficiently during the formal investigation, and (3) new foreign exporters who have not exported subject articles to the Philippines during the POI.

However, for those exporters or producers in Viet Nam who have not exported Type 1 and Type 1P cement to the Philippines during the POI (2017-2021), their individual margins of dumping may be determined following a review pursuant to Section 3 (n) of RA 8752 and elaborated under Section 18 (g) of the IRR (New Shippers Review). The said review shall be initiated and carried out on an accelerated basis, provided that such exporters or producers can show that they are not related to any of the exporters or producers in Viet Nam who are subject to anti-dumping duties on their aforementioned product. An application must be submitted to the Commission in writing containing a description of the foreign exporter's product and the basis of the request.

On the other hand, it should be noted that pursuant to Section 3(o) of RA 8752 and 19 (c) of its IRR provides that an interim review may be conducted to review the continued imposition of the anti-dumping duty.

2. Investigation on exporters determined to have a de minimis and/or negative dumping margins under Annex "B," is hereby terminated.

With the termination of investigation on the exporters listed under Annex "B," no anti-dumping duty, even at zero (0%) rate, shall be imposed on their exports of subject articles to the Philippines. The "All Others' Rates" shall likewise, not be applied to them. The said identified exporters are thus, excluded from the scope of the instant Department Administrative Order imposing the anti-dumping duties.

3. Accordingly, cash bonds deposited/paid by exporters (Annex "C") that are listed under Annex "B," but with previously determined provisional anti-dumping duties under DTI DAO No. 21-07, Series of 2021, and BOC Customs Memorandum Order No. 38-2021, shall be returned immediately upon the effectivity of the instant Department Administrative Order.

4. Finally, with respect to the cash bond deposited/paid by Vicem Hai Phong Cement Company Limited as a provisional anti-dumping duty which is in excess of the anti-dumping duty assessed, the remainder or the amount of US\$ 0.27/MT on its total exports from the effectivity of CMO No. 38-2021 until expiry on 20 April 2022 shall likewise, be returned immediately upon the effectivity of this Department Administrative Order.

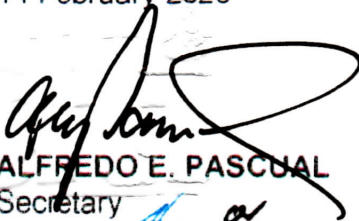
This Resolution can be accessed at the DTI website: <https://bit.ly/adm-portland-cement>.

This Resolution supersedes DTI-DAO No. 22-17, series of 2022, and shall take effect upon the issuance of the relevant Customs Memorandum Order by the Bureau of Customs.

Let this Resolution be published in two (2) newspapers of general circulation and let individual notices be sent to all interested parties including the country member concerned.

SO RESOLVED.

14 February 2023


ALFREDO E. PASCUAL
Secretary *4 a*

ANNEX "A"

DEFINITIVE DUMPING MARGINS (BY CEMENT TYPE)

No.	Company Name	Cement Type	Dumping Margin	
			In Absolute Terms (USD/MT)	As a Percentage of Export Price (%)
Producer-Exporter				
1	Ha Long Cement Joint Stock Company	1	3.85	9.48
2	Long Son Company Limited	1	3.86	9.51
		1P	4.18	10.67
3	Thang Long Cement Joint Stock Co.	1	3.27	7.94
		1P	1.43	3.41
4	Vicem Hai Phong Cement Company Ltd.	1	0.99	2.33
5	Vicem Tam Diep Cement One Member Co. Ltd.	1P	2.16	6.19
6	Vissai Ninh Binh JSC	1	4.78	12.06
Trader-Exporter				
7	Nam Anh Trade and Export Joint Stock Company	1	3.98	10.99
		1P	4.91	15.29
8	Nam Phuong Imex Import & Export	1	4.24	11.58
9	NCL Trading Joint Stock Company	1	1.11	2.76
10	Viet HP Import Export and Investment Joint Stock Co.	1	8.33	23.07
		1P	8.20	23.33
All Others' Rates*		1	-	23.07
		1P	-	23.33

**The "All Others' Rate" shall be applied to foreign exporters who (1) did not make themselves known to the Commission, (2) did not cooperate sufficiently during the formal investigation, and (3) new foreign exporters who have not exported subject articles to the Philippines during the POI.*

ANNEX “B”

EXPORTERS DETERMINED TO HAVE A *DE MINIMIS* AND/OR NEGATIVE DUMPING MARGINS (BY CEMENT TYPE)

No.	Name of Exporter	Dumping Margin
Ordinary Portland Cement Type 1		
1	Campha Cement Joint Stock Company	Negative
2	Chinon Cement Corporation	Negative
3	Omanco Material Viet Nam Company Limited	Negative
4	Vicem Tam Diep Cement One Member Co. Ltd.	De Minimis
5	Viet Nam Trading Services and Import Export Limited Company	Negative
Blended Cement Type 1P		
1	Chinon Cement Corporation	Negative
2	Ha Long Cement Joint Stock Company	Negative
3	Nam Phuong Imex Import & Export	Negative
4	NCL Trading Joint Stock Company	Negative
5	Omanco Material Viet Nam Company Limited	<i>De Minimis</i>
6	Viet Nam Trading Services and Import Export Limited Company	Negative
7	Vissai Ninh Binh JSC	Negative

ANNEX "C"

EXPORTERS WITH CASH BONDS TO BE RETURNED (BY CEMENT TYPE)

No.	Name of Exporters	Cement Type	Dumping Margin	
			Provisional Dumping Margin (Amount of Cash Bond) USD/MT	As a Percentage of Export Price (%)
1	Campha Cement Joint Stock Company	1	1.31	3.35
2	Chinfon Cement Corporation	1P	11.07	24.31
3	Nam Phuong Imex Import & Export	1P	5.98	17.30
4	Omanco Material Viet Nam Company Limited	1P	1.75	5.46
5	Viet Nam Trading Service and Import Export Limited Company	1	1.05	2.67

Tariff Commission's Report on the Motions for Reconsideration, citing Chapter 10.2 of its final report indicating the above exporters determined to have de minimis and or negative dumping margins by cement type vis-à-vis provisional measures.