REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

FINAL REPORT

FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE PELLETS AND GRANULES (AHTN 2017 CODE 3901.20.00)

Investigation No. SG-2021-OC-HDPE

Non-Confidential Version

(FOR IMPORTERS/EXPORTERS/OTHER PARTIES)

27 June 2022

4th Floor, West Insula Condominium, 135 West Avenue, Quezon City, 1105 Philippines
Tel. Nos.: (632) 8926-8731 / (632) 8928-8419 / (632) 8936-3315 / (632) 8936-3318 • Telefax Number: (632) 8921-7960
Website: tariffcommission.gov.ph • Philippine Tariff Finder: finder.tariffcommission.gov.ph
Email Address: TC.Assist@mail.tariffcommission.gov.ph

Table of Contents

Acronyms

AANZFTA	ASEAN – Australia – New Zealand Free Trade Agreement
ACFTA	ASEAN – China Free Trade Agreement
AHKFTA	ASEAN – Hong Kong, China Free Trade Agreement
AE	United Arab Emirates
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN – India Free Trade Agreement
AJCEPA	ASEAN – Japan Comprehensive Economic Partnership Agreement
AKFTA	ASEAN – Korea Free Trade Agreement
APMP	Association of Petrochemical Manufacturers of the Philippines
ASEAN	Association of Southeast Asian Nations
ASPBI	Annual Survey of Philippine Business and Industry
atm	atmosphere
ATIGA	ASEAN Trade in Goods Agreement
BIS	Bureau of Import Services
BOC	Bureau of Customs
CAGR	Compound Annual Growth Rate
CN	China
CPEWCMI	Chamber of Philippine Electric Wire and Cable Manufacturers, Inc.
cm	centimeter
Commission / TC	Tariff Commission
CSTR	Continuous Stirred Tank Reactor
DAO	Department Administrative Order
DTI	Department of Trade and Industry
ESCR	Environmental Stress Crack Resistance
FTA	Free Trade Agreement
g	gram
GAIA	Global Alliance for Incinerator Alternatives
GATT	General Agreement on Tariffs and Trade
HDPE	High-Density Polyethylene
HIC	Household and Industrial Chemicals
HS	Harmonized Commodity Description and Coding System
IED	Import Entry Declaration
ID	Indonesia
IRRs	Implementing Rules and Regulations
JGSPC	JG Summit Petrochemical Corporation
JGSOC	JG Summit Olefins Corporation
JP	Japan
kg	kilogram
kTA	kilotons per annum
LGU	Local Government Unit
LDPE	Low-Density Polyethylene
LLDPE	Linear Low-Density Polyethylene
LPE	Linear Polyethylene
m	meter
MFN	Most Favoured Nation
MI	Melt Index
min	minute
MPa	megapascal
MT	Metric Ton
MST	Microsoft Teams
MWD	Molecular Weight Distribution

MY	Malaysia
NPCAC	NPC Alliance Corporation
NTM	Non-Tariff Measure
OCOM	Office of the Commissioner of Customs
PE	Polyethylene
PET	Polyethylene terephthalate
PH – EFTA FTA	Philippines – European Free Trade Association Free Trade Agreement
PJEPA	Philippines – Japan Economic Partnership Agreement
POI	Period of Investigation
PP	Polypropylene
PS	Polystyrene
PPIA	Philippine Plastics Industry Association, Inc.
PSA	Philippine Statistics Authority
PVC	Polyvinyl Chloride
QA	Qatar
RA	Republic Act
SA	Saudi Arabia
SG	Singapore
TECO	Taipei Economic and Cultural Office in the Philippines
TH	Thailand
TRAINS	Trade Analysis Information System
TW	Taiwan
UNCTAD	United Nations Conference on Trade and Development
US	United States of America
USD	US Dollar
UV	Ultraviolet
WTO	World Trade Organization

1. TERMS OF REFERENCE

1.1. Preliminary Investigation by the Department of Trade and Industry

1.1.1. Initiation

On 09 March 2020, the Philippine polyethylene industry, represented by JG Summit Petrochemical Corporation (JGSPC), filed with the Department of Trade and Industry (DTI) an application for the imposition of safeguard measures against importations of High-Density Polyethylene (HDPE) pellets and granules from various countries pursuant to Republic Act (RA) No. 8800, otherwise known as the "Safeguard Measures Act". JGSPC alleged that "*serious injury to the domestic industry was caused by the increased volume of HDPE which is classified under ASEAN Harmonized Tariff Nomenclature (AHTN) Code 3901.20.00*".[1]

In its Initiation Report dated 28 August 2020, the DTI found "*prima facie evidence to initiate and conduct a preliminary safeguard investigation to determine whether HDPE pellets and granules are being imported into the Philippines in increased quantities and is causing serious injury to the domestic industry*".

In a letter dated 28 August 2020 and received by the Tariff Commission (TC or Commission) on 04 September 2020, the Secretary of Trade and Industry advised the Commission of said initiation of investigation.

1.1.2. Preliminary Determination

In its preliminary determination, the DTI found that "*a causal link exists between increased imports of the product under consideration and serious injury to the domestic industry".*[2]

The products covered by the preliminary investigation was limited to HDPE pellets and granules classified under AHTN 2017 Code 3901.20.00. Excluded from the investigation were the following HDPE products: "*polyethylene wax, ethylene acrylic acid copolymer, polypropylene, LDPE, special wires and cable grades, rotational molding grades in powder form, polyethylene terephthalate or PET resin used for potable water bottles*".

The period of investigation was 2015 to 2019. Updated data until September 2020 were also presented and taken into consideration.

[1] DTI. (2020). *Report on the Initiation of the Preliminary Investigation on the Application for Safeguard Measures on the importation of High-Density Polyethylene (HDPE) from various countries* (SGM Case No. SG05-2020).
[2] DTI. (2021). *Report on the Preliminary Affirmative Findings on the Application for Safeguard Measures on the Importation of High-Density Polyethylene (HDPE) pellets and granules from Various Countries (SGM Case No. SG05-2020)*.

1.1.3. Imposition of Provisional Measure

In its preliminary determination, the DTI found that *"the existence of critical circumstances was not established to warrant the imposition of a provisional safeguard measure".*[3]

Hence, in DTI Department Administrative Order (DAO) No. 21-05 issued on 17 September 2021, it was merely stated that "*imports originating from ASEAN member states shall be governed by the provisions of Articles 11 and 23 of the ASEAN Trade in Goods Agreement (ATIGA)*." Said Order was published in the *Manila Standard* and *Business Mirror* on 22 September 2021.

On 12 October 2021, the Office of the Commissioner (OCOM) of the Bureau of Customs (BOC) issued Memorandum No. 148-2021 making reference to the "*DTI's positive findings in the preliminary determination conducted on the petitions for general safeguard measures filed by JG Summit Petrochemical Corporation on HDPE pellets and granules*" and thus enjoining relevant BOC personnel to "*ensure the lawful collection of duties and taxes for HDPE under AHTN Code 3901.20.00*" for the purpose of "*prevent(ing) serious injury to the domestic industry*".

1.2. Endorsement of Case to the Tariff Commission

In a letter dated 20 September 2021 and received by the Commission on 24 September 2021, the Secretary of Trade and Industry requested the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure on importations of HDPE pellets and granules from various countries pursuant to Section 9 of RA No. 8800 and its Implementing Rules and Regulations (IRRs).

The Secretary endorsed to the Commission a copy of DTI-DAO No. 21-05 as well as the entire records of the case contained in the following folders:

Table 1.1. Case Records Received from the Department of Trade and Industry

Folder I	DTI Preliminary Report
Folder II	Importer's Response to DTI-BIS Questionnaire
Folder III	Exporter's Response to DTI-BIS Questionnaire
Folder IV	Other Correspondences

Following receipt of the request for formal investigation from the Secretary of Trade and Industry and the complete case records, the Commission commenced its formal investigation on 30 September 2021.

[3] *Ibid.*

It was mentioned earlier that the Philippine polyethylene industry is represented by JGSPC in the safeguard measure application. However, in a letter dated 14 February 2022, received by the Commission on 17 February 2022, JGSPC manifested that the Securities and Exchange Commission (SEC) had approved its merger with JG Summit Olefins Corporation (JGSOC), with JGSOC as the surviving entity effective as of 01 January 2022. Thus, by virtue of this merger, JGSOC now assumes the role of the Petitioner for this instant case, and shall henceforth be referred to as such in this Final Report.

2. SAFEGUARD ACTION

2.1 The Safeguard Measures Act of 2000

RA No. 8800, or the "Safeguard Measures Act", provides for general safeguard measures to afford relief to domestic industries suffering from serious injury or the threat thereof as a result of increased imports.

Section 5 of RA No. 8800 states:

"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; however, 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."

Section 15 provides:

"The duration of the period of an action taken under the General Safeguard Provisions of this Act shall not exceed four (4) years. Such period shall include the period, if any, in which provisional safeguard relief under Section 8 was in effect.

The effective period of any safeguard measure, including any extensions thereof under Section 19 may not, in the aggregate, exceed ten (10) years."

Under the Safeguard Measures Act, a general safeguard investigation has several stages as follows:

a. Initiation of Action Involving General Safeguard Measures

Section 6 provides:

"Any person, whether natural or juridical, belonging to or representing a domestic industry may file with the Secretary a verified petition requesting that action be taken to remedy the serious injury or prevent the threat thereof to the domestic industry caused by increased imports of the product under consideration.

In the absence of such a petition, the Secretary may, motu proprio, initiate a preliminary safeguard investigation if there is evidence that increased imports of the product under consideration are a substantial

cause of, or are threatening to substantially cause, serious injury to the domestic industry."

b. Preliminary Determination

Section 7 provides:

"Not later than thirty (30) days from receipt of the petition or a motu proprio initiation of the preliminary safeguard investigation, The Secretary shall on the basis of the evidence and submission of the interested parties, make a preliminary determination that increased imports of the product under consideration are a substantial cause of or threaten to substantially cause, serious injury to the domestic industry.

Upon a positive preliminary determination that increased importation of the product under consideration is a substantial cause of, or threatens to substantially cause, serious injury to the domestic industry, the Secretary shall, without delay, transmit its records to the Commission for immediate formal investigation."

c. Formal Investigation

The Tariff Commission 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 into the Philippines in increased quantities (whether absolute or relative to domestic production);

c. the presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product; and

d. 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.

Commission Order No. 2021-01, or the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act. No. 8800,* governs the procedure for the conduct of formal investigations on the imposition of safeguard measure before the Commission.

Section 3 thereof provides:

***"Section 3. Nature of the Investigation. The investigation of the Commission is fact-finding and administrative nature. It shall be conducted in a summary manner**. However, the Commission may require interested parties to formally present evidence for the purposes*

of determining and clarifying factual matters that are relevant in the conduct of the investigation.

The Commission may, in the course of its investigation, issue and apply procedural directions to secure just and expeditious determination of matters in issue." (Emphasis and underscoring ours)

The Commission shall conclude its formal investigation and submit a report of its findings and conclusions to the DTI Secretary or DA Secretary within 120 calendar days from receipt of the request from the Secretary, except when the Secretary certifies the same as urgent, in which case the Commission shall complete the investigation and submit the report within 60 calendar days.

Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive general safeguard measure.

The Commission also undertakes the following post-formal investigation activities:

- monitoring of the domestic industry's progress and specific efforts to bring about a positive adjustment to import competition;
- conduct of investigation on requests for extension and re-application of safeguard measures;
- conduct of investigation on requests for reduction, modification and termination of safeguard action; and
- after the termination of the safeguard measure, evaluation of the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition.

d. Decision

Within 15 calendar days from receipt of the final report of the Commission, the DTI or DA Secretary shall make a decision, taking into consideration the general safeguard measures recommended by the Commission.

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 as determined by him.

In the event of a negative final determination by the Commission, 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 safeguard measure within 10 days from the date the final decision had 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 year after the date of rendering such a decision.

2.2 The World Trade Organization (WTO) Agreement on Safeguards

Article XIX (Emergency Action on Imports of Particular Products) of the General Agreement on Tariffs and Trade (GATT) 1994 provides that:

> *"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 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."*

The Uruguay Round of Multilateral Trade Negotiations resulted in a new Agreement on Safeguards which interprets and elaborates Article XIX.

Article 2 of the Agreement provides that:

> *"A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."*

A major feature of the Safeguards Agreement is its proscription of a range of negotiated trade-restricting arrangements, including voluntary export restraints.

Further, Article 7 of the same Agreement stipulates that:

> *"1. A Member shall apply safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.*
>
> *2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed."*

In order that a substantially equivalent level of WTO concessions and other obligations to affected WTO Members is maintained, a country imposing safeguard measures may offer "adequate means of trade compensation" to affected exporting countries. If an agreement is not reached on such compensation, said exporting countries are given an opportunity to suspend "substantially equivalent" concessions or obligations under General Agreement on Tariffs and Trade (GATT) 1994 after the measures have been in place for three years, or immediately if the safeguard action is taken against imports which have not increased in absolute terms and the measure does not conform to the provisions of the Agreement on Safeguards.

Disputes arising from the application of safeguard measures are subject to WTO dispute settlement procedures.

Safeguard measures, if imposed, must be liberalized progressively. A measure extended shall not be more restrictive than it was at the end of the initial period and should continue to be liberalized.

Article XIX of GATT 1994 stipulates that an emergency action is permissible only where the increase in imports (and the consequent serious injury or threat thereof) is due to unforeseen developments and the effect of GATT-WTO obligations, including tariff concessions. The Agreement on Safeguards, when it provides for the conditions for the application of safeguard measures (*i.e.*, increased importation, serious injury or threat thereof, and causal link) is, however, silent on the circumstances prescribed by Article XIX.

In relation to the current inquiry, the circumstances provided in Article XIX of GATT 1994 need not be demonstrated for the imported products under consideration for the reason that HDPE pellets and granules are not subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, the current inquiry is governed by the national legislation (RA No. 8800) and the terms and conditions of the Agreement on Safeguards.

2.3 Free Trade Agreements (FTAs)

a. Association of Southeast Asian Nations Trade in Goods Agreement (ATIGA)

Article 86 (*Safeguard Measures*), Chapter 9 (*Trade Remedy Measures*) of the ATIGA provides that:

> *"Each Member State which is a WTO member retains its rights and obligations under Article XIX of GATT 1994, and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture."*

Article 11 (*Notification Procedures*), Chapter 1 (*General Provisions*) provides, among others:

> *"1. Unless otherwise provided in this Agreement, Member States shall notify any action or measure that they intend to take:*
>
> *(a) which may nullify or impair any benefit to other Member States, directly or indirectly under this Agreement; or*
>
> *(b) when the action or measure may impede the attainment of any objective of this Agreement.*
>
> *2. x x x*
>
> *3. A Member State shall make a notification to Senior Economic Officials Meeting (SEOM) and the ASEAN Secretariat before effecting such action or measure referred to in paragraph 1 of this Article. Unless otherwise provided in this Agreement, notification shall be made at least sixty (60) days before such an action or measure is to take effect. A Member State proposing to apply an action or measure shall provide adequate opportunity for prior discussion with those Member States having an interest in the action or measure concerned."*

Considering that HDPE pellets and granules are covered by the ATIGA, notice of any safeguard action shall be given to the Senior Economic Officials Meeting (SEOM) and the ASEAN Secretariat before effecting any such action or measure and adequate opportunity for consultation/s shall be accorded the governments of the affected ASEAN Member States.

b. ASEAN – China Free Trade Agreement (ACFTA)

Article 9(1) on Safeguard Measures of the Agreement on Trade in Goods under the ACFTA Agreement provides, that *"Each Party, which is a WTO member, retains its rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards."* Furthermore, paragraph 11 of Article 9 states that *"When applying ACFTA safeguard measures, a Party shall not have simultaneous recourse to the WTO safeguard measures referred to in paragraph 1."*

c. ASEAN – Korea Free Trade Agreement (AKFTA)

Paragraph 1 of Article 9 (*Safeguard Measures*) of the Agreement on Trade in Goods under the AKFTA Agreement states:

> *"Each Party which is a WTO member retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. Actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement."*

In addition, paragraph 10 of said Article provides:

"Notwithstanding the provisions of this Article, no Party may impose an ASEAN-Korea FTA safeguard measure on a good to which actions are being applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards. When a Party intends to apply, pursuant to Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, an action on a good to which ASEAN-Korea FTA safeguard measure is being applied, it shall terminate the ASEAN-Korea FTA safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards."

d. ASEAN – Australia – New Zealand Free Trade Agreement (AANZFTA)

Article 9 (*Relationship to the WTO Agreement*), Chapter 7 (*Safeguard Measures*) of the AANZFTA Agreement provides, as follows:

"1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.

2. A party shall not apply a safeguard measure or provisional measure, as provided in Article 6 (Scope and Duration of Transitional Safeguard Measures) or Article 7 (Provisional Safeguard Measures) on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement, nor shall a Party continue to maintain a safeguard measure or provisional measure on a good that becomes subject to a measure that the party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement.

3. A party considering the imposition of a global safeguard measure on an originating good of another Party or Parties shall initiate consultations with that Party or Parties as far in advance of taking such measure as practicable."

e. ASEAN – Japan Comprehensive Economic Partnership Agreement (AJCEPA)

Paragraph 1 of Article 20 (*Safeguard Measures*) provides:

"1. A Party which is a member of the World Trade Organization may apply a safeguard measure to an originating good of the other Parties in accordance with Article XIX of GATT 1994 and the

Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Safeguards"), or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Agriculture"). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not be subject to Chapter 9 of this Agreement."

In addition, paragraph 9(a) of said Article states:

"9(a) A Party applying a safeguard measure in connection with an importation of an originating good of another Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply the AJCEP safeguard measure to that importation."

f. Philippines – Japan Economic Partnership Agreement (PJEPA)

Paragraph 11 of Article 22 (*Emergency Measures*) under PJEPA provides:

"11. Each Party may take safeguard measures to the originating goods in accordance with:

(a) Article XIX of the GATT 1994 and the Agreement on Safeguards, provided that the originating good is the subject of the concession of that Party under the GATT 1994 and, by such a safeguard measure, that Party suspends the obligation of that Party under the GATT 1994 or withdraws or modifies the concession of that Party under the GATT 1994; or

(b) Article 5 of the Agreement on Agriculture Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "the Agreement on Agriculture"), provided that the originating good is the subject of the concession to that Party under the GATT 1994 and, by such a safeguard measure, that Party imposes the additional duty under Article 5 of the Agreement on Agriculture."

g. ASEAN – India Free Trade Agreement (AIFTA)

Paragraph 1 of Article 10 (*Safeguard Measures*) provides:

"1. Each Party, which is a WTO Member, retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (Agreement on Safeguards) and Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (Agreement on Agriculture). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on

Safeguards or Article 5 of the Agreement on Agriculture shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement (ASEAN-India DSM Agreement).”

Paragraph 11 of said Article further states:

“11. Notwithstanding the provisions of this Article, no Party may impose an AIFTA safeguard measure on a good to which actions are being applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards on Article 5 of the Agreement on Agriculture. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture, an action on a good to which an AIFTA safeguard measure is being applied, it shall determine the AIFTA safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.”

h. Philippines – European Free Trade Association Free Trade Agreement (PH – EFTA FTA)

Article 2.14 (*Global Safeguard Measures*) of PH-EFTA FTA states that:

“The rights and obligations of a Party in respect of global safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. In taking measures under these WTO provisions, a Party shall, in accordance with WTO rules, exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury.”

Further, paragraphs 1 and 2 of Article 2.15 (*Transitional Safeguard Measures*) of the same agreement states that:

“1. Where, as a direct result of the reduction or elimination of an import duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take transitional safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to paragraphs 2 to 14.

2. Transitional safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to

cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards."

i. ASEAN – Hong Kong, China Free Trade Agreement (AHKFTA)

Article 1 of Chapter 7 of the AHKFTA states:

"Each Party affirms its rights and obligations with respect to another Party under Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, Article XIX of GATT 1994, and the Agreement on Safeguards in Annex 1A to the WTO Agreement."

3. THE FORMAL INVESTIGATION

Section 9 of RA No. 8800 provides the legal basis for the Commission to conduct a formal investigation on the merits of imposing a definitive safeguard measure against importations of HDPE pellets and granules from various countries. The provision reads:

> *"Section 9. Formal Investigation. - Within five (5) working days from receipt of the request from the Secretary, the Commission shall publish the notice of the commencement of the investigation, and public hearings which shall afford interested parties and consumers an opportunity to be present, or to present evidence, to respond to the presentation of other parties and consumers and otherwise be heard. Evidence and positions with respect to the importation of the subject article shall be submitted to the Commission within fifteen (15) days after the initiation of the investigation by the Commission.*
>
> *The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) calendar days from receipt of the referral by the Secretary, except when the Secretary certifies that the same is urgent, in which case the Commission shall complete the investigation and submit the report to the Secretary within sixty (60) days."*

3.1. Period of Investigation

As previously mentioned, the period of investigation (POI) of the DTI was 2015 to 2019, with updated data up to September 2020 also taken into consideration.[4]

For purposes of the Commission's formal investigation, and in accordance with WTO-requirements, the POI is from 2015 to June 2021, i.e., the period for which the latest data on importations is available. The determination of the POI is discussed more fully in Chapter 7 of this Report.

3.2. Notifications

The Commission commenced its formal investigation with the issuance of a *Notice of Formal Investigation and Preliminary Conference* on 30 September 2021 (*Annex A*). Said *Notice* was posted on the Commission's website *(http://www.tariffcommission.gov.ph*) and published in *The Manila Times* and *Manila Standard* on the same date (*Annex B*). Individual notices were likewise sent *via* email to all parties on record (*Annex C*).

[4] Ibid.

3.3. Conduct of Preliminary Conference

Held *via* videoconference through the Microsoft Teams (MST) platform on 07 October 2021, the Preliminary Conference apprised parties on the adoption of Commission Order 2021-02 on the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8800*; timelines; nature of investigation; application of the rules of court; appearance of counsel and parties; inclusion or exclusion of parties; formal requirements; modes of service/notice; treatment of confidential information; maintenance of public file; conduct of on-site investigation/data verification; submissions (i.e., position papers/memoranda, adjustment plan, affidavits of witnesses, additional issues for the public hearing, comments to Staff Report); issuance of Staff Report; conduct of public hearing; termination of the investigation; and other issues raised.

In attendance during the Preliminary Conference were representatives/counsels of petitioner JGSOC and other parties including DTI-Bureau of Import Services (BIS), Philippine Plastics Industry Association, Inc. (PPIA), Chamber of Philippine Electric Wire and Cable Manufacturers, Inc.; Governments of Saudi Arabia, Indonesia, Thailand, Viet Nam, United Arab Emirates, Qatar, and Malaysia; Embassies of the Republic of Korea, Indonesia, and Mexico; and the Taipei Economic and Cultural Office in the Philippines (TECO).

Matters taken up and agreed upon by the parties during the Preliminary Conference were contained in an *Order of Preliminary Conference* issued by the Commission on 12 October 2021 (*Annex D*). Posted on the Commission's website on the same date, the Order was provided *via* email to all parties that attended said Conference.

3.4. Ocular Inspection/Data Verification/Meetings

As provided in its *Order of Preliminary Conference*, the Commission will conduct on-site investigations, to include ocular inspections and visits, to verify information provided or to obtain further details.

Due to the Covid-19 public health situation, the Commission opted to conduct online data verification activities. The following virtual verification/consultation meetings were undertaken:

Table 3.1. Schedule of Online Data Verification Activities

Party	Date of Consultation / Data Verification
JGSOC	10 November 2021 / 12 January 2022 / 21 January 2022 24 February 2022*
Chamber of Philippine Electric Wire and Cable Manufacturers, Inc. (CPEWCMI)	24 November 2021
Inca Philippines (Inca)	25 November 2021
Dow Chemical Pacific (Singapore) Private Limited (DCPS)	01 December 2021

Party	Date of Consultation / Data Verification
Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C. (Qatar Chemical)	01 December 2021
Dow Chemical Pacific Ltd. (DCPL)	02 December 2021
Sumitomo Chemical Asia Pte Ltd. (Sumitomo)	03 December 2021

**Onsite data verification*

3.5. Requests for Additional Information

Following the data verification activities/virtual consultations, the Commission requested relevant information (e.g., product specifications; manufacturing process; data on production, trade, financial indicators, and market shares) from JGSOC and other interested parties to gain a deeper understanding of the Philippine polyethylene industry (Table 3.2).

Table 3.2. Requests for Additional Information by TC

Party	Date of Initial TC Communication	Date of Initial Response
JGSOC	09 November 2021	02 December 2021
Philippine Plastics Industry Association, Inc. (PPIA)	09 November 2021	24 November 2021
CPEWCMI	24 November 2021	20 December 2021
Inca	26 November 2021	03 December 2022
Qatar Chemical	01 December 2021	17 December 2022
DCPS	03 December 2021	20 December 2021
DCPL	03 December 2021	20 December 2021
Sumitomo	06 December 2021	21 December 2021

3.6. Issuance of Staff Report

Prior to the scheduled public hearing, the Commission, on 08 February 2022, issued its Staff Report containing its preliminary findings on the determination of product comparability and volume of increased imports. All concerned parties were thereafter provided a copy of said Report and were given five working days from receipt thereof to submit their respective comments to the same. Some of the parties requested for extension of submission of comments.

The following parties submitted their comments to the Staff Report *(Annex E):*

Table 3.3. Parties with Comments to the Staff Report

Party	Date of Submission
Government of Indonesia	15 February 2022
DCPS	15 February 2022
DCPL	15 February 2022
Siam Polyethylene Company Limited (SPE)	15 February 2022
Department of Foreign Trade of Thailand	16 February 2022
GC Marketing Solutions Company Limited (GC Marketing)	18 February 2022

Party	Date of Submission
Sumitomo	22 February 2022[5]
Rabigh Refining and Petrochemical Corporation (Petro Rabigh)	22 February 2022[6]

3.7. Notice and Conduct of Public Hearing

Based on its preliminary findings in the Staff Report issued on 08 February 2022, the Commission issued a *Notice of Public Hearing* on 07 February 2022, setting the case for hearing on the aspects of serious injury or threat thereof and existence of causal relationship between increased imports and serious injury on 21 - 24 February and 28 February 2022, via Videoconferencing through the Microsoft Teams Platform.

The said *Notice* was published on *The Manila Times* and the *Manila Standard* on 08 February 2022 *(Annex F),* and was posted on the Commission's website on 07 February 2022. Individual notices were likewise sent to all interested parties through electronic mail *(Annex G).*

During the first day of the public hearing, the representatives and/or counsels of the following parties were present:

a. Petitioner, JGSOC;
b. Importers – Art Pack Philippines, Inca Philippines, and Pact Closure Systems;
c. Exporters – DCPL, DCPS, SPE, GC Marketing, Sumitomo, Petro Rabigh, Siam Synthetic Latex Company Limited (SSLC), Lotte Chemical Titan Corporation Sdn. Bhd. (Lotte), and PT Chandra Asri Petrochemical Co. Tbk
d. Associations – Association of Petrochemical Manufacturers of the Philippines, PPIA, CPEWCMI, and American Wire & Cable Company
e. Governments of Thailand, Indonesia, Republic of Korean, Turkey, and Taiwan
f. Other registered participants which included private companies, members of the media, and private individuals

Thereafter, the petitioner presented its evidence while the oppositors were given the opportunity to cross-examine, respond, and seek clarifications on the same. Said oppositors, including other interested parties, were likewise given the opportunity to be heard and submit their views before the Commission.

[5] In its *Letter* dated 15 February 2022, Sumitomo requested extension of time to submit its Comment until 22 February 2022, or an additional five working days from the original submission date of 15 February 2022. The said request was granted by the Commission through its *Letter* dated 18 February 2022.
[6] In its *Letter* dated 15 February 2022, Petro Rabigh requested extension of time to submit its Comment until 22 February 2022, or an additional five working days from the original submission date of 15 February 2022. The said request was granted by the Commission through its *Letter* dated 18 February 2022.

The petitioner was directed by the Commission to submit its Final Memorandum/Position Paper, along with the additional information required during the public hearing, on 03 March 2022. Meanwhile, the oppositors were given until 14 March 2022 to file their respective Final Memoranda/Position Papers. Having no further issues for discussion, the public hearing was terminated on 21 February 2022.

The List of Attendees during the public hearing can be found in *Annex H.*

3.8. Submission of Final Memoranda/Position Papers

The following parties filed their respective statements (made during the public hearing) and/or their Final Memoranda/Position Papers with the Commission *(Annex I):*

Table 3.4. Parties with Submissions After the Conduct of the Public Hearing

Party	Date of Submission
Government of Thailand – Department of Foreign Trade	22 February 2022
Government of Indonesia – Embassy of the Republic of Indonesia to the Philippines	04 March 2022
JGSOC	11 March 2022[7]
CPEWCMI	14 March 2022
GC Marketing	14 March 2022
Kingdom of Saudi Arabia – General Authority of Foreign Trade	21 March 2022
Sumitomo	21 March 2022[8]
Petro Rabigh	21 March 2022[9]
PPIA	21 March 2022[10]
DCPL	21 March 2022[11]
DCPS	21 March 2022[12]
SPE	21 March 2022[13]

[7] In a *Motion for Extension [of] Time to File Final Memoranda* filed on 02 March 2022, JGSOC requested extension of time to submit its Final Memorandum/Position Paper until 11 March 2022. The said *Motion* was granted by the Commission through its *Letter* dated 04 March 2022.
[8] In its *Letter* dated 08 March 2022, Sumitomo requested extension of time to submit its Final Memorandum/Position Paper until 21 March 2022. The said request was granted by the Commission through its *Letter* dated 15 March 2022.
[9] In its *Letter* dated 08 March 2022, Petro Rabigh requested extension of time to submit its Final Memorandum/Position Paper until 21 March 2022. The said request was granted by the Commission through its *Letter* dated 15 March 2022.
[10] In its *Motion for Time (To File Amended or Final Position Paper)* dated 14 March 2022, PPIA requested extension of time to submit its Final Memorandum/Position Paper until 21 March 2022. The said request was granted by the Commission through its *Letter* dated 17 March 2022.
[11] In a *Motion for Additional Time to File Memorandum/Position Paper* dated 14 March 2022, DCPL requested extension of time to submit its Final Memorandum/Position Paper until 19 March 2022. The said request was granted by the Commission through its *Letter* dated 16 March 2022. However, considering that 19 March 2022 falls on a Saturday, the deadline for submission was moved on the next working day, or on 21 March 2022.
[12] In a *Motion for Additional Time to File Memorandum/Position Paper* dated 14 March 2022, DCPS requested extension of time to submit its Final Memorandum/Position Paper until 19 March 2022. The said request was granted by the Commission through its *Letter* dated 16 March 2022. However, considering that 19 March 2022 falls on a Saturday, the deadline for submission was moved on the next working day, or on 21 March 2022.
[13] In a *Motion for Additional Time to File Memorandum/Position Paper* dated 14 March 2022, SPE requested extension of time to submit its Final Memorandum/Position Paper until 19 March 2022. The said request was granted by the Commission through its *Letter* dated 16 March 2022. However, considering that 19 March 2022 falls on a Saturday, the deadline for submission was moved on the next working day, or on 21 March 2022.

Party	Date of Submission
SSLC	21 March 2022[14]
Lotte	24 March 2022[15]

3.9. Issuance of Report of Findings and Conclusions

Under RA No. 8800, the Commission has 120 calendar days from receipt of the records of the case to complete its investigation and submit a report of its findings and reasoned conclusions, whether favorable or not, to the Secretary. However, it should be noted that in the completion of its investigation, the Commission takes into account the circumstances which are beyond its control which include, among others, requests for extension on the filing of pleadings and/or submission of required information or documents, and requests for rescheduling of data verification activities.

In addition, it should be emphasized that in the formulation of its Report to the Secretary, the Commission gives credence to all submissions of the parties to the case, including all arguments raised in their respective Initial Position Papers; Comments to the Staff Report (which in turn may affect the Commission's preliminary findings in said Report); and Final Memoranda/Position Papers.

Thereafter, the Commission, upon submission of its Report to the Secretary, will make the same available to the public *sans* confidential information and publish a summary in two newspapers of general circulation.

On the part of the Secretary, he shall issue a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure, if any, within fifteen days from receipt of the Report of the Commission.

[14] In a *Motion for Additional Time to File Memorandum/Position Paper* dated 14 March 2022, SSLC requested extension of time to submit its Final Memorandum/Position Paper until 19 March 2022. The said request was granted by the Commission through its *Letter* dated 16 March 2022. However, considering that 19 March 2022 falls on a Saturday, the deadline for submission was moved on the next working day, or on 21 March 2022.
[15] In its *Entry of Appearance with Motion for Additional Time to File Memorandum* (Motion) dated 14 March 2022, Lotte requested extension of time to submit its Final Memorandum until 24 March 2022. The said request was granted by the Commission through its *Letter* dated 18 March 2022.

4. THE PARTIES' SUBMISSIONS

A public file containing non-confidential information/submissions was maintained by the Commission and made available, upon request, to all interested parties. All position papers, affidavits and other documentary evidence received by the Commission to date are tabulated in *Annex J*.

4.1. The Petitioner: Domestic Polyethylene Industry

In support of its application for the imposition of safeguard measures against importations of HDPE pellets and granules from various countries, petitioner JGSOC submitted the following arguments/explanations:

Table 4.1. Positions of Petitioner: JGSOC

Issue	Positions
On the imported product under consideration	• Philippine-produced HDPE and imported HDPE have the same use. Both locally produced and imported HDPE are used for a broad range of applications such as extrusion for blown film, sheets, straps, pipe and filament, as well as injection and blow molding applications for food and beverage, consumer, industrial, agricultural and infrastructure products. • Philippine-produced HDPE and imported HDPE have the same raw material. The main raw material for all polyethylene (PE), including HDPE, is ethylene, which is primarily derived from steam crackers designed to crack feedstocks such as naphtha, ethane, propane, butane, gas oils, and other hydrocarbons. US and Middle East crackers typically use ethane, while Asian and European crackers typically use either domestic or imported naphtha. • Philippine-produced HDPE and imported HDPE fall under the same tariff classification. All HDPE, regardless of grade type, end-use, application, and physical and chemical characteristics, when imported or exported, should fall under Harmonized Commodity Description and Coding System (HS)/AHTN 2017 tariff heading 3901.20.00, described as "Polyethylene having a specific gravity of 0.94 or more". Analysis of HDPE imports data, however, shows that not all HDPE imported into the country and which entered the domestic market are classified under the aforementioned tariff code. HDPE products are imported and recorded in Import Entry Declarations (IEDs) under Chapter 39 including, but not limited to, HS/AHTN tariff heading 3901.20. • Philippine-produced HDPE and imported HDPE may be produced using different technologies but would generally follow the same production process steps (i.e., purification, reaction, resin degassing, vent recovery, additive addition and extrusion). The technology used by JGSOC for its two existing reactor lines is UNIPOL™ PE Production Process. • Philippine-produced HDPE and imported HDPE have the same distribution channels. Both are sold directly to local product manufacturers through traders and distributors.

Issue	Positions
	• Philippine-produced HDPE and imported HDPE have the same physical characteristics. Most HDPE resins, including those sold and distributed by JGSOC, are typically sold in pellet form and packaged in 25-kg heavy-duty bags. Some resins may also be sold in jumbo bags packaged at 750-kg – 1000-kg each. Others are sold filled into lined bulk containers of 20-footer or 40-footer sizes. Some HDPE resins, such as those used for rotomolding applications, are sold in powder form. In the case of JGSOC, all its HDPE resins are sold exclusively in pellet form and are of natural translucent white color.
On increased imports	• The pertinent imported products are covered by IEDs of specific grades that are like and have the same use as the products being produced by the Philippine industry. • Total volume of HDPE imports, excluding importations for applications not identified as directly served by JGSOC products as well as imports of the domestic HDPE manufacturer, substantially grew during the period of surge, i.e., from 2018 onwards, with increases of 4% (in 2018), 39% (in 2019), and 6% (in 2020 despite the onset of the global pandemic). • Excluding importations for applications not identified as directly served by JGSOC products, the total number of HDPE importers also substantially increased during the period of surge: in 2018 by 12%, in 2019 by 14%, and in 2020 by 14%, despite onset of the global pandemic.
On serious injury and/or threat of serious injury	• Excluding importations for applications not identified as directly served by JGSOC products, the share of HDPE imports relative to domestic production substantially increased during the period of surge, with share in 2018 at [redacted]%, in 2019 at [redacted]%, and [redacted]% in 2020. • The annual domestic consumption of HDPE has been increasing from [redacted] MT in 2015 to [redacted] MT in 2021. • Despite positive growth rates for domestic consumption of HDPE products until 2019, and with consumption practically maintained in 2020 compared to 2019 volumes despite the pandemic, HDPE sales of the Philippine Industry to the domestic market have been decreasing. From peak sales of [redacted] MT in 2017, sales volumes have been reduced by -1% in 2018, -12% in 2019 and -5% in 2020, • The Philippine Industry's market shares have declined, from its peak market share of 67% in 2017 to 66% in 2018, 55% in 2019 and 53% in 2020, despite positive growth rates for domestic consumption of HDPE products until 2019, and consumption in 2020 practically maintained compared to 2019 volumes despite the pandemic. • Utilization of the rated capacity of the Philippine Industry did not improve despite an increase in demand. Capacity utilization rate has decreased for the Philippine industry despite the increase in demand. JGSOC's combined production capacity for PE is [redacted] kilotons per annum (kTA). This is the combined capacity for HDPE and Linear Low-Density Polyethylene (LLDPE), as the two [redacted] kTA PE units are swing reactors that can produce both types of resins. From 2015 onwards, JGSOC's effective rated capacity for PE production has always been greater than the overall domestic demand for HDPE products. • The Philippine Industry was not able to increase production despite an increase in Philippine market demand. From peak production volumes of [redacted] MT in 2017 and [redacted] MT in 2018, HDPE production volumes of the Philippine Industry substantially decreased by 18% in

Issue	Positions
	2019, and by a further 8% in 2020, despite positive growth rates for domestic consumption of HDPE products until 2019, and consumption in 2020 practically maintained compared to 2019 volumes despite the pandemic. • There has been an increase in ending inventory in the period of surge despite an increase in demand. • Imported HDPE is consistently being sold at a price below Philippine-produced HDPE. • The Philippine Industry has been forced to decrease its selling price to compete and defend its market share. The relatively low selling prices at which imported HDPE products are sold have prevented the Philippine Industry from increasing its selling price to allow it to recover its costs of production. • Income from operations of the Philippine Industry decreased as a result of decreased sales, capacity utilization, and the price suppression and price depression of locally produced HDPE resulting from competition with imported HDPE. • Return on sales of the Philippine Industry correspondingly declined during the increase of imports. • Direct employment by the Philippine Industry has been increasing. • Labor productivity decreased during the increase in imports.
Unforeseen Developments	• The US-China trade war which began in 2018 has also caused displacement of usual trade flows, giving rise to increased exports to the Philippines. • Massive volumes of US PE originally intended to supply China is now forced to enter other markets, and thus the normal trade patterns are disrupted. • Given the US-China trade war, as well as the completion of expansions of their respective petrochemical industries, Asian countries have also started to heavily trade HDPE products into the Philippines, at prices which are highly competitive against low-priced US and Middle East imports, all of which have been taking away from the local producer's market share. <u>US Shale Gas Boom</u> • The US shale gas boom has led to an oversupply of PE, which is primarily intended for export and is expected to flood Asian markers. • Major petrochemical players such as Dow and ExxonMobil are at the forefront of US expansions. • Almost all new ethane crackers are integrated with downstream PE, some of which target HDPE as the main PE product. • The integration towards PE resins is in response to ensuring that the end-products are those that can be more easily sold into the world market, rather than ethane and ethylene which are gases that require specialized vessels to be traded. As such, US PE exports have been rapidly ramping up since 2017. <u>2022 Russia-Ukraine Conflict</u> • The Russian-Ukraine conflict is expected to affect supply chains and have started to increase energy and petrochemical raw material costs.

Issue	Positions
	• Increased worldwide surplus due to expected decreased Gross National Product (GNP) and slowing economies and overcapacity is a threat of more increased imports to the country. COVID-19 Pandemic • The lockdowns imposed by governments worldwide have hampered trade flows, demand, and continuity of operations. Many local manufacturers have had to reduce or completely halt operations during this period, whether due to an increase in caseload of COVID infections, or disallowed to operate by their respective local government units, or due to transport restrictions that limited availability of personnel to work on-site.
Other factors affecting the domestic industry	• Naphtha crackers are very much cost-disadvantaged on ethylene costs compared to ethane crackers. Thus, exporters of HDPE, especially those from ethane-producing countries, are able to drop their prices much lower than domestic pricing, and still with ample margin space to absorb the duties and be sold at lower than or at parity with local pricing.

Submission of Adjustment Plan

Rule 4.1 of the IRRs of RA No. 8800 defines adjustment plan as an "*action plan which a domestic industry is required to submit, that describes a set of quantified goals, specific plans, and timetables that a concerned industry commits to undertake in order to facilitate positive adjustment of the industry to import competition*."

Following the Commission's directive in its *Order of Preliminary Conference* issued on 12 October 2021, JGSOC submitted on 02 December 2021 (via electronic mail) its adjustment plan containing measures which the company commits to adopt from 2020 to 2024 to facilitate its positive adjustment to import competition (Table 4.2).

Table 4.2. Adjustment Plan of JGSOC

Measures to be Undertaken	Positive Effects	Timeline
New [redacted] MTA PE Plant using US – based Chevron Phillips MarTECH ADL™ PE Production technology.	To improve economies of scale and competitive advantage To enable JGSOC to produce higher value PE products	Ongoing Construction Projected date of completion: Second Quarter of 2022
[redacted] Solar Rooftop Power Project and [redacted] Combined Cycle Gas Turbine (CCGT) Project	To reduce power costs, optimize fuel consumption and reduce carbon and Green House Gas (GHG) emissions	For [redacted] Solar Rooftop Power Project: Phase 1 - Second Half of 2022 Phase 2 - First half of 2023 For [redacted] CCGT: Target start-up by 2024
Expansion of Cracking Facility	To help lower product unit costs	Completed as of July 2021

Measures to be Undertaken	Positive Effects	Timeline
	To help improve economies of scale and build up capacity to match projected market demand in the short to medium term	
New catalyst activator	To help reduce catalyst activation costs To allow JGSOC to activate its catalysts onsite rather than offsite (abroad), thereby helping to reduce catalyst activation costs	Ongoing construction Projected date of completion: Second Quarter of 2022
Benchmarking Study on Reliability and Maintenance Performance	To improve plant reliability To enable the maintenance team to focus efforts on specific and measurable improvements and leverage resources to where most needed	Initial survey completed: Second Quarter of 2022 For Reassessment: 2022
Maintenance Work Process and Asset and Costing Optimization	To improve plant reliability To achieve a more efficient maintenance process that results in lower Mean Time to Repair (MTTR) To achieve more efficient administration and end-user adoption To enable Asset Lifecycle Costing and Modeling To make maintenance costs more predictable and controllable	Contract finalization is ongoing Project commencement: January 2022 Projected date of completion: Fourth Quarter of 2022
Maintenance Improvement through Spare Parts Optimization	To improve plant reliability	Commenced in November 2020 Projected date of completion: Fourth Quarter of 2022
Process Analytics Tool Using Artificial Intelligence	To improve production efficiency and output To prevent equipment breakdown, prevent recurrence of process upsets, and maintain quality to deliver products that meet or exceed customer requirements on time	Projected date of completion: 2022

Measures to be Undertaken	Positive Effects	Timeline
Predictive / Prescriptive Maintenance Analytics Tool Using Artificial Intelligence	To improve production efficiency and output. To reduce machine breakdowns, maintenance costs and ultimately a net increase in production output.	Projected date of completion: 2022
Polymer Plants APC Software Upgrade	To improve production efficiency and output To help improve plant control stability; maximize feed and production; reduce energy consumption; and minimize variability in product quality	Projected date of completion: 2022
Process Information Management System for New PE Plant; Process Historian Database (PHD); Alarm Management System (AMS); PE3 Plant Resource Manager (PRM); and PE3 Access Control System (ACS)	To improve production efficiency and output	Projected date of completion: 2022
Purchase of Operator Training Simulator (OTS)	To improve production efficiency and output To help minimize incidence of plant upsets caused by human error	100% completed; online as of October 2020 Ongoing trainings to prepare PE3 Operations Team

4.2. Other Parties-In-Interest

Many parties-in-interest (e.g., local manufacturers of wires and cables and plastic products; importers; foreign governments and their respective embassies; foreign HDPE manufacturers; foreign exporters) submitted position papers citing their concerns, comments, and reservations on the imposition of safeguard measure against importations of subject HDPE from various countries (Table 4.3). The positions of these interested parties are summarized in *Annex K*.

Table 4.3. Parties With Submissions to the Commission

Nature of Business	Party
Foreign Governments	• Brazil • Indonesia • Mexico • Saudi Arabia • Thailand • United Arab Emirates • Qatar
Association of local manufacturers of wires and cables	Chamber of Philippine Electric Wires and Cables Manufacturers, Inc.

Nature of Business	Party
Association of local plastic products manufacturers	Philippine Plastics Industry Association
Local importers	• American Wire and Cable Co., Inc. • Coex Inc. • Phelps Dodge Philippines Energy Products Corp. • INCA Philippines, Inc.
Foreign HDPE manufacturers	• Rabigh Refining and Petrochemical Co. (based in Saudi Arabia)
Foreign exporters	• Dow Chemical Pacific (Singapore) Ltd. (based in Singapore) • Dow Chemical Pacific Ltd. (based in Hong Kong) • GC Marketing Solutions Company Limited (based in Thailand) • Siam Polyethylene Company, Ltd. (based in Thailand) • Sumitomo Chemical Asia Pte. Ltd. (based in Singapore)

5. OVERVIEW OF THE DOMESTIC INDUSTRY AND MARKET

5.1. The Domestic Petrochemical Industry

Petrochemicals are organic compounds derived from petroleum raw materials (called naphtha) or natural gas, or a derivative produced from certain substances (e.g., ammonia, carbon black, and thousands of other organic chemicals) by chemical reaction.[16] A significant stream of the petrochemical product tree consists of what are commonly referred to as synthetic resins.[17]

The Philippine petrochemicals industry is a strategic sector of the economy. With strong linkages to upstream, midstream and downstream industries, the petrochemicals industry serves as an anchor of the country's industrial development.

The upstream sector consists of producers of monomers of ethylene, propylene, styrene, butadiene, and xylene, among others. These monomers undergo the process of polymerization to produce, among others, polymers of ethylene, propylene, styrene, and vinyl chloride.[18]

The midstream sector produces polymers.[19] Their industry association is called the Association of Petrochemical Manufacturers of the Philippines (APMP) and currently there are four member companies, namely:

a. JGSOC – sole producer of polymers of ethylene under HS heading 39.01 and polymers of propylene;
b. Philippine Resin Industries Inc. – producer of suspension-type polyvinyl chloride;
c. Chemrez Technologies, Inc. – producer of polymers of styrene, unsaturated polyester, polymer emulsions, and methyl ester; and
d. Petron Corporation – producer of propylene, benzene, toluene, mixed xylene, and polypropylene.[20]

JGSOC informed the Commission that there was another producer of PE in the Philippines, namely, NPC Alliance Corporation (NPCAC). NPCAC was established in August 2005 and used to produce HDPE. However, NPCAC stopped operations indefinitely. Based on available trade data, NPCAC's last recorded importation of ethylene, the primary raw material for HDPE, was in May 2015.[21]

---

[16] Board of Investments. (2017). *The Philippine Petrochemical Industry Profile.* Retrieved January 19, 2022, from https://boi.gov.ph/wp-content/uploads/2018/02/Petrochemicals-March-13-2017.pdf
[17] *Ibid.*
[18] Tariff Commission. (2019). *Investigation Report on Section 1608 Petition for Tariff Modification on LDPE and LLDPE*.
[19] *Ibid.*
[20] *Ibid.*
[21] JGSOC Submission of TC Form 5A

Finally, the downstream sector consists of plastic fabricators and manufacturers who convert resins to industrial and consumer products. Among the products of this sector are: plastic tubes, pipes and hoses; floor coverings; plates, sheets, film, foil, appliance and automotive parts; and articles for the conveyance or packing of goods (e.g., carboys, plastic bottles, sacks and bags).[22] Based on the 2016 Annual Survey of Philippine Business and Industry (ASPBI) - Manufacturing Sector of the Philippine Statistics Authority (PSA), a total of 375 establishments were engaged in the manufacture of plastic articles for packing goods.[23]

The domestic petrochemical industry's resin products are mostly sold in pellet form, although some are sold in powder form. Table 5.1 shows the uses of the various locally produced plastic resins:

Table 5.1. Uses of Plastic Resins

Plastic Resin	Finished products
Polyvinyl Chloride (PVC)	• Construction supplies – e.g., rigid pipes and fittings, window frames, doors and jambs, insulation for electric wires and cables, corrugated roofs, gutters, downspouts • Films and sheets – e.g., shower curtains, tablecloths, book covers, other school supplies • Household items – e.g., floor tiles, linoleum, flexible hoses, upholstery materials, wall covers, tarpaulins, toys • In the medical field – blood bags, tubings, other related medical materials
Polystyrene (PS)	Cups, fastfood eating utensils, Compact Disc (CD) cases, appliance casings and parts, packaging foam, casings and parts for electronic gadgets (e.g., TV sets, radio, stereos)
Polypropylene (PP)	e.g., Sacks, toys, adhesive tape, cigarette packaging, pails, furniture, jumbo bags, tarpaulins, strapping, food containers, ropes, snack packaging, parts for appliances and electronic gadgets, cosmetic bottles
Polyethylene (PE)	e.g., Shopping bags, garbage bags, sack liners, toys, pallets, crates, housewares, food containers, lubricating oil containers, plastic pipes, drums

Source: Board of Investments. Petrochemical industry profile (2017)

5.2. The Domestic HDPE Industry

5.2.1. The Domestic Manufacturer

Petitioner JGSOC is the largest manufacturer of polyolefins and petrochemicals in the Philippines. Established in 1994 and with commercial operations commencing in 1998, JGSOC is the first and only integrated polyethylene (PE) and polypropylene (PP) resin manufacturer in the country. It is currently the sole local producer of HDPE.[24]

[22] *Supra* note 18
[23] PSA, 2016 Annual Survey of Philippine Business and Industry (ASPBI) - Manufacturing Sector. Retrieved from http://psa.gov.ph
[24] JGSOC Submission of TC Form 5A

JGSOC produces High-Density PE, Linear Low-Density PE, Homopolymer PP, and Random Copolymer PP resins, which are marketed under the EVALENE® brand.[25] It is the dominant player in the local resins market and its resin products are distributed to more than 30 countries all over the world.

JGSOC's production capacities are [redacted] of PE and [redacted] of PP using the UNIPOL™ Process. An additional [redacted] of PE capacity will be added in the second quarter of 2022 using the MarTECH™ Process. This new bimodal and metallocene PE plant, using Chevron Phillips Chemical's MarTECH™ loop slurry polymerization technology, will allow JGSOC to produce high performance bimodal and metallocene PE products. With these expanded capacities, JGSOC will be able to expand its current PE and PP grade slates and introduce additional products for higher-value applications.[26]

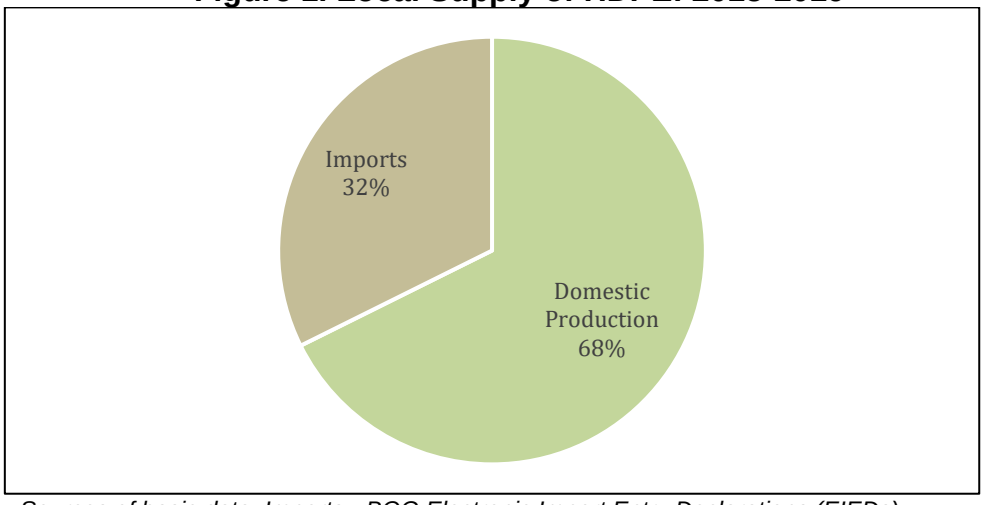
JGSOC has also ventured into the manufacture of other petrochemical derivatives. In the first half of 2021, a new Aromatics Extraction Unit was commissioned to produce benzene, toluene, mixed xylenes, and mixed aromatics. This new facility increased domestic capacities for the above-mentioned products, thus helping promote supply stability and market competition. [27]

5.2.2. The Domestic Market: Supply and Demand

Supply

The total supply of HDPE in the Philippines is composed of imported and locally produced HDPE. For the five-year period covering 2015 to 2019, total supply amounted to [redacted] MT, with local HDPE accounting for 68% ([redacted] MT) and imports contributing the remaining 32% ([redacted] MT) (Figure 1).

Figure 1. Local Supply of HDPE: 2015-2019



Sources of basic data: Imports - BOC-Electronic Import Entry Declarations (EIEDs); Domestic Production - JGSOC

[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*

Demand

HDPE resins are used in a broad range of applications. As will be discussed more fully in Chapter 7 of this Report, HDPE applications encompass the food, beverage, consumer products, packaging, and infrastructure sectors.

Packaging and Food Industry

Packaging constitutes the largest application in the market for plastics in the Philippines.[28] According to GlobalData, a leading data and analytics company, the country's packaging market is expected to reach 69 billion units at a compound average growth rate (CAGR) of 3.3% for the period 2019 to 2024. A driving factor in the growth of the sector is the demand for rigid plastics packaging for processed foods and soft drinks.

Packaging is mostly used in the food industry, accounting for 39.5% of the market, followed by non-alcoholic beverages at 37.5%, and other industries at 11.4%.[29] In 2010, the food industry generated an income of USD 11.98 billion which increased to USD 20.25 billion in 2019, thereby resulting to increasing growth rates for the food packaging industry.[30]

However, despite the potential of the packaging industry, demand is likely to be adversely affected by the COVID-19 pandemic and existing government policies on the use of plastics.

Sachet and Plastic Bag Industry

Demand for sachet and plastic bags is consumer-driven. According to the 2019 Global Alliance for Incinerator Alternatives (GAIA), an average Filipino uses 591 pieces of sachets, 174 shopping bags, and 163 plastic labo bags yearly. For plastic use in the Philippines, it is estimated that a staggering amount of 164 million pieces of sachet are being consumed daily, which is equivalent to 59.8 billion pieces of sachets annually. Furthermore, around 57 million shopping bags are used throughout the country every day, which is equivalent to 20.6 billion pieces a year. Plastic labo use is at 45.2 million pieces per day or 16.5 billion pieces a year.[31] Despite this, demand for sachets and plastics bags (i.e., shopping bags, labo bags), is also seen to be affected by the COVID-19 pandemic and existing government policies on plastics use.

---

[28] Mordor Intelligence. (2021). *Philippines Plastics Market - Growth, Trends, COVID-19 Impact and Forecasts (2022 - 2027)*. Retrieved from Mordor Intelligence: https://www.mordorintelligence.com/industry-reports/philippines-plastics-market

[29] GlobalData. (2020, December 18). *Philippines' packaging market to reach 69 billion units at 3.3% CAGR by 2024, says GlobalData*. Retrieved from GlobalData: https://www.globaldata.com/philippines-packaging-market-reach-69-billion-units-3-3-cagr-2024-says-globaldata

[30] *Ibid.*

[31] Global Alliance for Incinerator Alternatives (GAIA). (2020). *Regulating single-uise plastics in the Philippines: Opportunities to Move Forward.* Retrieved from GAIA: https://www.no-burn.org/wp-content/uploads/Philippine-Policy-Brief-on-SUPs-Ban-1.pdf

Plastic Pipes and Fittings Market

HDPE pipes are increasingly used in infrastructure and irrigation. The plastic pipes and fittings market in the Philippines is growing. Drivers of growth include government policies encouraging construction of housing units, development of commercial spaces, infrastructure for sewage and potable water, and agricultural development and irrigation projects, all of which have increased demand for plastic pipes. In 2018, the plastic pipes and fittings sector was expected to grow at a CAGR of 10% until 2022.[32]

Extrusion Molded Plastics Market

A key use of HDPE is in extrusion molded plastic products. Extrusion molded plastic products are seen in a wide variety of applications such as materials for construction, automotive manufacturing, and the consumer goods market (from durable goods such as furniture to disposable containers). The Philippines plastic extrusion molded parts market was valued at USD 618.9 million as of 2016. It is expected to grow at a CAGR of 3.5% from 2017 to 2023.[33]

5.3. Government Policies/Programs on HDPE

5.3.1. Tariff Rates

HDPE is classified under AHTN 2017 Code 3901.20.00. It is not subject of any Philippine obligation or tariff concession under the WTO and its current (2022) MFN tariff rate is 10% (Table 5.2). HDPE is locally produced (solely by JGSOC) and is considered an intermediate product, being a product of polymerization of ethylene and being used, in turn, as an input for the manufacture of various plastic products.

Table 5.2. HDPE: Degree of Processing, Local Availability, WTO Bound Rate and MFN Tariff Rate

AHTN 2017 Code	Degree of Processing*	Local Availability*	WTO Bound Rate	MFN Rates of Duty (%): 2015-2022
3901.20.00	Intermediate Good	Locally Produced	Unbound	10[/d] *(2015-2017)* 10 *(2018-2022)*

** Based on TC verification*

[32] Ken Research Private Ltd. (2018, November 28). *Philippines Plastic Pipes and Fittings Market Outlook to 2022 - By uPVC, cPVC, PE, PPR, and Other Plastic Pipes; By End User Application*. Retrieved from Ken Research Private Ltd.: https://www.kenresearch.com/blog/2018/11/philippines-plastic-pipes-and-fittings-market/

[33] Report Ocean. (2016). *Philippines Plastic Extrusion Molded Parts Market by Application (Housing Building Material, Automobile, and Infrastructure) Opportunity Analysis and Industry Forecast, 2016-2023*. Retrieved from Report Ocean: https://reportocean.com/industry-verticals/sample-request?report_id=31574

Under the various Free Trade Agreements (FTAs) that the Philippines is a party to, HDPE may be imported duty-free into the Philippines only under one FTA - the ASEAN Trade in Goods Agreement (Table 5.3). Under five other FTAs (i.e., ASEAN-China FTA, ASEAN-Korea FTA, ASEAN-Australia-New Zealand FTA, ASEAN-Hong Kong, China FTA, and ASEAN-India FTA), the preferential rates of duty on HDPE range from 3%-15%. Finally, HDPE is among the excluded products under the ASEAN-Japan Comprehensive Economic Partnership Agreement and the Philippines-European Free Trade Association FTA, and is for renegotiation under the Philippines-Japan Economic Partnership Agreement.

Table 5.3. Preferential Tariffs for HDPE: 2015-2022

AHTN 2017 Code	Preferential Tariffs (%)				
	AANZFTA	**ACFTA**	**AHKFTA**	**AIFTA**	
3901.20.00	15 *(2015-19)* 12 *(2020-22)*	10 *(2015-17)* 5 *(2018-22)*	3	13.39 *(2015)* 12.86 *(2017)* 12.32 *(2019)* 11.79 *(2021)*	13.12 *(2016)* 12.59 *(2018)* 12.05 *(2020)* 11.52* *(2022)*
	AJCEPA	**AKFTA**	**ATIGA**	**PH-EFTA FTA**	**PJEPA**
	X	12	0	X (For all schedules)	R

Note: AANZFTA = ASEAN-Australia-New Zealand FTA; ACFTA = ASEAN-China FTA; AHKFTA= ASEAN-Hong Kong, China, FTA; AIFTA = ASEAN-India FTA; AJCEPA = ASEAN-Japan Economic Partnership Agreement; ASEAN-Korea FTA; ATIGA = ASEAN Trade in Goods Agreement; PH-EFTA FTA = Philippines-European Free Trade Association FTA; PJEPA = Philippines-Japan Economic Partnership Agreement; X = Excluded; R = Renegotiation
**Until 30 December 2022 only; Starting 31 December 2022 - 11.25%*

5.3.2. Non-Tariff Measures

Based on the Trade Analysis Information System (TRAINS) database of the United Nations Conference on Trade and Development (UNCTAD), there is no specific non-tariff measure (NTM) for HDPE. However, there are two NTMs indicated for HS Heading 39.01 which refer to "polymers of ethylene, in primary forms") (Table 5.4).

Table 5.4. Non-Tariff Measures on HS Code 3901.20.00

NTM Code	Category	Number of NTMs In Force As of 2018
E111	Non-automatic import licensing, quotas, prohibitions, quantity-control measures and other restrictions other than SPS or TBT measures	1
F12	Price control measures including additional taxes and charges	1

Total		2

Source: UNCTAD – TRAINS

5.3.3. Policies to Reduce Plastic Pollution

Domestic demand for HDPE may be affected by policies that discourage the use of single-use plastic products.

Low-value single-use plastics have an adverse impact on the environment because they do not biodegrade. This plastic waste that can neither be recycled nor composted can, for example, leak into the soil, or to rivers and seas, and when burned, pollute the air.

To address the mounting problem of plastic pollution in the country, RA No. 9003, otherwise known as the "*Ecological Solid Waste Management Act of 2000*", was passed on 26 January 2001. Deemed complementary to RA No. 8679, or the "Clean Air Act", this law declares that it is a policy of the State to adopt "*a systematic, comprehensive and ecological solid waste management program"* which shall, among others, "*ensure the proper segregation, collection, transport, storage, treatment and disposal of solid waste*".

Under this law, the State is obligated to set guidelines and targets for solid waste avoidance and volume reduction, and local government units (LGUs) retain primary enforcement of solid waste management. The law also encourages greater private sector participation in solid waste management.[34]

As of 2019, 316 LGUs have ordinances regulating or banning the use of plastic bags in the Philippines such as: (i) bans on the use of plastic bags as primary packaging material on certain products; (ii) bans on the selling, provision, and use of non-biodegradable materials; (iii) total bans on the use of plastic bags; and (iv) promotion of the use of bio-degradable and reusable plastics bags.[35]

If manufacturers opted to shift from throwaway/single-use/non-biodegradable plastic packaging to reusable packaging or alternative delivery systems, the amount of plastic waste produced would be substantially reduced and the environmental problems caused by mounting plastic waste would be curbed.

On the other hand, the demand for HDPE, as raw material in the production of plastic bags and containers, would also consequently weaken.

[34] Republic Act No. 9003, otherwise known as the "*Ecological Solid Waste Management Act of 2000*".
[35] Amurao, M. L. (2019). *Regulations on the Use of Plastic Bags in the Philippines and in Other Countries.* National Tax Research Center. Manila. Retrieved June 25, 2022, from https://ntrc.gov.ph/images/journal/2019/j20190910b1.pdf

6. DETERMINATION OF COMPLIANCE WITH DOMESTIC INDUSTRY REQUIREMENT

Section 4(f) of RA No. 8800 defines "domestic industry" as referring to "*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*."

Rule 4.1 of the IRRs of RA No. 8800 further provides that: *"(1) in the case of a domestic producer which also imports the product under consideration, only its domestic production of the like or directly competitive product shall be treated as part of the domestic production, or (2) in the case of a domestic producer which produces more than one product, only that portion of its production of the like or directly competitive production may be treated as part of such domestic production."*

As the application was filed by JGSOC, the lone manufacturer of HDPE in the Philippines, the domestic industry requirement under Section 4(f) of RA No. 8800 is satisfied.

Domestic production of HDPE declined by 12.7% from 2015 (170,537 MT) to 2020 (148,832 MT) (Table 6.1).

Table 6.1. Domestic Production of HDPE: 2015-June 2021

Year	Indexed Domestic Production*	Growth Rate (%)
2015	100	--
2016	110	9.82
2017	114	3.73
2018	115	0.71
2019	94	-17.73
2020	87	-7.53
2021 (January to June)	63	--

Source of basic data: JGSOC
**Base year is set at 2015*

7. DETERMINATION OF LIKE PRODUCT OR DIRECTLY COMPETITIVE PRODUCT

Rule 9.4.a of the IRRs of RA No. 8800 requires the Commission to determine *"if the domestic product is a like or directly competitive product to the imported product under consideration."*

Section 4(h) of RA No. 8800 defines "like product" as "*a domestic product which is identical, i.e., alike in all respects to the imported product under consideration, or in the absence of such a product, another domestic product which, although not alike in all respects, has characteristics closely resembling those of the imported product under consideration."* Section 4(e) defines "directly competitive products" as *"domestically-produced substitutable products."*

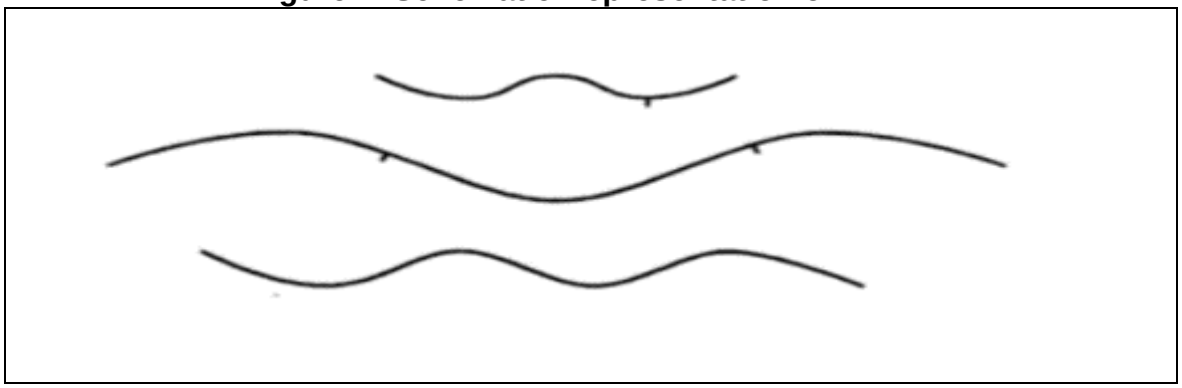
7.1. Subject Articles

Plastics are a type of resin that can be easily molded and are often used as a cheap, durable packaging material.

Polyethylene (PE), being an enormously versatile polymer, is the most widely produced plastic in the world. PE is a polymer of ethylene and is classified by its density and branching. The three main types of PE are low-density polyethylene (LDPE), linear low-density polyethylene (LLDPE), and high-density polyethylene (HDPE).

HDPE is a crystalline thermoplastic polymer and is the closest in chemical structure to pure PE because it consists primarily of unbranched molecules with very few flaws to mar its linearity (Figure 2). Due to its very low level of branching, HDPE is sometimes referred to as linear polyethylene (LPE).[36]

Figure 2. Schematic Representation of HDPE



Source: Handbook of Polyethylene: Structures: Properties, and Applications

[36] *Peacock, A.J., et al. Handbook of Polyethylene: Structures: Properties, and Applications (2000), p.2*

HDPE is characterized by its toughness, excellent chemical resistance, electrical insulating properties, and ease of processing due to its low level of branching and high density. Hence, HDPE resins are used in a variety of processing techniques such as extrusion, extrusion blow molding, injection, and rotational molding. HDPE products produced through these processing techniques are used in numerous customer applications such as for pipes, plastic fuel tanks, industrial packaging, bottles, healthcare articles, containers, toys, films, tapes and fibers.

7.1.1. Imported Products Under Consideration

Based on JGSOC's application, the imported products under consideration are "HDPE from all exporting countries".

In its preliminary investigation, the DTI limited the product coverage to HDPE pellets and granules (classified under AHTN 2017 Code 3901.20.00) excluding "*polyethylene wax, ethylene acrylic acid copolymer, polypropylene, LDPE, special wires and cable grades, rotational molding grades in powder form, polyethylene terephthalate or PET resin used for potable water bottles*".[37]

For its formal investigation, the Commission considered **HDPE pellets and granules** as the imported products for consideration.

7.1.2. The Domestic Products

During the POI (2015-June 2021), the domestic industry produced **HDPE pellets and granules**.

Marketed under the brand name EVALENE® (whether locally or internationally), petitioner JGSOC currently produces 13 HDPE grades for the following end-user processing techniques:

Table 7.1. JGSOC's Current Commercial EVALENE® HDPE Grades (Unipol™ Technology)

Processing Techniques	Evalene® Grades	Co-monomer	Melt Index @190°C/2.16kg (g/10min)	Density (g/cm³)	Typical Applications
Film	HF09522	[redacted]	0.075	0.952	Grocery bags, Supermarket produce bags, Carrier bags, Trash bags, Sack liners
	HF14522	[redacted]	0.12	0.952	Produce bags on a roll, Supermarket produce bags, Wet market bags, Sando bags, Laundry bags, Carrier bags, Trash bags, Sack liners, Flexible packaging
Injection Molding	HJ04451	[redacted]	4	0.955	Pallets and crates for cold storage applications
	HJ04601	[redacted]	4	0.96	Pallets and crates for cold storage applications
	HJ04602	[redacted]	4	0.96	Beverage caps for mineral water, juice and tea drinks
	HJ08601	[redacted]	8	0.96	Crates and cases, Caps for still and mineral water
	HJ20571	[redacted]	20	0.957	Housewares, Caps, Pails, Toys
Blow Molding	HB09521	[redacted]	0.075	0.952	Medium size extrusion blow molded containers (10-50 liters) for household and industrial chemicals (HIC), condiments and cooking oil

[37] DTI. (2021). *Report on the Preliminary Affirmative Findings on the Application for Safeguard Measures on the Importation of High-Density Polyethylene (HDPE) pellets and granules from Various Countries.* (SG Case No. 05-2020).

Processing Techniques	Evalene® Grades	Co-monomer	Melt Index @190°C/2.16kg (g/10min)	Density (g/cm^3)	Typical Applications
	HB23551	[redacted]	0.27	0.955	Rigid packaging, Food, beverage and condiment packaging, Bottles for personal care products, Bottles for household and industrial chemicals (HIC)
	HB33531	[redacted]	0.39	0.953	Rigid packaging, Food, beverage and condiment packaging, Bottles for personal care products, Bottles for household and industrial chemicals (HIC)
Pipe	HP10441	[redacted]	0.08	0.944	Pressure pipe applications (PE 80), Pipes for building & construction, Smooth wall and corrugated pipes for electrical conduits, telecommunications, irrigation and sewage
	HP06491	[redacted]	0.02	0.949	Pressure pipe applications (PE 100), Small to large diameter pipes for water, sewage, irrigation, industrial and mining
Mono-filament	HM10561	[redacted]	1	0.956	Commercial and industrial ropes and nets (fishing net, agricultural net, mosquito net), Non-woven filament applications

Source: JGSOC (Appendix 1)

7.2. WTO Requirement

Like Products

In the WTO Appellate Body Report on "Japan – Taxes on Alcoholic Beverages", it adopted that Panel's findings that *"like products"* must be narrowly construed, noting that "*the term 'like products' suggest that for two products to fall under this category they must share, **apart from commonality of end-uses**, essentially the same physical characteristics" (emphasis supplied)*.[38] The Report further stated that: *"Tariff classification has been used as a criterion for determining "like products" in several previous adopted panel reports."* [39]

Directly Competitive Products

Paragraph 91 of the WTO Appellate Body Report on "Korea – Taxes on Alcoholic Beverages"[40] identified the following key elements for the interpretation of the term "directly competitive":

i. The word "competitive" means "characterized by competition". The context of the competitive relationship is necessarily the marketplace, since that is the forum where consumers choose different products that offer alternative ways of satisfying a particular need or taste. As competition in the marketplace is a dynamic and evolving process, the competitive relationship between products is not to be analyzed exclusively by current consumer preferences; competitive relationship extends as well to potential competition.
ii. According to the ordinary meaning of the term "directly competitive", products are competitive or substitutable when they are interchangeable or if they offer alternative ways of satisfying a particular need or taste.

[38] WTO Appellate Body Report of the Panel. 1996. *"Japan – Taxes on Alcoholic Beverages".* WTO Document Code WT/DS8/AB/R; WT/DS10/AB/R; WT/DS11/AB/R
[39] WTO Appellate Body Report. 1996. *"Japan – Taxes on Alcoholic Beverages".* WTO Document Code WT/DS8/AB/R; WT/DS10/AB/R; WT/DS11/AB/R
[40] WTO Appellate Body Report. 1998. *"Korea – Taxes on Alcoholic Beverages"*: WTO Document Code WT/DS75/AB/R; WT/DS84/AB/R

iii. “Like” products are a subset of directly competitive or substitutable products: all like products are, by definition, directly competitive or substitutable, whereas not all “directly competitive or substitutable” products are “like”.

7.3. Factors for Consideration

In making a determination on like or directly competitive products, the Commission was guided by the requirements of the Safeguard Measures Act and the WTO Agreement on Safeguards.

The Commission considered all submissions received and undertook its own research (e.g., available information on PE manufacturers’ websites, relevant information on the internet).

7.3.1. Production Process

Linear PE such as HDPE and LLDPE are produced by means of catalytic polymerization reactions of ethylene and its co-polymerization reaction with 1-olefin at low-pressure conditions.

Polymerization is a chemical reaction in which a polymer chain is formed by combining a large number of molecules called monomers. In the case of PE, ethylene is the monomer.

Short-chain branches are introduced onto the polyethylene backbone by co-polymerization with 1-olefin co-monomers (also called α-olefins) such as 1-butene, 1-hexene, and 1-octene. Hydrogen is fed to the reactor to control the chain length of the polymer.

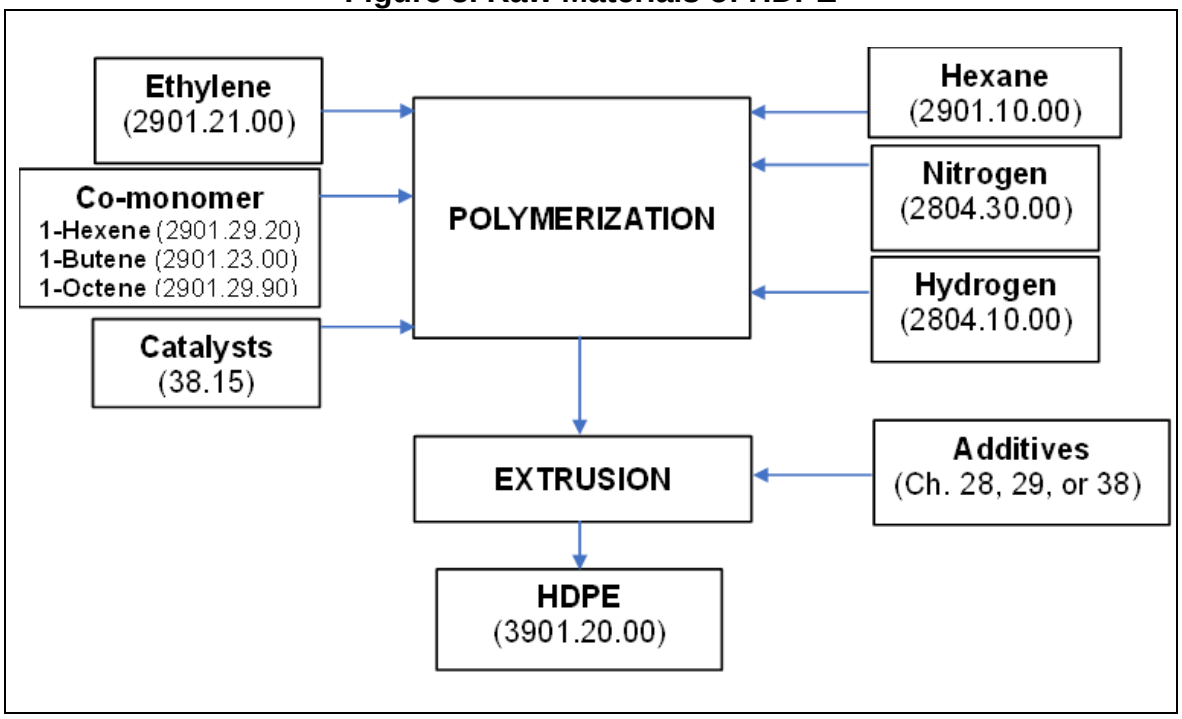
Catalysts are used to induce the polymerization reaction and increase the reaction rate. The catalysts employed in these reactions are based on derivatives of three transition metal atoms: titanium, chromium or zirconium. In particular, commercial synthesis of linear PE is carried out with the use of chromium-based catalysts, titanium-based catalysts (Ziegler-Natta catalysts), and metallocene catalysts.[41]

Nitrogen gas is utilized to increase pressure in the reactor and maintain gas composition while hexane is used as an induced condensing agent that helps cool the reactor. Additives such as antioxidants, UV stabilizers, anti-block, anti-slip, and anti-static agents, among others, are added to the granular or powder resin during extrusion to improve the physical and chemical properties of HDPE.

Figure 3 illustrates the raw materials used in the production of HDPE:

[41] Spalding, M. A., & Ananda, C. M. (2018). *Handbook of Industrial Polyethylene and Technology.* p.27. *Scrivener Publishing, LLC.*

Figure 3. Raw Materials of HDPE



There are three different industrial processes developed for transition metal-catalyzed low-pressure PE polymerization which are applied in the manufacture of HDPE resins (summarized in Table 7.2). These are the following:

a. Gas Phase Polymerization

Gas phase processes for polyethylene were developed originally by Union Carbide (now Dow) and later by Naphtachimie (now INEOS). These processes are called the Unipol® and Innovene® processes, respectively. The predominant catalyst used in each process is of the supported Ziegler-Natta type, though the catalysts are produced by completely different chemistries. The Unipol® process is now licensed through Univation Technologies, a joint venture of Dow and ExxonMobil (Figure 4).[42]

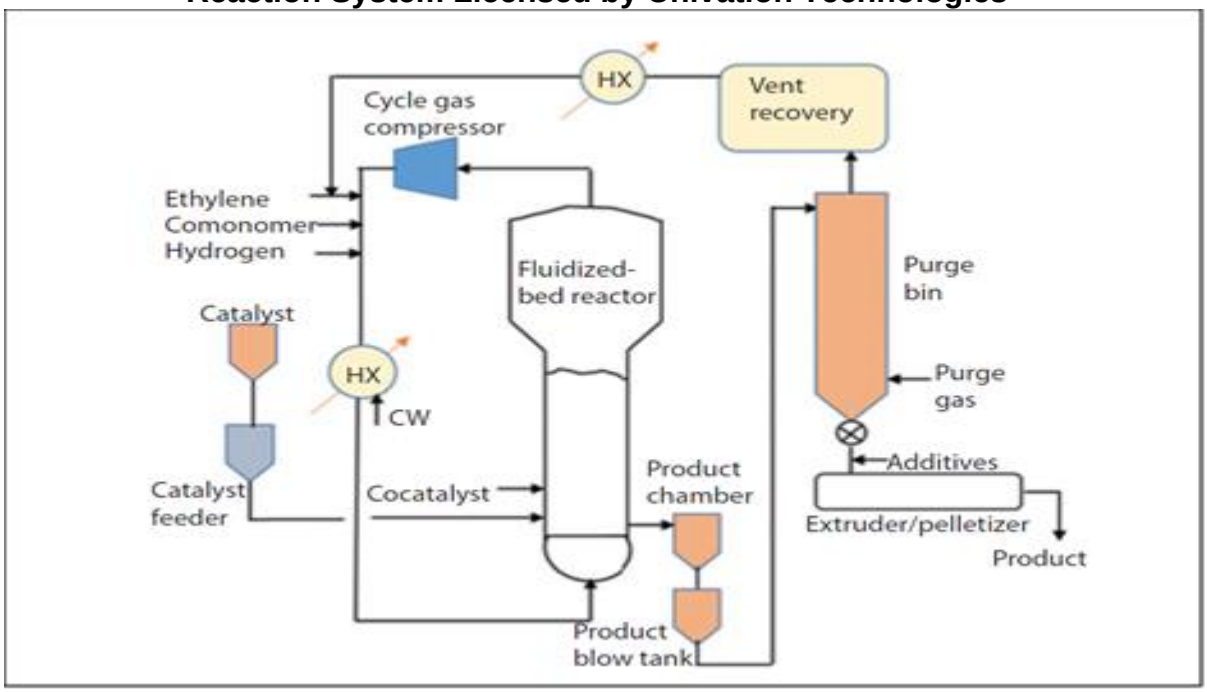
A gas phase polymerization reactor (Figure 4) is a large cylindrical tower with a height of up to 25 m and with a length-to-diameter ratio of approximately 7. It usually operates at a pressure of 1.5-2.5 megapascal (MPa) [15-25 atmosphere (atm)] and at a temperature from 70-100 °C.[43]

The reactor is half-filled with a bed of polymer particles, which is vigorously agitated and mixed by a high-velocity gas stream. The gas stream enters the reactor through a perforated distribution plate at the reactor's bottom; it fluidizes the bed of the polymer particles and removes the heat of polymerization. The stream includes ethylene, an α-olefin (in copolymerization reactions), hydrogen, which is used for molecular weight

[42] Malpass, D. B. (2010). *Introduction to Industrial Polyethylene: Properties, Catalysts, and Processes.* p.93 *Scrivener Publishing LLC.*
[43] Spalding, M. A., & Ananda, C. M. (2018). *Handbook of Industrial Polyethylene and Technology.* p.32 *Scrivener Publishing, LLC.*

control, and nitrogen (an inert component). The gas mixture exits the reactor at its top; it is compressed, cooled, its composition is reconstituted, and the gas is returned to the reactor. Furthermore, solid catalyst in the form of small particles is continuously fed into the reactor to induce polymerization and increase reaction rate. The resin formed is continuously removed from the reactor going to the product chamber. From the product chamber, the HDPE resin is degassed in the purge bin to remove its accompanying gas mixture before it is conveyed to the extruder.

Figure 4. Diagram of a Gas-Phase Fluidized Bed Reaction System Licensed by Univation Technologies



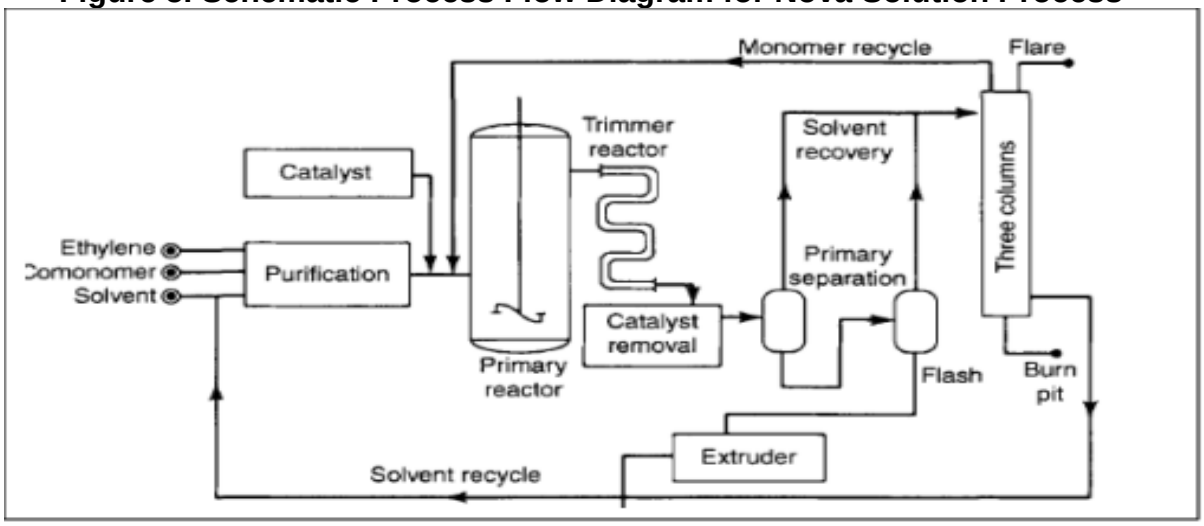
Source: Handbook of Industrial Polyethylene and Technology

b. Solution Polymerization

In Solution polymerization, the polymerization reaction is homogeneous, occurring in solution at temperatures well above the melting range of polyethylene. In 1960, DuPont-Canada (now Nova) commercialized what has become known as the "solution process" using Ziegler-Natta catalysts based on titanium and vanadium compounds. DSM (Stamicarbon) and Dow also developed highly successful solution processes for polyethylene.

Solution processes operate at 160-220 °C and pressures of 3.45-34.47 MPa (34.5 -344.7 atm). Under such conditions, the polymer is dissolved in the solvent, typically cyclohexane or C8 aliphatic hydrocarbons. A simplified process flow diagram for the Nova solution process is shown in Figure 5.

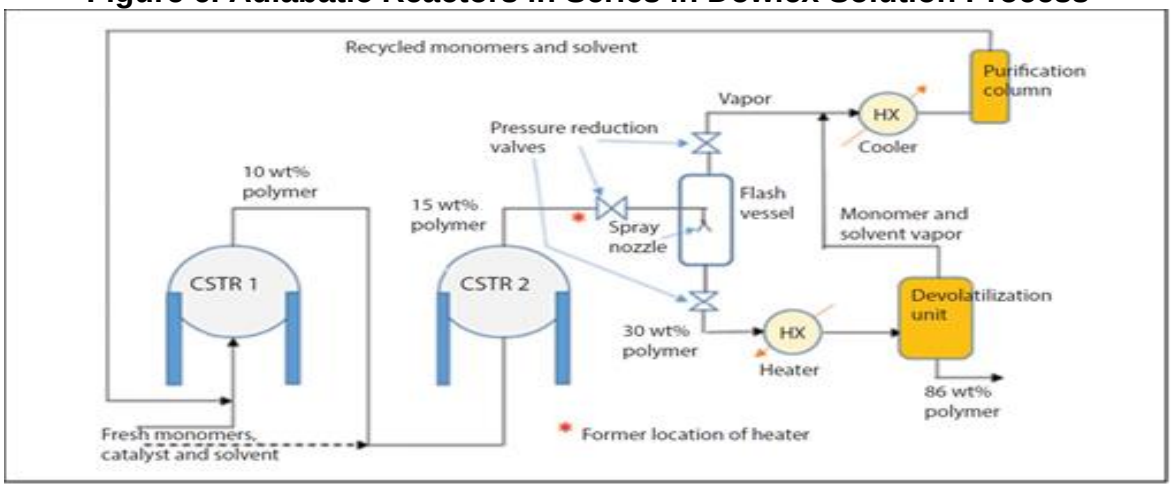
Figure 5. Schematic Process Flow Diagram for Nova Solution Process



Source: Introduction to Industrial Polyethylene Properties, Catalyst, and Processes

Dow employs a low-pressure, catalytic solution process known as the DOWLEX™ process (Figure 6). Dow's efforts in the 1960s to produce low-pressure, linear PE included a solution process to make HDPE. Comonomers included 1-butene, 1-hexene, and 1-octene. Today, 1-octene is the most widely used co-monomer in the DOWLEX process.

Figure 6. Adiabatic Reactors in Series in Dowlex Solution Process



Source: Handbook of Industrial Polyethylene and Technology

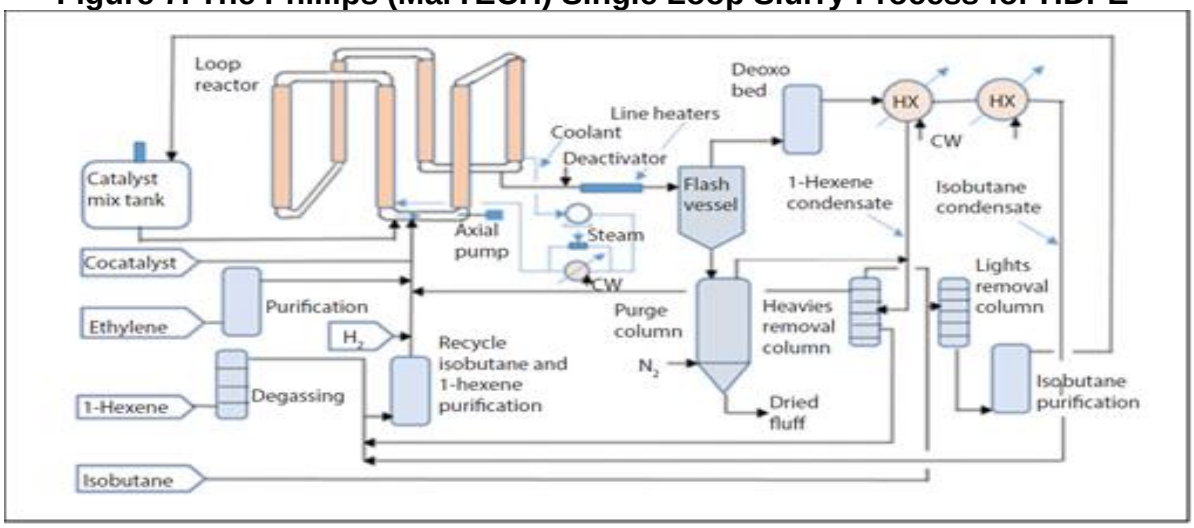
In addition to DOWLEX™, other technologies that produce HDPE include: DuPont, COMPACT solution process developed by Dutch State Mines (DSM), and Equistar.

c. Slurry (Suspension) Polymerization

Polymerizations may be conducted in diluents in which PE is insoluble at the process temperature. Such processes are termed slurry (or suspension) processes. Most slurry reactors for the production of HDPE and LLDPE resins are built as large folded loops containing vertically positioned long runs of pipe 0.5-1 meter (m) in diameter connected by short horizontal stretches of the same pipe (Figure 7). The

loop reactors operate at a pressure of up to 3 MPa (30 atm) and at a temperature from 60-75 °C. The reactor is filled with slurry of polymer particles suspended in a low-boiling solvent, usually isobutane or isopentane. An internal pump forces a high-speed circulation of the suspension through the loop. The concentration of polymer particles in the slurry is maintained at 20-25 % by weight. The residence time of polymer particles in the reactor ranges between 1.5 and 3 hours and the ethylene conversion in the process is usually very high, 97-98 %.

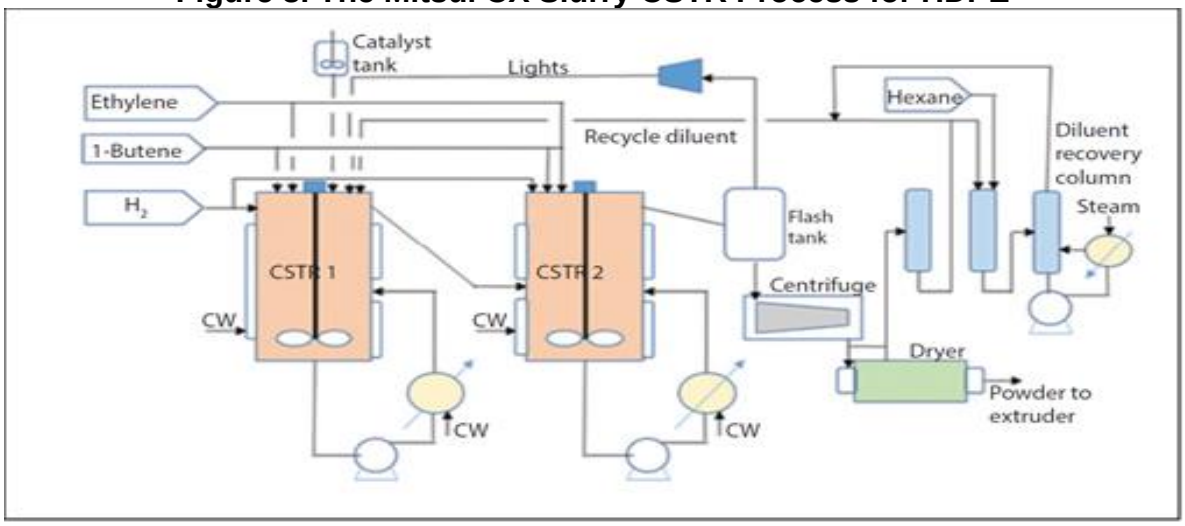
Figure 7. The Phillips (MarTECH) Single Loop Slurry Process for HDPE*



**Dual-loop operation is also employed.*
Source: Handbook of Industrial Polyethylene and Technology

In addition, production of HDPE in a slurry continuous stirred tank reactor (CSTR) rather than a loop reactor was another early means of exploiting catalytic polymerization. The main difference between the slurry CSTR and slurry loop processes are in the means of agitation and cooling of the reactor(s). Slurry CSTR processes use one, two, or three reactors, usually in series, to produce HDPE. The use of multiple reactors, as with loop reactors, enables production of polymers having tailored, broad molecular weight distribution (MWD). Diluent, catalyst, and optionally cocatalyst, are fed into the first reactor. Ethylene, comonomer and hydrogen may be fed into any or all reactors (Figure 8).

Figure 8. The Mitsui CX Slurry CSTR Process for HDPE



Source: Handbook of Industrial Polyethylene and Technology

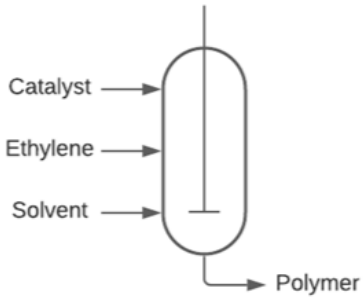
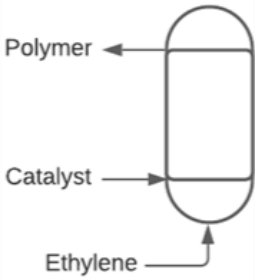
Modern plants sometimes use two or more individual reactors in series (e.g., two or more slurry reactors, two gas-phase reactors, or a combination of slurry and gas phase reactor), with each reactor operating under slightly different conditions, so that the properties of the different end-products from the individual reactors are present in the resulting polymer mixture. This leads to a broad or bimodal (low and high) molecular weight distribution and improved mechanical properties (*e.g.*, stiffness and toughness) in the final plastic product, a bimodal polymer. Unimodal polymers, on the other hand, are polymers of either low or high molecular weight distribution and have lesser flexibility and applicability compared to bimodal polymers.

An example of a combined process is the Borstar process developed by Borealis. Borstar also uses a large-scale loop slurry polymerization reactor and a gas-phase polymerization reactor in series and is capable of producing bimodal PE. The loop slurry reactor produces low molecular weight fractions, and the gas phase reactor produces higher molecular weight products. [44]

The three industrial processes developed for transition metal-catalyzed low-pressure PE polymerization which are used to manufacture HDPE resins are summarized in Table 7.2.

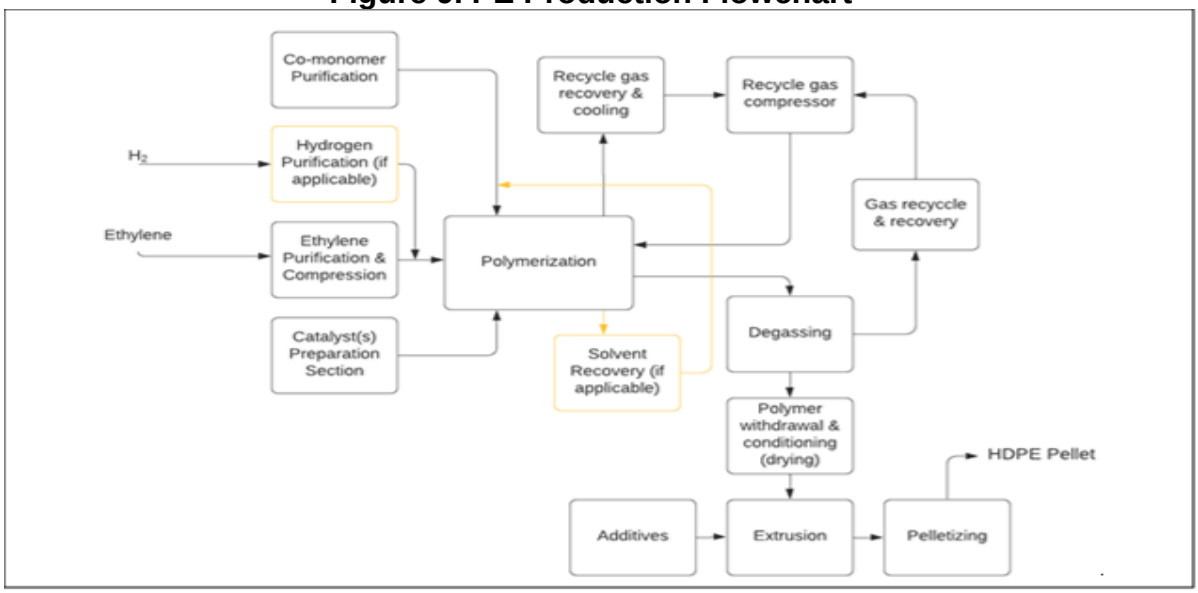
[44] Malpass, D. B. (2010). *Introduction to Industrial Polyethylene: Properties, Catalysts, and Processes.* p.96 *Scrivener Publishing LLC.*

Table 7.2. Industrial Catalytic Polymerization Reaction Processes of Ethylene

	Solution Process	Slurry Process	Gas Phase Process
Reactor	Polymerization reaction takes place in a CSTR (Continuous Stirred Tank Reactor). **Figure 9. CSTR**  	Polymerization reaction takes place in a CSTR or loop reactor.	Polymerization reaction takes place in a fluidized bed reactor. **Figure 10. Fluidized Bed Reactor** 
Operating Temperature	130 to 180 °C	60 to 75 °C	70 to 100 °C
Operating Pressure	3 to 20 MPa (30 to 200 atm)	Up to 50 MPa (30 atm)	1.5 to 2.5 MPa (15 to 25 atm)
Features	Both catalyst and resulting polymer remain dissolved in a solvent that must be removed to isolate the polymer.	Catalyst and polymer formed during production remains suspended in a liquid medium.	No solvent is used. The polymer produced is in powder/ granule form and is removed from the reactor with the gas mixture.
Licensors/ Technologies	▪ DOW Chemical (DOWLEX) ▪ DSM/Stamicarbon (COMPACT) NOVA Chemicals (SCLAIRTECH) (Advanced SCLAIRTECH)	**Ziegler Slurry Process (HDPE):** ▪ Lyondell Basell (Hostalen) ▪ Mitsui Chemicals (CX Process) ▪ Nippon ▪ Equistar **Slurry Loop Process (HDPE and swing LLDPE/HDPE):** ▪ Chevron Phillips ▪ Borealis (BORSTAR) (slurry loop and gas phase in series) ▪ INEOS Technologies (Innovene™ S)	**HDPE and swing LLDPE/HDPE:** ▪ Univation (UNIPOL™ PE Process, PRODIGY Bimodal), and UNIPOL unimodal swing process ▪ Lyondell Basell (Spherilene), bimodal swing ▪ Lyondell Basell (Lupotech G) unimodal HDPE/MDPE ▪ INEOS INNOVEN G unimodal swing process

These three industrial processes follow a general PE manufacturing flowchart shown in Figure 9**.** The process starts with the purification step wherein impurities in the raw materials (such as acetylenes, conjugated dienes, halogens, oxygenated, and sulfur compounds) are removed to prevent production of undesired products or disruption to the production process.

Figure 9. PE Production Flowchart



Source: Egyptian Association for Pioneers of Technology (APET)

The raw materials are then fed into the reactor where polymerization of ethylene takes place. Depending on the product grade to be produced, either 1-hexene or 1-butene is added to obtain the desired polymer density. The catalyst is introduced in this step. Hexane, which helps cool the reactor, and nitrogen gas, which increases the pressure and maintains gaseous composition, are also added. The PE resin is then conveyed into a product purge bin.

In the degassing step, unreacted hydrocarbon gases, which pose a safety concern in the downstream process and cause odor problems in the final product, are removed by purging the resin with a steady flow of nitrogen. The purged gases are recovered using a vent recovery system, which improves the overall efficiency of the process by minimizing the amount of gas released to the atmosphere.

After purging, the PE resins are conveyed to the extrusion area where additives are added as necessary to improve the polymer's properties and/or handling. The resin and the additives are melted and mixed in the extruder and then cut into pellets. These pellets are then transferred to the pellet drier and sent to the pellet blenders and silos, where the pellet resins are homogenized before being conveyed for packaging.

The foregoing industrial polymerization processes produce PE products with a wide range of density and melt index (MI) and which are applicable for use in a variety of PE processing techniques, i.e., blow film; blow molding; injection molding; cast film; pipe (Table 7.3). Hence, regardless of the production process/technology used, all HDPE can be used for the same processing techniques, depending on the HDPE density and MI.

Table 7.3. Low-Pressure PE Polymerization Products Slate

Processing Techniques	Solution Process		Slurry Process		Gas Phase Process	
	Density (g/cm^3)	MI (g/10 min)	Density (g/cm^3)	MI (g/10 min)	Density (g/cm^3)	MI (g/10 min)
Blow Film	0.885-0.932	0.7-5	0.922-0.976	0.04-5	0.885-0.965	0.085-5
Blow Molding	0.915-0.932	0.7-4	0.922-0.960	0.08-4	0.915-0.960	0.85-0.4
Injection Molding	0.890-0.932	0.7-200	0.922-0.979	0.7-50	0.890-0.970	0.85-75
Cast Film	0.925-0.930	5-70	0.922-0.976	4-70	0.922-0.965	5-75
Pipe	-	-	0.940-0.963	0.06-0.4	0940-0.963	0.085-0.4

Source: Egyptian Association for Pioneers of Technology (APET)

Findings

The Commission finds the following:

a. JGSOC produces its HDPE resin products using the Unipol™ PE process licensed under Univation Technologies for its two existing reactor lines.
b. JGSOC's first production line makes use of dry, chrome-based (Phillips) catalysts, whereas the second production line makes use of Ziegler-Natta catalysts.
c. The manufacturing process utilized by JGSOC follows the general process of HDPE production discussed above, which involves purification, polymerization reaction, resin degassing, vent recovery, additive addition, and extrusion.
d. JGSOC's new [redacted] PE plant, which is projected to operate in the second quarter of 2022, will employ the MarTECH ADL™ technology licensed by Chevron Phillips Chemical. It is a loop slurry reactor process that will allow the company to produce bimodal HDPE, metallocene HDPE, and bimodal metallocene HDPE (for which there is currently no local production). This new PE line will produce eight new HDPE grades, which will improve the grade slate of JGSOC to 21.

For imported HDPE, the Commission's findings are as follows:

a. Imported HDPE are produced using the solution process, and slurry cascade process that produces high-performance HDPE multimodal products.

Both imported and local HDPE resins are produced using the same general process of polymerization of ethylene, employing either of the three established modes of production, *i.e.*, solution process, slurry process, and gas-phase technology.

7.3.2. Product Specifications

7.3.2.1. Product Composition

HDPE has three major components: ethylene, co-monomer, and additives.

A. Ethylene

Ethylene is the main monomer of the polymer chain and constitutes more than 95% by weight of the total polymer content.

B. Co-Monomer

Completely linear HDPE resins (no co-monomer) are quite brittle and prone to environmental stress cracking. To overcome this, small amounts (<1%) of α-olefin comonomer (1-butene or 1-hexene or 1-octene) are added to introduce low concentrations of short chain branching, primarily to enhance processability but also to improve toughness and environmental stress crack resistance (ESCR).[45]

The presence of α-olefin comonomer contributes to the branching in the polymer structure, hence decreasing density/crystallinity and increasing ESCR.

C. Additives

Additives are essential to the performance of PE. Additives are used to stabilize the polymer, make the polymer easier to process, and/or enhance its end use properties. Some of the additives commonly incorporated in PE are the following: antioxidants, antistatic agents, ultraviolet (UV) light stabilizers, lubricants, antimicrobials, slip agents, acid scavengers, flame retardants, polymer processing aids, cross-linking agents, anti-blocking agents, and colorants, among others.[46]

Antioxidants prevent oxidative degradation of polymers, while UV stabilizers protect plastic products from polymer deterioration when exposed to UV light. Anti-static agents prevent electrostatic buildup on the surfaces of plastic products. Cross-linking agents improve the physical properties of thermoplastics by cross-linking.[47]

Carbon black, incorporated in amounts of 0.5–2.5 % by weight in HDPE, acts as a thermal and UV stabiliser, offering good thermal and ageing resistance. It also imparts surface resistivity and increases tensile

[45] Malpass, D. B. (2010). *Introduction to Industrial Polyethylene: Properties, Catalysts, and Processes.* p.10 *Scrivener Publishing LLC.*
[46] Malpass, D. B. (2010). *Introduction to Industrial Polyethylene: Properties, Catalysts, and Processes.* p.101 *Scrivener Publishing LLC.*
[47] Campo, E. A. (2008). *Selection of Polymeric Materials - How to Select Design Properties from Different Standards.*

strength. It is used in cable compositions, and also for sheets, pipes, conduits, and injection molded parts.[48]

Findings

The Commission finds the following:

a. The 13 HDPE grades produced by JGSOC all contain ethylene, [redacted] co-monomer, and additives.
b. In terms of the co-monomer, only one HDPE grade (HM10561) uses [redacted] as co-monomer while the remaining 12 HDPE grades produced by JGSOC (HF09522, HF14522, HJ04551, HJ04601, HJ04602, HJ08601, HJ20571, HB09521, HB23551, HB33531, HP10441 and HP06491) utilize [redacted].
c. In terms of the additives, all of the 13 HDPE grades produced by JGSOC contain antioxidants. Other additives used (i.e., [redacted]) vary depending on the intended application of each grade.

For imported HDPE, the Commission finds the following:

a. Imported HDPE grades also consist of ethylene, less than [redacted]% to less than [redacted]% co-monomer, and additives.
b. Like the locally produced HDPE, some imported HDPE also use [redacted] and [redacted] as co-monomer while other imported HDPE use [redacted]. There are also imported HDPE that do not contain a co-monomer.
c. Furthermore, similar to locally produced HDPE grades, the imported HDPE grades also contain varying additives depending on their intended use. For instance, imported HDPE used for blow film extrusion process contains an additive content of [redacted]% by weight. HDPE grades used for wire and cable applications contain special additives, which render them suitable for use in wire and cable compounds (such as [redacted]) to improve performance and properties that will meet the requirements of wire and cable international standards for technical and safety purposes, including those of the Insulated Cable Engineers Association, International Electrotechnical Commission, and Association of Edison Illuminating Companies.

Both locally produced and imported HDPE consist of ethylene, co-monomers, and additives.

7.3.2.2. Product Characteristics

HDPE is characterized by its linear and little-to-none branching structure, which grants it greater balance, impact strength, chemical resistance (due to its greater intermolecular forces), and tensile strength compared to lower density PE resins. It is also weatherproof, easy to process by most methods, and has a low cost.

[48] Vasile, C., et. al. (2005). *Practical Guide to Polyethylene.* p.24

A. Physical Form

HDPE resin is a flexible, translucent/waxy material and commonly comes in the form of powder or granules and translucent white or opaque pellets depending on its end use and compatibility with the equipment/machines used by end-users in producing plastic products.[49]

B. Density

Molecular density describes the mass to volume ratio of a given polymer. It is influenced by the number, size, and arrangement of crystals formed by a polymer in its solid state. More crystallization is indicative of higher density. The linearity of the polymer is also a determinant of its density, such that a more linear structure results in a higher density as it facilitates stacking and crystallization. On the other hand, branched polymers have a lower density as branching deters crystallization. This means that the larger the amount of co-monomer, the lower the density of the polymer. Thus, it can be deduced that HDPE consists of a lesser amount of co-monomer than lower density PE.

Density is one of the primary characteristics of PE resins. It is universally used as a distinctive parameter that instantly establishes the application range of a resin.[50] HDPE resins typically have densities falling in the range of approximately 0.94-0.97 g/cm^3.[51]

As shown in Table 7.3, the processing techniques of PE for fabricating into consumer and industrial products vary depending on the density.

C. Melt Index

Melt flow index or melt index (MI) is a measure of the rate of extrusion of the PE in grams per 10 minutes. Hence, the length of polymer chains is a determinant of its MI. A longer polymer chain has a higher molecular weight and therefore a lower MI, which means it is more challenging to extrude long-chain polymers compared to short-chain polymers. On the other hand, a higher MI is indicative of easier processability.

7.3.3. Processing Techniques of HDPE and Applications/End-Use

HDPE exhibits superior balance of stiffness, rigidity, impact strength, and chemical resistance, making it ideal for a broad range of processing techniques such as extrusion (blow film, pipe, and monofilament), injection molding, rotational molding, blow molding, and compounding.

[49] Vasile, C., et. al. (2005). *Practical Guide to Polyethylene.*p.16
[50] Kissin, Y. V. (2012). *Polyethylene: End-use properties and their physical meaning..*
[51] *Supra* note 45

Shown in Table 7.3 are the density and MI ranges of HDPE resins produced using the three catalytic polymerization processes of ethylene and which are suitable for the following end-user processing techniques:

a. Blown Film Extrusion Process

The process involves extrusion of a plastic resin through a circular die, followed by "bubble-like" expansion to form a thin tubular product that can be used directly, or slit to form a flat film. The molten tube gradually deforms into a stable solid cylindrical bubble beyond the frost (freeze) line. The bubble is then flattened in a collapsing device (tent frame).[52]

This technique is commonly used to produce plastic products for use in consumer packaging (e.g., packaging film for frozen products, shrink film for transport packaging, food wrap film, packaging bags, or form, fill and seal packaging film), industry packaging (e.g., shrink film, stretch film, or container liners), laminating film (e.g., laminating of aluminum or paper used for packaging of, for example, milk or coffee), films for the packaging of medical products, and agricultural film.

b. Injection Molding Process

In this process, the polymer is fed into a heated barrel and the melted plastic is injected into a pre-formed mold. The cavity of the mold forms the shape of the product.[53] The mold clamps around a metal shank or core rod, which forms the internal shape of the pre-form. The pre-formed product is cooled and the mold is opened to eject the rod and release the solidified product.

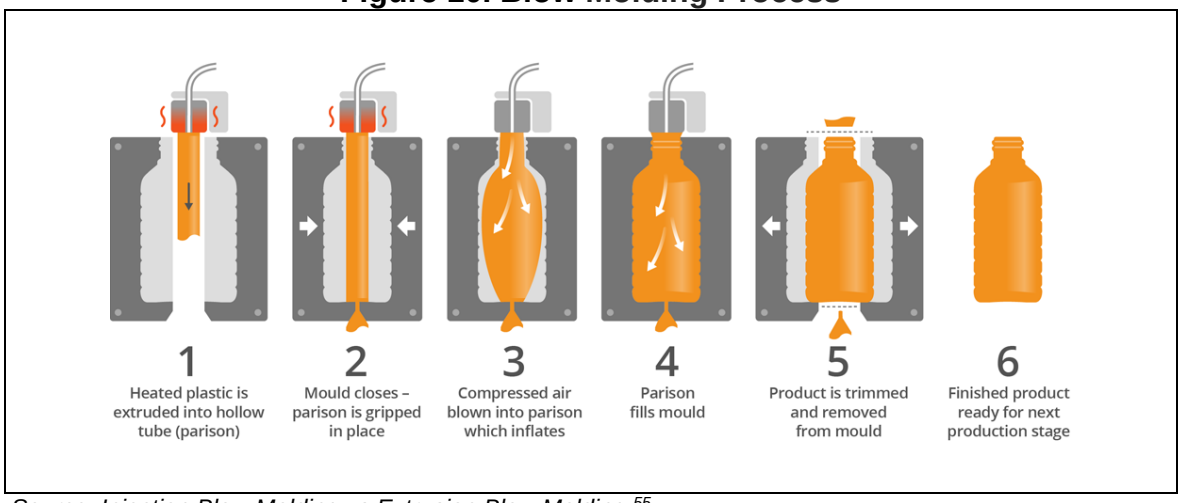
This process provides good dimensional control, design flexibility, and low scrap production. The main applications of this process include narrow and wide-mouthed containers, such as bottle crates, garbage cans, buckets, jars, plastic caps, and other household articles.

c. Blow Molding Process

The blow molding process, as illustrated in Figure 10 below, involves extruding heated polymer into a hollow tube (called a parison), that is clamped by a mold to form the desired product shape. Compressed air is streamed into the parison to inflate it into shape. The unit is then cooled, the mold is opened, and the finished product is released.[54]

[52] Vasile, C. (2005). *Practical Guide to Polyethylene.* p.117
[53] Shrivastava, A. (2018). *Plastics Processing.* In A. Shrivastava, *Introduction to Plastics Engineering* pp.143-177
[54] E2Global. (n.d.). *Injection Blow Molding vs Extrusion Blow Molding*. Retrieved from E2Global: https://e2global.com/blog/injection-blow-molding-vs-extrusion-blow-molding/

Figure 10. Blow Molding Process



Source: Injection Blow Molding vs Extrusion Blow Molding [55]

This process yields products of high chemical resistance and impact toughness and favorable barrier properties. Typical products produced through this process include household bottles, automotive fuel tanks, gasoline storage barrels, household and industrial chemicals (HIC) bottles, watering cans, and pharmaceuticals and health care bottles.

d. Pipe Extrusion Process

This process utilizes an extruder which converts the PE raw material to a continuous tubular melt by extrusion through an annular die. The molten pipe then passes through a sizing device (which calibrates its dimensions) and then through a cooling trough. After being cooled, the pipe is conveyed for cutting into desired final lengths or coiling.

This process is used in the manufacture of pressure pipes, pipes for water distribution, sewerage, irrigation, building and construction, and telecommunications.

e. Monofilament Extrusion Process

Monofilament is usually extruded using a conventional screw extruder of rather small size, through a die consisting of a series of holes. The monofilaments are extruded downward into a tank of water (quench tank) from which they go to pull-rolls to be drawn and oriented. The physical properties of the strands depend on the conditions of extrusion, on the degree of stretching, and on the temperature at which they are stretched. For HDPE, a melt temperature of between 260 and 290 °C is usually best.

Woven fabrics made from HDPE monofilament are widely used in geotextile applications as a coarse filter to protect the drainage body from penetration of the soil and also to prevent blocking or clogging of drainage systems.

[55] *Ibid.*

Agricultural and fishing nets, mosquito nets, and flat yarn (such as for tarpaulins) are among the common applications of this process.

f. Wire and Cable Compound Extrusion Process

HDPE pellets used for wire and cable applications are compounded with additives (such as processing aids, blowing/nucleating agents, colorants, anti-ultraviolet additive, and flame retardant fillers) to improve its performance and properties so as to meet the requirements of wire and cable international standards, including those of the Insulated Cable Engineers Association, International Electrotechnical Commission, and Association of Edison Illuminating Company, for technical and safety purposes. They have densities ranging from 0.941 g/cm^3 - 0.954 g/cm^3 and MI of (190^{o}C/2.16 kg) of 0.2 g/10 min - 0.85 g/10 min.

g. Rotational Molding Process

Rotational molding, also referred to as roto-molding, is a technique used in the production of hollow plastic products. It makes use of a polymer in powder form and produces fully encapsulated hollow parts by rotating a fully enclosed mold on two axes. The process involves heating up the mold in the oven part of a rotational molding machine, where the powder polymer melts and flows. The melted polymer coats the surface of the mold as it spins. The mold is then removed from the oven and continues to rotate until the polymer is solidified. The product is then cooled and one-half of the mold is removed in order to take out the finished part.[56]

Typical applications of this process include children's toys, garden furniture, and road traffic bollards.[57] Many applications that are produced by means of rotational molding cannot or are very difficult to mold using another process.

Findings

The Commission's findings on (i) product characteristics (physical form, melt index, and density) and (ii) applications/end-use of local and imported HDPE are presented in the succeeding discussion in terms of the processing technique of HDPE.

a. Blown Film Extrusion Process

Locally produced blown film grade HDPE resins (HF09522 and HF14522) have a density of 0.952 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.075 - 0.12 g/10 min. They are in pellet form and are typically used in the manufacture of produce bags on a roll, supermarket produce bags, wet market bags, sando bags, laundry bags, carrier bags, trash bags, sack liners, and flexible packaging.

[56] Cantor, K. M., & Watts, P. (2011). *Plastics Processing. Applied Plastics Engineering Handbook,* pp. 195–203.
[57] Vasile, C. (2005). *Practical Guide to Polyethylene.* p.130-131

Likewise, imported film grade HDPE resins have a density of 0.941 - 0.969 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.05 - 1.3 g/10 min. They are also in pellet form and are generally used in the manufacture of blown film, general packaging, shopping and grocery bags, seed bags, disposal bags, industrial liners, dry food packaging, stand up pouches, pet food packaging, heavy duty shipping sacks, and barrier film in food packaging.

b. Injection Molding Process

Locally produced injection molding grade HDPE resins (HJ04551, HJ04601, HJ04602, HJ08601, and HJ20571) have a density of 0.955 **-** 0.96 g/cm^3 and MI (190^{o}C/2.16 kg) of 4 - 20 g/10 min. They are in pellet form and are typically used in the manufacture of beverage caps for mineral water, juice and tea drinks, and pallets and crates for cold storage applications.

Similarly, imported injection molding grade HDPE resins have a density of 0.95 - 0.964 g/cm^3 and MI (190^{o}C/2.16 kg) of 4 - 17 g/10 min. They are also in pellet form and are generally used in the manufacture of indoor containers and boxes, crates, paint pails, caps and closures for general and industrial use, and caps for mineral water and for non-carbonated beverages.

c. Blow Molding Process

Locally produced blow molding grade HDPE resins (HB09521, HB23551, and HB33531), have a density of 0.952 - 0.957 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.075 - 0.39 g/10 min. They are in pellet form and are typically used in the manufacture of rigid packaging; food, beverage and condiment packaging; bottles for personal care; and for medium-size extrusion blow molded containers (10-50 liters) for HIC, condiments and cooking oil.

Correspondingly, imported blow molding grade HDPE resins have a density of 0.95 - 0.964 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.07 - 17 g/10 min. Also in pellet form, they are generally used in the manufacture of large-sized containers (up to 150 liters); water tanks; drums and industrial parts; non-pressure pipes; synthetic rattan; toys and housewares; waste bins; tough plastic parts; cases and boxes for industrial parts; farm produce and beverage crates; and pails and buckets. The imported blow molding grade with a high MI of 17 g/10 min can also be used to manufacture pipes.

d. Pipe Extrusion Process

Locally produced pipe grade HDPE resins (HP10441 and HP06491) have a density of 0.944 - 0.949 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.02 - 0.08 g/10 min. They are in pellet form and are generally used in the manufacture of pressure pipe applications (PE 80 and PE 100); pipes for buildings and construction; smooth wall and corrugated pipes for electrical conduits, telecommunications, irrigation and sewage; and small to large diameter pipes for water, sewage, irrigation, industrial and mining.

Similarly, imported pipe grade HDPE resins are in pellet form, with a density of 0.949 - 0.964 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.06 - 17 g/10 min. They are generally used in the manufacture of pressure pipes, water distribution pipes, sub-duct conduits, and sewerage and industrial pipes. The imported blow molding grade with a high MI of 17 g/10 min can also be used to manufacture pipes.

e. Monofilament Extrusion Process

Locally produced monofilament grade HDPE resins (HM10561) have a density of 0.956 g/cm^3 and MI (190^{o}C/2.16 kg) of 1 g/10 min. They are in pellet form and are typically used in the manufacture of commercial and industrial ropes and nets (e.g., fishing nets, agricultural nets, mosquito nets) and non-woven filament applications.

Likewise, imported monofilament grade HDPE resins have a density of 0.954 g/cm^3 and MI (190^{o}C/2.16 kg) of 0.9 g/10 min. Also in pellet form, they are generally used in the manufacture of monofilament (rope, net), flat yarn (stretched tape, tarpaulin), co-extrusion film, and lamination film.

f. Wires and Cable Compound Extrusion Process

Even though the base HDPE resin used in wire and cable compounds is being produced by JGSOC, the company does not compound for the wires and cable industry as said compounding requires a specialized HDPE grade and the same is not in their line of business.

Imported HDPE grades specially made for use in the manufacture of wire and cable jackets/coatings and are imported by member companies of the Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCMI). Wires and cable compounds which use HDPE as base resin are compounded with different additives (e.g., processing aids, antioxidants, blowing/nucleating agents, colorants, carbon black, flame retardant fillers) that then impart or enhance insulating properties required in the manufacture of wire and cable jackets/coatings. In contrast, local HDPE grades contain only the basic additives (e.g., antioxidants, acid scavenger, lubricant, UV stabilizers) because they do not undergo compounding process. Finally, local HDPE grades do not conform to the requirements of wire and cable international standards including those of the Insulated Cable Engineers Association, International Electrotechnical Commission, and Association of Edison Illuminating Companies.

Hence, the domestic polyethylene industry currently does not produce HDPE grades that can be used by the wire and cable industry.

g. Rotational Molding Process

The domestic polyethylene industry currently does not produce HDPE grades that are suitable for rotational molding process.

During the POI, no importations of HDPE rotational molding grade were recorded. The HDPE used in rotational molding process application are generally in powder form with a particle size of 500 microns or below, a melt index of 4.0 g/10 min, and a density of 0.93 - 0.94 g/cm^3. Currently, the domestic polyethylene industry does not produce HDPE grades with such specifications.

7.3.4. Tariff Classification

Heading 39.01 of the AHTN 2017 covers polymers of ethylene, in primary forms.

The pertinent Harmonized System (HS) Explanatory Notes (EN) state that HDPE is a polyethylene having a specific gravity at 20 °C of 0.94 or more (calculated on an additive-free polymer basis). It is used in the manufacture of a variety of blow-molded and injection-molded articles, woven sacks, gasoline and oil containers, for the extrusion of pipes, etc.

Furthermore, Note 6(b) to Chapter 39 states that in headings 39.01 to 39.14, the expression "primary forms" applies only to the following forms: blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms.

Hence, HDPE pellets and granules, being the products under consideration, are classified under AHTN 2017 subheading 3901.20.00, as they are polyethylene having a specific gravity of 0.94 or more.

Findings

The Commission finds that:

a. All 13 grades of HDPE produced by JGSOC have densities of 0.94 g/cm^3 or more and contain [redacted] α-olefin. Hence, all the domestically produced HDPE are properly classifiable under AHTN 2017 subheading 3901.20.00.

b. Imported HDPE grades have densities of 0.94 g/cm^3 or more and contain [redacted] α-olefin. These imported HDPE grades are thus classifiable under AHTN 2017 subheading 3901.20.00.

c. The Commission examined the seven products excluded in DTI's preliminary determination. Two of the products – (i) special wires and cable grades and (ii) rotational molding grades in powder form – are classified under AHTN 2017 Code 3901.20.00 and were discussed in preceding sections of this Report.

   On the other hand, the remaining five products have a different tariff classification: (i) polyethylene wax is classified under AHTN 2017 subheading 3404.90.90; (ii) ethylene acrylic acid copolymer – AHTN 2017 subheading 3906.90.99; (iii) polypropylene (PP) – AHTN 2017 subheadings 3902.10.30, 3902.10.40, and 3902.10.90; (iv) low-density polyethylene (LDPE) – AHTN

2017 subheadings 3901.10.19 and 3901.10.99; and (v) polyethylene terephthalate (PET) resin – AHTN 2017 subheading 3907.61.00. Having a different tariff classification also means that these five goods do not undergo either of the three established processes of polymerization, have different product composition (i.e., comonomers and additives) and physical properties, and are not intended for similar processing and end-use/applications as HDPE resins classified under AHTN 2017 subheading 3901.20.00.

The Commission thus concurs with the exclusion by DTI of these five goods from the imported products under consideration.

7.3.5. Distribution Channels

A distribution channel is a chain of businesses or intermediaries through which a good or service passes until it reaches the final buyer or the end-user. Distribution channels for HDPE can be either direct or indirect. The indirect channels involve several middlemen such as foreign distributors and domestic distributors and traders. Alternatively, HDPE producers can also sell directly to end-users such as plastic product manufacturers.

Findings

For the domestic industry, the Commission has determined the following:

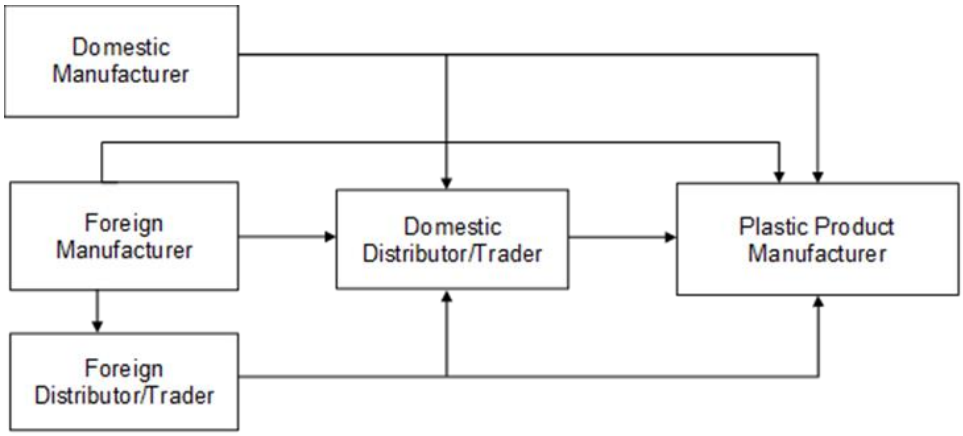
a. JGSOC supplies its HDPE resins directly to over 200 local plastic products manufacturers, and secondarily through distributors.
b. JGSOC also exports HDPE resins through accredited distributors, trading partners, and directly to foreign plastic products manufacturers.

As for imported HDPE resins, the Commission finds the following:

a. There are foreign manufacturers that supply HDPE to domestic distributors and traders as well as sell directly to plastic product manufacturers.
b. There are foreign distributors/traders which serve as the marketing arm of foreign HDPE manufacturers.
c. There are also other foreign manufacturers which do not directly export to the Philippines but rather through their affiliates.

Figure 11 shows how HDPE (whether local or imported) is distributed in the Philippine market.

Figure 11. Distribution of HDPE



7.4. Findings on Product Comparability

In its determination of like or directly competitive product, the Commission considered the following critical factors: (i) production process; (ii) product composition; (iii) product characteristics; (iv) HDPE processing technique and application/end-use; (v) tariff classification; and (vi) distribution network.

In view of the foregoing, the Commission's findings (summarized in Table 7.4) are as follows:

a. HDPE pellets and granules, whether local or imported, undergo either of the three established processes of manufacture, *i.e.*, solution process, gas-phase process, and slurry process.

b. Both local and imported HDPE are in pellet form.

c. Both locally produced and imported HDPE have similar product composition, consisting of ethylene, co-monomers, and additives. The specific co-monomers and additives used, as well as the amounts added, depend on the intended HDPE processing technique and the end-use/application. Different grades of HDPE pellets and granules are produced, with varying density and melt index values.

    i. Both locally produced and imported HDPE grades which are intended for blown film extrusion process have similar material composition in terms of the percentage co-monomer content (less than 1%) and fall within the same density and MI ranges of 0.941-0.969 g/cm3 and 0.05-1.3 g/10 min, respectively, and have the same applications, e.g., shopping and grocery bags, seed bags, disposal bags, industrial liners, and barrier film in food packaging.

    ii. Both local and imported HDPE grades which are intended for injection molding process have similar material composition in terms of the percentage of co-monomer content (less than 5%) and fall within the same density and MI ranges of 0.95-0.964 g/cm3 and 4-20 g/10 minutes,

respectively, and are used to manufacture paint pails, caps and closures for general and industrial use, and beverage caps for non-carbonated drinks, and pallets and crates.

iii. Both locally produced and imported HDPE grades which are intended for blow molding process have similar material composition in terms of the percentage co-monomer content (less than 5%), falls within the same density and MI ranges of 0.952-0.964 g/cm^3 and 0.07-17 g/10 min, respectively, and have the same end-use (medium to large-sized containers; water tanks; rigid packaging; toys and housewares; waste bins; food, beverage and condiment packaging; and bottles for personal care, among others). The imported blow molding grade with a high MI of 17 g/10 min can also be used to manufacture pipes.

iv. Both local and imported HDPE grades which are intended for pipe extrusion process have similar material composition in terms of the percentage co-monomer content (less than 5%), falls within the same density and MI ranges of 0.944-0.964 g/cm^3 and 0.02-0.17 g/10 min, respectively, and are used for the manufacture of pressure pipes, water distribution pipes, and sewerage pipes, among others.

v. Both locally produced and imported HDPE grades which are intended for monofilament extrusion process bear the same material composition in terms of co-monomer content (less than 5%), fall within the same density and MI ranges of 0.954-0.956 g/cm^3 and 0.9-1 g/10 min, respectively, and are intended for the manufacture of ropes, nets, and flat yarns.

vi. The domestic industry does not produce resin grades suitable for the wires and cable compound extrusion process (*i.e.*, wire and cable compounds for use in the insulation and jacketing of telecommunication and electrical wires); these grades are thus sourced solely from foreign distributors and manufacturers. Local grades are intended only for the manufacture of packaging, industrial and household plastic products and thus do not undergo compounding process, only contain basic additives, and do not conform with international standards for cables and wires.

vii. The domestic industry does not produce resin grades suitable for the rotational molding process. Since local HDPE grades are intended only for the manufacture of packaging, industrial and household plastic products, they have a different physical form, MI, and density from the specifications required by the local rotational molding manufacturer.

d. HDPE pellets and granules, whether local or imported, are supplied in the Philippine market using similar distribution network, i.e., from HDPE producer to distributors and plastic goods manufacturers.

e. HDPE pellets and granules, whether local or imported, are properly classified under AHTN 2017 subheading 3901.20.00.

f. The Commission concurs with the exclusion of (i) PE wax (AHTN 2017 subheading 3404.90.90); (ii) ethylene acrylic acid copolymer (AHTN 2017 subheading 3906.90.99); (iii) PP (AHTN 2017 subheadings 3902.10.30, 3902.10.40, and 3902.10.90); (iv) LDPE (AHTN 2017 subheadings 3901.10.19 and 3901.10.99); and (v) PET resin (AHTN 2017 subheading 3907.61.00) from the imported products under consideration. Their different tariff classification also indicates that these goods do not undergo either of the three established processes of polymerization, they have different product composition and physical properties, and they are intended for different processing techniques and end-use/applications compared to HDPE pellets and granules classified under AHTN 2017 subheading 3901.20.00.

7.5. Conclusions

In view of the foregoing and in accordance with RA No. 8800, the Commission finds the following:

a. Locally produced HDPE pellets and granules are intended for (i) film extrusion process, (ii) injection molding process, (iii) blow molding process, (iv) pipe extrusion process and (v) monofilament extrusion process, and their respective applications, and are considered **like products** to imported HDPE pellets and granules which are intended for the same processes and applications.

   Both the imported and local HDPE products undergo either of the three established processes of polymerization; are in pellet form; have similar product composition (*i.e.*, ethylene, co-monomers, and additives); are intended for similar processing techniques and end-use/applications; have similar physical properties depending on their processing and application/end-use; are classified under AHTN 2017 subheading 3901.20.00; and have similar distribution channels.

b. Locally produced HDPE pellets and granules are **neither "like products" nor "directly competitive products"** to imported HDPE pellets intended for wires and cable compound extrusion process and its applications.

   Having a different product composition from the imported product in terms of the additives, not having undergone compounding process, and not conforming to relevant international standards, local HDPE is intended only for the manufacture of packaging, industrial, and household plastic products and therefore not substitutable with imported HDPE wire and cable compounds used by the wire and cable industry.

c. Locally produced HDPE pellets and granules are **neither "like products" nor "directly competitive products"** to imported PE products intended for rotational molding process and its applications.

Having a different physical form, MI, and density from the specifications set by the local rotational molding manufacturer, local HDPE pellets and granules, intended for the manufacture of packaging, industrial, and household plastic products, are therefore not substitutable with imported PE rotational molding grades.

Table 7.4. Comparison of Locally Produced and Imported HDPE Pellets and Granules

Parameters	Findings									
	Local					Imported				
Grades	Evalene® HF09522 HF14522	Evalene® HJ04451 HJ04601 HJ04602 HJ08601 HJ20571	Evalene® HB09521 HB23551 HB33531	Evalene® HP10441 HP06491	Evalene® HM10561	Arsene ▸ SF5007 ▸ UF5205H ▸ SM5508 Sumitomo ▸ F0554 Elite ▸ 5538G ▸ 5960GI ▸ AT 6900	Arsene ▸ SI6008 Dow HDPE ▸ 17450N ▸ KS 10100UE ▸ KT 10000 UE	Arsene ▸ UB5206H Dow HDPE ▸ 17450N ▸ KS 10100UE ▸ KT 10000 UE	Arsene ▸ SP4808 Dow HDPE ▸ 17450N ▸ KS 10100UE ▸ KT 10000 UE	Arsene ▸ SM5508	AXELERON ▸ CS K-3364 NT ▸ CS L-3364 NT ▸ CC 3485 NT DOW ▸ DGDK-3479 BK
Applications	**Films** *(Produce bags on a roll, Supermarket produce bags, Wet market bags, Sando bags, Laundry bags, Carrier bags, Trash bags, Sack liners, Flexible packaging)*	**Injection Molding** *(Beverage caps for mineral water, juice and tea drinks; Pallets and crates for cold storage applications)*	**Blow Molding** (*Rigid packaging, Food, beverage and condiment packaging, Bottles for personal care; Medium size extrusion blow molded containers (10-50 liters) for household and industrial chemicals (HIC), condiments and cooking oil*)	**Pipe** (*Pressure pipe applications (PE 80), Pipes for building & construction, Smooth wall and corrugated pipes for electrical conduits, telecommunications, irrigation and sewage; Pressure pipe applications (PE 100), Small to large diameter pipes for water, sewage, irrigation, industrial and mining*)	**Monofilament** *(Commercial and industrial ropes and nets (fishing net, agricultural net, mosquito net), Non-woven filament applications)*	**Films** *(Blown film, general packaging, shopping and groceries bags, seed bags, disposal bags and Industrial liners; Dry food packaging Stand up pouches Pet food packaging Heavy duty shipping sacks; Barrier film in food packaging); film (co-extrusion, lamination film)*	**Injection Molding** *(Indoor containers and boxes; Crates; Paint pails; Caps and closure for general and industrial; Caps for mineral water; Caps for non-carbonated beverage)*	**Blow Molding** (*Large-sized containers (up to 150L), Water tank, Drum and industrial parts, Non-pressure pipes, Synthetic Rattan; Toys and housewares; Waste bins, large containers, tough parts; Cases and boxes for industrial parts; Farm produce and beverage crates; Pails and buckets.*)	**Pipe** (*Pressure pipes, water distribution pipes, sub-duct conduit, sewerage and industrial pipes*)	**Monofilament** *(Monofilament (rope, net), flat yarn (stretched tape, tarpaulin)*	**Wire and Cable** *(Solid insulation compound, cellular insulation compounds, black jacketing compound)*
Co-monomer	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Additives	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Composition (%)										
A. Ethylene	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Parameters	Findings										
	Local					Imported					
B. Comonomer	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
C. Additives	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Melt Index @190°C/2.16kg (g/ 10 min)	0.075-0.12	4-20	0.075-0.39	0.02-0.08	1	0.05-1.3	4-17	0.07-17	0.06-17	0.9	0.2-0.85
Density (g/cm3)	0.952	0.955-0.957	0.952-0.955	0.944-0.949	0.956	0.941-0.969	0.95-0.964	0.95-0.964	0.949-0.964	0.954	0.945-0.954
Physical Characteristics	Translucent white pellets	Translucent white pellets	Translucent white pellets	Translucent white pellets	Translucent white pellets	Pellets	Pellets	Pellets	Pellets	Pellets	White to yellow pellets; black pellets
Production Process	Gas Phase Process	Gas Phase Process	Gas Phase Process	Gas Phase Process	Gas Phase Process	Slurry Process Solution Process	Solution Process	Solution Process	Solution Process	-	Solution Process
Tariff Classification	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00	3901.20.00

8. DETERMINATION OF INCREASED IMPORTS

Rule 9.4.b of the IRRs of RA No. 8800 provides that the Commission shall determine *"if the product (under consideration) is being imported into the Philippines in increased quantities whether absolute or relative to domestic production."*

8.1 Period of Investigation

As mentioned in Chapter 3 of this Report, the POI is 2015 to June 2021. This is in accordance with the requirement by the WTO Appellate Body in its Reports on "Argentina – Safeguard Measures on Imports of Footwear"[58] and "Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products"[59] that it is necessary for investigating authorities to examine recent imports and not simply trends in imports during the past five years.

In its Report on "United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China"[60], the Appellate Body emphasized the importance of examining recent imports and noted that:

> *"… the period of investigation selected by the investigating authority must be sufficiently recent to provide a reasonable indication of current trends in imports."*

Said Report also acknowledged the Appellate Body's decision in "Argentina – Safeguard Measures on Imports of Footwear", to wit:

> *"… the use of the present continuous tense in the phrase 'is being imported' requires investigating authorities to examine 'recent' import trends. For this reason, investigating authorities must select a period of investigation that is sufficiently recent to provide a reasonable indication of current trends in imports. Or, as the Appellate Body put it, 'the investigation period should be the recent past.' However, once the period of investigation is selected, and is sufficiently recent to provide a reasonable indication of current trends in imports, nothing in the use of the present continuous tense 'are increasing' in Paragraph 16.4 and 'are being imported' in Paragraph 16.1 implies that the analysis must be limited to import data relating to the very end of the period of investigation."* (emphasis supplied)

[58] WTO Appellate Body Report. (1999). *Argentina — Safeguard Measures on Imports of Footwear* (DS121). WTO Document Code WT/DS121/9
[59] WTO Appellate Body Report (1999). *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products* (DS98). WTO Document Code WT/DS98/12
[60] WTO Appellate Body Report (2011). *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from* China (DS399). WTO Document Code WT/DS399/AB/R

The Appellate Body Report on "United States – Safeguard Measure on Imports of Fresh, Chilled, or Frozen Lamb from New Zealand"[61] also stressed the importance of data from the most recent past: *"… we note that the Agreement on Safeguards provides no particular methodology to be followed in making determinations of serious injury or threat thereof. However, whatever methodology is chosen, we believe that data relating to the most recent past will provide competent authorities with an essential, and, usually, the most reliable basis for a determination of a threat of serious injury. The likely state of the domestic industry from the very near future can best be gauged from the data from the most recent past…"* (emphasis supplied)

8.2 WTO Requirement

In its Report on "Argentina – Safeguard Measures on Imports of Footwear"[62], the WTO Appellate Body provided guidance in interpreting increase in imports, to wit:

> "*The determination of whether the requirement of imports 'in such increased quantities' is met is not merely a mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, it bears repeating, not just any increased quantities of imports will suffice. There must be 'such increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."*

In the same Report, the WTO Appellate Body expounded such necessity to analyze not just the quantitative aspects of an import surge, but also justify the findings through a qualitative approach:

> *"The determination of whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination…*
>
> *[T]his language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."* (emphasis supplied)

[61] WTO Document: WT/DS177/AB/R; WT/DS178/AB/R
[62] WTO. Appellate Body Report. (1999). *Argentina — Safeguard Measures on Imports of Footwear* (DS121). WTO Document Code WT/DS121/9

Meanwhile, in its Report on "United States – Safeguard Measures on Fresh, Chilled, or Frozen Lamb from New Zealand[63]", the use of data from the most recent past is encouraged by the Appellate Body, but such data must be supported by a holistic analysis of the *trends* which are apparent in the entire investigative period:

> *"[A]lthough data from the most recent past has special importance, competent authorities should not consider such data in isolation from the data pertaining to the entire period of investigation. The real significance of the short-term trends in the most recent data, evident at the end of the period of investigation, may only emerge when those short-term trends are assessed in the light of the longer-term trends in the data for the whole period of investigation...*
>
> *Thus, we believe that, in conducting their evaluation under Article 4.2(a), competent authorities cannot rely exclusively on data from the most recent past, but must assess that data in the context of the data for the entire investigative period." (underscoring supplied)*

The Appellate Body in its Report on "United States – Definitive Safeguard Measures on Imports of Certain Steel Products"[64] reiterated the importance of analyzing the trends in imports over the *entire* POI:

> *"In our view, what is called for in every case is an explanation of how the trend in imports supports the competent authority's finding that the requirement of 'such increased quantities' within the meaning of Articles XIX:1(a) and 2.1 has been fulfilled. It is this explanation concerning the trend in imports – over the entire period of investigation – that allows a competent authority to demonstrate that 'a product is being imported in such increased quantities." (emphasis supplied)*

8.3 Source of Import Data

To determine the volume of imports of subject article over the POI, the Commission made use of the Electronic Import Entry Declarations (EIEDs) of the BOC.

Based on its determination of "like products" and "directly competitive products", the Commission excluded HDPE pellets and granules used for (i) rotational and injection molding applications and (ii) wire and cable applications which are classifiable under AHTN 2017 Code 3901.20.00.

[63] WTO Appellate Body Report. (2001). *United States – Safeguard Measure on Imports of Fresh, Chilled, or Frozen Lamb from New Zealand* (DS177). par. 138. WTO Document Code WT/DS177/AB/R; WT/DS178/AB/R
[64] WTO Appellate Body Report. (2003). *United States – Definitive Safeguard Measures on Imports of Certain Steel Products* (DS252). par. 374. WTO Document Cod: WT/DS252/AB/R

Thus, imports of HDPE pellets and granules were those that fall under AHTN 2017 Codes 3901.20.00 and with product descriptions referring to goods that are classifiable as HDPE (e.g., “HDPE”, “High Density Polyethylene”, “HD Polyethylene”, and “HD”). HDPE described in the BOC-EIEDs as being used for (i) rotational and injection molding applications and (ii) wire and cable applications were excluded. To increase accuracy, imports with outlier landed costs were also excluded.[65]

Following the submissions received and issues raised by interested parties in their comments to the Staff Report and final position papers, the Commission prudently examined BOC-EIEDs indicating imports for AHTN 2017 Heading 39.01 (except for subheading 3901.30.00 which covers ethylene-vinyl acetate copolymers). Product descriptions referring to goods that are classifiable as HDPE (e.g. “HDPE”, “High Density Polyethylene”, “HD Polyethylene”, and “HD”) were extracted and added as imports of HDPE. The same process of removing imports with outlier landed costs was also undertaken as a final step.

A more detailed breakdown of the import data used by the Commission in its final determination of increased imports is shown in *Annex L*.

8.4 Imports of High-Density Polyethylene

During the POI, HDPE was imported by the domestic industry and other parties.

Total imports of subject article grew from 75,923 MT in 2015 to 112,097 MT in 2020, or an increase of 48% over six years (Table 8.1). In terms of annual volumes, imports were lowest in 2016 (66,464 MT) and highest in pre-pandemic year 2019 (117,808 MT).

Table 8.1. Volume of Imports of HDPE: 2015-June 2021

Year	Import Volume (in MT)						% Share	
	By Domestic Industry	Growth Rate (%)	By Other Importers/ Traders	Growth Rate (%)	TOTAL Imports	Growth Rate (%)	By Domestic Industry	By Other Importers/ Traders
2015	35.00		75,887.72		75,922.72		0.05	99.95
2016	315.39	801	66,148.78	-13	66,464.17	-12	0.47	99.53
2017	221.45	-30	85,550.28	29	85,771.73	29	0.26	99.74
2018	1.95	-99	90,601.87	6	90,603.82	6	0.00	100.00
2019	1,656.69	84,858	116,151.62	28	117,808.31	30	1.41	98.59
2020	1,892.88	14	110,204.52	-5	112,097.40	-5	1.69	98.31
TOTAL	4,123.36	-	544,544.80	-	548,668.20	-	0.80	99.20
Average	687.23	17,109	90,757.47	9	91,444.69	9.6	0.65	99.35

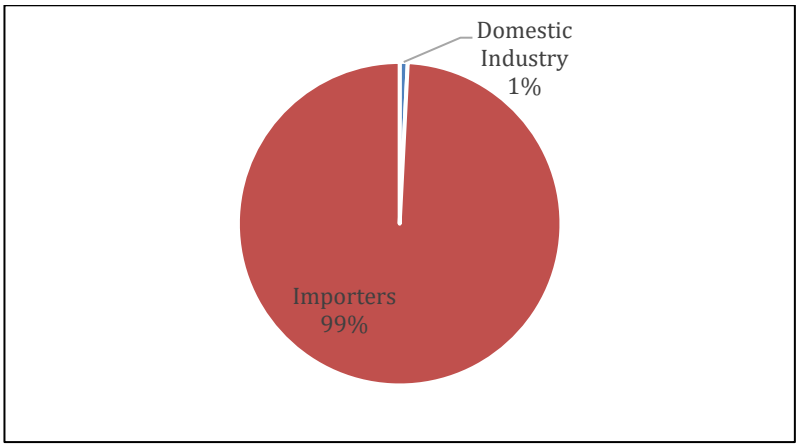
[65] To facilitate accurate estimation, the data set was first categorized by (1) country of origin and (2) importer/consignee. Obvious outliers (entries whose landed costs are greater than PhP 1,000.00/kg) were removed. Any additional outliers were determined based on Z-Scores. The Z-Score is defined as: $\frac{Landed\ Cost - Mean\ Landed\ Cost}{Standard\ Deviation\ of\ the\ Landed\ Cost}$. A Z-Score of 3.5 was selected as the cutoff to minimize deletion of entries as this ensures that 99.7% of all normally distributed values are captured in the dataset.

Year	Import Volume (in MT)						% Share	
	By Domestic Industry	Growth Rate (%)	By Other Importers/ Traders	Growth Rate (%)	TOTAL Imports	Growth Rate (%)	By Domestic Industry	By Other Importers/ Traders
January-June								
2019	334.86	-	55,213.70	-	55,548.56	-	0.60	99.40
2020	1,172.63	250	51,889.42	-6	53,062.04	-4	2.21	97.79
2021	767.00	-35	61,410.34	18	62,177.34	17	1.23	98.77

Source of basic data: BOC-EIEDs

Imports of the domestic industry accounted for merely 1% of total importations over the POI (Figure 12). Its share of imports peaked in 2020 at nearly 2%, equivalent to 1,893 MT.

Figure 12. Import Shares of Market Participants: 2015-June 2021



Source of basic data: BOC-EIEDs

8.4.1 Sources of Imports

During the POI, the bulk of Philippine imports of HDPE were sourced from the ASEAN region, specifically Thailand (30%), Malaysia (24%), and Singapore (22%) with a combined 76% share (Table 8.2 and Figure 13). This is predictable since HDPE imports from ASEAN Member States (AMSs) enjoy duty-free entry into the Philippines. Other sources included Saudi Arabia (11%), Taiwan (3%), the United States of America (3%), Indonesia (2%), the United Arab Emirates (1%), China (1%), and Qatar (1%).

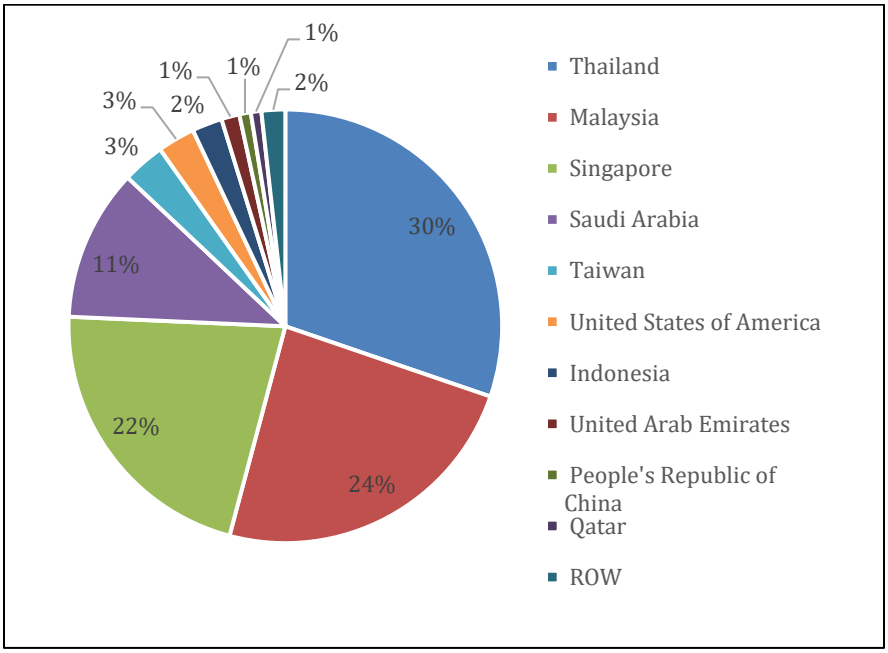
Table 8.2. Country Suppliers of Imported HDPE: 2015-June 2021

Country of Origin	Import Volume (in MT)								% Share
	2015	2016	2017	2018	2019	2020	2021 (January-June)	TOTAL	
Thailand	27,877.96	18,438.74	29,939.20	28,907.25	31,687.28	31,444.76	15,136.68	183,600.16	30
Malaysia	17,310.88	10,944.17	8,344.13	19,817.41	32,613.64	32,287.52	23,604.88	145,043.94	24
Singapore	19,138.22	21,119.77	20,220.31	19,144.05	23,173.71	20,742.19	7,197.35	130,859.14	22
Saudi Arabia	5,505.51	7,175.00	14,867.28	13,781.00	12,662.59	7,906.03	6,787.40	68,746.69	11
Taiwan	651.50	904.69	3,585.55	3,160.55	5,176.17	3,780.77	1,946.52	19,223.00	3

Country of Origin	Import Volume (in MT)								% Share
	2015	2016	2017	2018	2019	2020	2021 (January-June)	TOTAL	
United States of America	34.16	1,658.74	1,718.63	884.24	5,190.48	6,536.75	895.31	16,934.33	3
Indonesia	1,045.50	1,360.00	2,372.15	770.09	1,401.50	3,821.50	2,898.00	13,679.51	2
United Arab Emirates	2,761.47	866.25	1,090.38	843.16	866.60	346.65	1,410.75	8,192.03	1
People's Republic of China	189.79	1,215.81	489.63	364.49	1,181.11	1,149.09	590.64	5,185.14	1
Qatar	102.00	449.50	832.00	1,061.50	985.00	908.50	408.00	4,750.84	1
Rest of World	1,270.73	2,016.11	2,091.05	1,868.12	1,213.55	1,280.78	985.29	10,735.38	2
TOTAL	**75,887.72**	**66,148.78**	**85,550.28**	**90,601.87**	**116,151.62**	**110,204.52**	**61,860.81**	**606,405.61**	**100**

Source of basic data: BOC-EIEDs

Figure 13. Import Shares of Country Suppliers of HDPE: 2015-June 2021



Source of basic data: BOC-EIEDs

8.4.2 Top Importers and Exporters

The Commission recorded 519 importers/traders engaged in the business of importing HDPE. The top ten HDPE importers accounted for 40% (245,604 MT) of total imports during the POI (Table 8.3). Said importers sourced HDPE mostly from four ASEAN Member States (i.e., Thailand, Singapore, Malaysia, and Indonesia), with other non-ASEAN sources being located within Asia as well. The top three importers were RPMC Plastic Philippines, Inc. (14%), Basic Packaging Corporation (4%), and San Miguel Yamamura Packaging Corporation (4%).

Table 8.3. Top Ten Importers of HDPE: 2015-June 2021

Importer	Top Country Source/s	Volume of Imports (in MT)								% Share
		2015	2016	2017	2018	2019	2020	2021 (January-June)	TOTAL	
RPMC Plastic Philippines Inc.	SA, SG, US	6,221.25	14,874.89	23,017.24	13,349.71	13,970.45	8,554.20	7,463.00	87,450.73	14
Basic Packaging Corporation	MY, TH, US	2,500.00	3,061.00	5,040.26	3,928.25	5,511.25	4,311.25	2,033.00	26,385.02	4
San Miguel Yamamura Packaging Corporation	TH, MY, SA	684.61	270.00	1,512.83	4,557.60	9,495.70	7,025.85	148.50	23,695.08	4
Asian Plastic Center	TH, MY ID	1,001.50	1,624.00	3,407.91	2,538.00	4,304.00	3,564.38	3,712.00	20,151.78	3
J-Film Philippines, Inc.	TH, SA, TW	101.76	3,980.46	3,885.49	3,781.93	3,663.75	2,987.88	1,601.25	20,002.51	3
Citiplas Plastic Servicing Center	TH, MY, ID	1,180.50	1,166.00	3,637.89	2,688.00	2,414.00	3,931.50	1,078.25	16,096.14	3
Closure Systems International	SG, AE, CN	2,063.38	3,613.23	3,896.11	3,685.88	1,433.50	-	-	14,692.09	3
Ceed Forming Corporation	SG, JP, QA	1,252.87	1,329.75	2,806.20	2,354.99	1,465.42	2,785.38	1,504.09	13,498.70	2
Calypso Plastic Center	TH, MY, ID	1,793.00	316.00	2,444.38	1,808.00	3,432.50	2,190.25	796.25	12,780.38	2
Dunhill Plastic Industries	MY, SG, TH	574.00	1,261.74	618.00	1,035.00	3,899.50	1,821.25	1,642.00	10,851.49	2
Subtotal		**17,372.86**	**17,372.86**	**50,266.30**	**39,727.35**	**49,590.07**	**37,171.93**	**19,978.34**	**245,603.92**	**40**
Others		**58,514.86**	**34,651.72**	**35,283.98**	**50,874.52**	**66,561.55**	**73,032.59**	**41,882.47**	**360,801.70**	**60**
GRAND TOTAL		**75,887.72**	**66,148.78**	**85,550.28**	**90,601.87**	**116,151.62**	**110,204.52**	**61,860.81**	**606,405.61**	**100**

Legend: AE – United Arab Emirates; CN – China; ID – Indonesia; JP – Japan; MY – Malaysia; QA – Qatar; SA – Saudi Arabia; SG – Singapore; TH – Thailand; TW – Taiwan; US – United States of America

Note: Excludes imports of JGSOC

Source of basic data: BOC-EIEDs

The Commission identified 389 exporters of HDPE during the POI. The top ten exporters accounted for 78% (476,122 MT) of total volumes (Table 8.4). The top three exporters were Lotte Chemical Titan Corporation (21%), Chevron Phillips Chemicals Asia (14%), and SCG Plastics Co. Ltd (11%).

Table 8.4. Top Ten Exporters of HDPE to the Philippines: 2015-June 2021

Exporter	Origin	Volume of Imports by Traders (in MT)								% Share
		2015	2016	2017	2018	2019	2020	2021 (January-June)	TOTAL	
Lotte Chemical Titan Corporation	MY, SG, TH	11,733.52	10,675.12	7,912.26	17,116.85	28,954.05	28,812.15	21,464.70	126,668.63	21
Chevron Phillips Chemicals Asia	SG, US, MY	12,887.97	12,524.43	11,053.89	9,421.65	17,081.90	17,597.74	6,349.05	86,916.63	14
SCG Plastics Co. Ltd.	TH, MY, SA	13,103.33	7,696.77	14,747.07	9,735.23	12,868.68	4,293.35	3,794.00	66,238.42	11
Petro Rabigh Refining and Petrochemical Co.	SA, SG	2,180.76	3,865.96	9,813.32	9,207.00	7,499.50	4,207.50	4,529.25	41,303.28	7
SCG Performance Chemical Co. Ltd.	TH	3,777.68	1,965.95	4,753.70	6,451.10	7,181.75	8,953.15	4,016.00	37,099.33	
PTT Polymer Logistics Co. Ltd.	TH	7,111.11	8,638.02	10,142.85	10,558.68	504.13	-	-	36,954.77	6
GC Marketing Solutions Co. Ltd	TH	-	-	-	-	9,781.45	17,334.98	7,249.18	34,365.60	6
Abu Dhabi Polymers Co. Ltd.	SG, AE, CN	3,896.60	2,672.73	4,448.70	4,824.63	2,497.75	1,385.75	643.50	20,369.65	3
Sumitomo Chemicals Asia Pte. Ltd.	SG, SA	1,993.00	5,079.00	3,019.50	1,485.00	1,930.50	866.25	544.50	14,917.75	2
Borouge Pte. Ltd.	AE, MY CN	1,386.00	1,658.25	1,035.28	818.05	1,489.51	2,450.40	2,450.25	11,287.73	2
Subtotal		**58,069.95**	**54,776.22**	**66,926.55**	**69,618.19**	**89,789.20**	**85,901.26**	**51,040.43**	**476,121.79**	**78**
Others		17,817.77	11,372.56	18,623.73	20,983.69	26,362.42	24,303.27	10,820.38	130,283.82	22
Grand Total		**75,887.72**	**66,148.78**	**85,550.28**	**90,601.87**	**116,151.62**	**110,204.52**	**61,860.81**	**606,405.61**	**100**

Legend: AE – United Arab Emirates; CN – China; MY – Malaysia; SA – Saudi Arabia; SG – Singapore; TH – Thailand; US – United States of America
Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

8.5 Findings on Increased Imports

In making a determination on increased imports, the Commission was guided by the relevant requirements of the Safeguard Measures Act and the WTO Agreement on Safeguards. The Commission also considered all submissions received and undertook its own research.

For purposes of determining whether HDPE pellets and granules are being imported into the Philippines in increased quantities, whether absolute or relative to domestic production, the importations of the domestic HDPE industry were excluded.

8.5.1 Increased Volume of Imports: In Absolute Terms

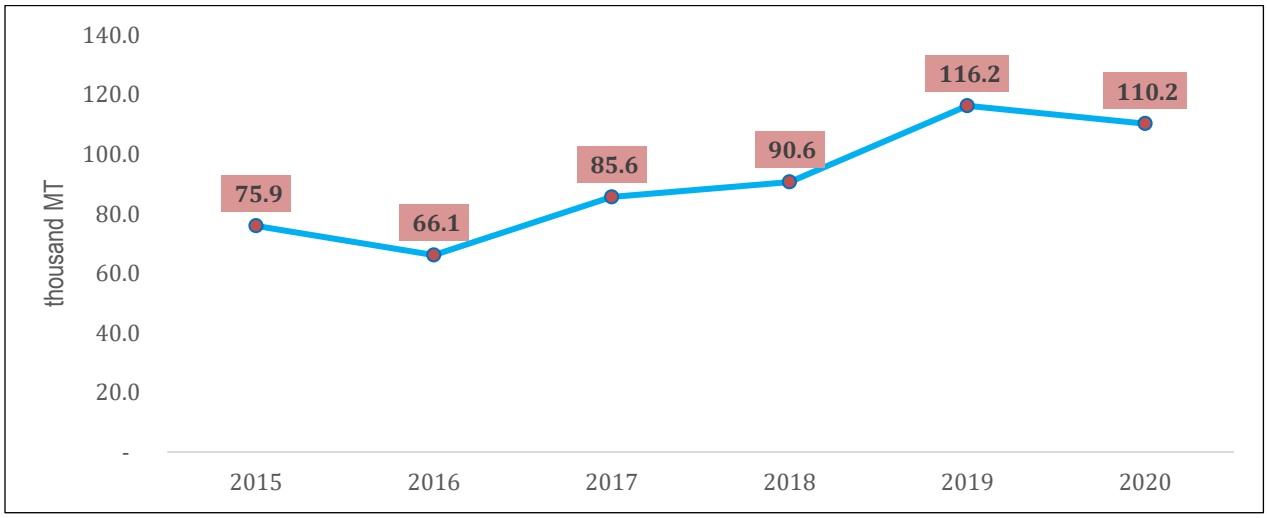
In the first two years of the POI, import volumes of HDPE pellets and granules decreased by 13% from 75,888 MT to 66,149 MT (Table 8.5 and Figure 14). Volumes subsequently rose by 29% in 2017 (to 85,550 MT) and by another 6% in 2018 (to 90,602 MT).

Table 8.5. Imports of HDPE by Importers/Traders, In Absolute Terms: 2015-2020

Year	Import Volume (in MT)	Growth Rate (%)
2015	75,887.72	
2016	66,148.78	-13
2017	85,550.28	29
2018	90,601.87	6
2019	116,151.62	28
2020	110,204.52	-5

Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

Figure 14. Imports of HDPE by Importers/Traders, In Absolute Terms: 2015 to 2020



Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

In 2019, imports increased yet again, by 28% year-on-year to 116,152 MT, surpassing the 100,000 MT-mark for the first time during the POI. During this year, domestic production of HDPE pellets and granules contracted to [redacted] MT, smaller by some 6% than the initial 2015 figure ([redacted] MT) and by approximately 18% compared to the previous year's yield ([redacted] MT). The 2019 production slump was

attributable to a complex-wide shutdown implemented by the domestic industry in the last quarter of 2019 and which stretched up to the first quarter of 2020.

In 2020, imports declined by 5% to 110,204 MT, attributable to the adverse economic consequences (e.g., mobility restrictions) brought about by the global COVID-19 pandemic.

Import levels in 2019 and 2020 were thus considered "not normal" due to then-prevailing market conditions, i.e., the planned shutdown (which affected the available volumes of locally manufactured HDPE pellets and granules in the domestic market) and the pandemic in 2020 (which dampened economic activities due to health and mobility restrictions).

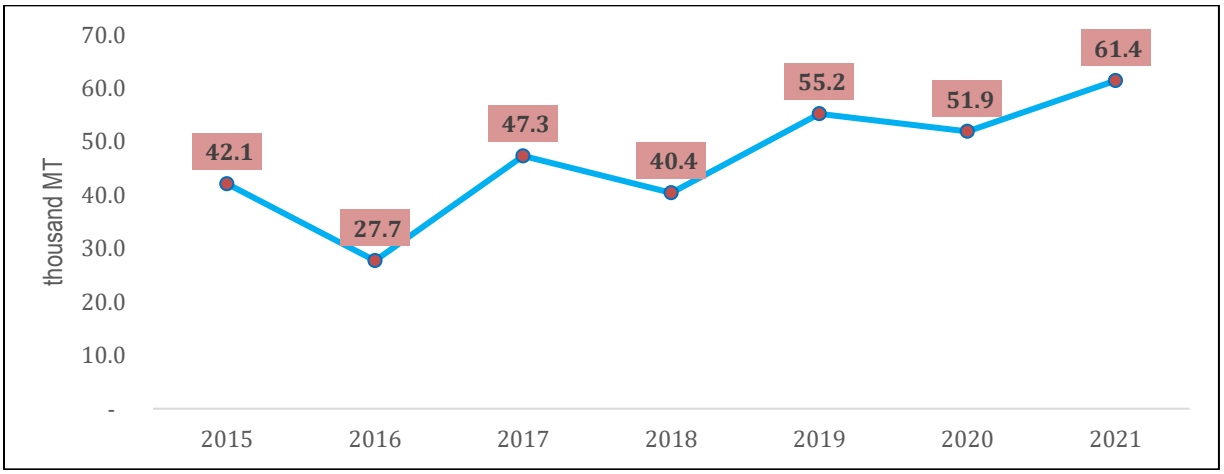
Since the POI is until June 2021, the Commission evaluated first semester imports. Similar to annual volumes, an erratic pattern was observed: from 42,130 MT in 2015, imports declined to 27,728 MT in 2016, only to increase by 71% to 47,331 MT in 2017 (Table 8.6 and Figure 15). In 2018, the volume shrank by 15% to 40,404 MT.

Table 8.6. First Semester Imports of HDPE by Importers/Traders, In Absolute Terms: 2015-2021

Year	First Semester Import Volume (MT)	Growth Rate (%)
2015	42,129.86	
2016	27,728.44	-34
2017	47,330.93	71
2018	40,404.19	-15
2019	55,213.70	37
2020	51,889.42	-6
2021	61,410.34	18

Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

Figure 15. First Semester Imports of HDPE by Importers/Traders, In Absolute Terms: 2015-2021



Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

In 2019, first semester imports grew to 55,213 MT. In pandemic year 2020, however, first semester imports decreased to 51,889 MT. Import levels for these two years can be considered as "not normal" and thus can be excluded from the analysis because of two events (i.e., the planned shutdown and the pandemic) which constitute uncommon circumstances that influenced importations.

In 2021, January-June imports reached a peak level of 61,410 MT. When compared with the volume of imports logged in 2018 (40,404 MT), the 2021 first semester figure was significantly higher by 52%. This 2021 figure was also a substantial 46% greater than the initial half-year import volume in 2015 (42,130 MT).

In addition, the average first semester import quantity for the normal years 2015-2018 was 39,398 MT (Table 8.7). The 2021 half-semester volume was significantly greater, by about 56%, than this average import quantity.

Table 8.7. Comparative Analysis of First Semester and Annual Imports of HDPE by Importers/Traders: 2015-2021

Year	Import Volume (MT)		Share of First Semester Imports to Annual Imports (%)
	First Semester	Whole Year	
2015	42,129.86	75,887.72	56
2016	27,728.44	66,148.78	42
2017	47,330.93	85,550.28	55
2018	40,404.19	90,601.87	45
Average	**39,398.36**	**79,547.16**	**50**
2019	55,213.70	116,151.62	48
2020	51,889.42	110,204.52	47
2021	**61,410.34**	**--**	**--**

Note: Excludes imports of JGSOC
Source of basic data: BOC-EIEDs

On average from 2015-2018, import volumes in the first semester accounted for 50%, or half, of annual imports. Hence, there is a high likelihood that imports in 2021 would exhibit similar trend, i.e., the first semester figure would double to 122,821 MT by the end of the year, thus surpassing by a substantial 54% the average annual imports of 79,547 MT for *normal* years 2015-2018 as well as actual annual imports for all years of the POI.

8.5.2 Increased Volume of Imports: Relative to Domestic Production

During the first four years of the POI, domestic production rose from 170,537 MT (2015) to 195,645 MT (2018) (Table 8.8). The annual shares of HDPE imports to domestic HDPE production did not breach 50% and the average was 42%.

Table 8.8. Share of HDPE Imports by Importers/Traders Relative to Domestic Production: 2015-2020

Year	Imports (MT)	Growth Rate (%)	Domestic Production (MT)	Growth Rate (%)	Share of Imports to Production (%)
2015	75,887.72	--	100	--	[redacted]
2016	66,148.78	-13	110	10.82	
2017	85,550.28	29	114	3.73	
2018	90,601.87	6	115	0.71	
2019	116,151.62	28	94	-17.73	
2020	110,204.52	-5	87	-7.53	

Note: Excludes imports of JGSOC
Source of basic data: Imports - BOC-EIEDs; Production - JGSOC

From October 2019 to March 2020, JGSOC shut down its operations to give way to a complex-wide expansion. As a result, its production contracted by 18% to [redacted] MT in 2019. This substantially smaller domestic supply made available in the market led to an expansion of imports (by 28%) and a marked rise in its share to production to [redacted]%.

In 2020, production fell further to [redacted] MT, the lowest over the POI, as the impact of the planned shutdown was exacerbated by the consequences of the unexpected COVID-19 pandemic. Hence, although annual imports were lower by 5% compared to the 2019 level, its share to local production rose further to peak at [redacted]%.

As the POI was extended to June 2021, the Commission examined first semester import shares as well. As previously mentioned, import levels in 2019 and 2020 were considered "not normal" due to atypical events (i.e., the planned shutdown and the onset of the pandemic) which influenced importations. On the other hand, the first semester of 2021 may be considered normal as JGSOC resumed full production and the economic recovery from the pandemic was underway.

Domestic production during the first semester of *normal* years 2015-2018 averaged [redacted] MT. During the same period, import volumes averaged 39,398 MT, and the average share of imports relative to domestic production was [redacted]% (Table 8.9). In 2021, this import share rose to [redacted]% as first semester imports reached a highpoint of 61,410 MT even though domestic production had recovered to peak at [redacted] MT.

Table 8.9. Share of First Semester HDPE Imports by Importers/Traders Relative to Domestic Production: 2015-2018 (Average) and 2021

	First Semester Volume (MT)		Share of Imports to Production (%)
	Imports	Indexed Domestic Production*	
Average: 2015-2018	39,398.36	100	[redacted]
2021	61,410.34	124	

Note: Excludes imports of JGSOC
** Base year is set at 2015*
Source of basic data: BOC-EIEDs (Imports); JGSOC (Production)

8.6 *De Minimis* Volumes

Rule 13.1.d of the IRRs of RA No. 8800 provides that *"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 nine percent (9%) of the total Philippine imports of the product concerned."*

During the POI, there were 14 developing countries whose individual shares of total Philippine imports of HDPE were found to be below the 3% threshold. Their collective imports of HDPE aggregated to only 5.7% and thus did not exceed the 9% benchmark. These developing countries are listed in *Annex M*.

8.7 Conclusions

Based on import data from 2015 to June 2021, the Commission finds the following:

a. Following a dip in 2016, imports of HDPE pellets and granules increased by 29% in 2017 (to 85,550 MT) and by another 6% in 2018 (to 90,602 MT).

   In 2019, imports continued to grow, breaching the 100,000 MT mark to peak at 116,152 MT. This substantial 2019 increase can be ascribed to the low domestic production of HDPE pellets and granules during said year. In particular, the planned shutdown of JGSOC for six months (from October 2019 until March 2020) and the consequent decline in locally available supply relative to demand constrained users of the subject article to turn to imports to satisfy their requirements for HDPE. In 2020, imports slowed to 110,204 MT. The decline is attributable to the intense economic disruptions caused by the COVID-19 global outbreak.

   Import levels in 2019 and 2020 are considered "not normal" due to exceptional circumstances which influenced importations, namely, the planned shutdown from October 2019 to March 2020 (which reduced the available local supply) and the onset of the pandemic in 2020 (which dampened economic activity). In 2021, economic recovery from the effects of the pandemic were well underway.

   An evaluation of first semester imports over the POI showed that the 2021 volume (61,410 MT) was significantly greater than the following relevant benchmark figures: by 52% compared to import levels in 2018 (40,404 MT) and by 56% compared to average levels in 2015-2018 (39,398 MT).

   On average, import volumes in the first semester accounted for 50%, or half, of annual imports during the *normal* years of 2015-2018. Considering this historical pattern, there is a high likelihood that imports in 2021 would exhibit similar trend,

i.e., the first semester figure would double to 122,821 MT and thus be a significant 54% higher than average annual imports of 79,547 MT for *normal* years 2015-2018.

The foregoing increases in the first semester 2021 import figure relative to comparable and relevant benchmark figures were considered recent, sudden, sharp and significant.

b. The share of imports of HDPE pellets and granules relative to domestic production averaged [redacted]% in 2015 to 2018. Subsequently, the shares rose to [redacted]% and [redacted]% in 2019 and 2020, respectively, attributable mainly to the declines in local production volumes arising from planned shutdown (October 2019 to March 2020) and the adverse economic impact of the pandemic.

While 2019 and 2020 figures were considered abnormal and excluded from analysis due to the voluntary shutdown and the onset of the COVID-19 pandemic which affected importations, the same cannot be applied to year 2021 when the domestic industry resumed production and economic recovery from the effects of the pandemic gained traction.

In January to June 2021, which represents the most recent past and may be deemed a best indicator of the likely situation in the very near future, the share of imports to local production was [redacted]% even though domestic production had recovered to a peak volume ([redacted] MT), which was significantly and sharply higher when compared to the [redacted]% average share for *normal* years 2015 to 2018.

In view of the foregoing, and in accordance with RA No. 8800, the Commission concludes that HDPE pellets and granules were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The increase in volume of imports can be considered recent, sudden, sharp and significant enough.

9. DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF

Rule 9.4c of the IRRs of RA No. 8800 requires that the Commission shall determine "the presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product."

Section 12 of RA No. 8800 provides guidance in the determination of serious injury or threat thereof, to wit:

> *"In reaching a positive determination that the increase in the importation of the product under consideration is causing serious injury or threat thereof to a domestic industry producing like products or directly competitive products, all relevant factors having a bearing on the situation of the domestic industry shall be evaluated. These shall include, in particular, the rate and amount of the increase in imports of the products concerned in absolute and relative terms, the share of the domestic market taken by the increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.*
>
> *Such positive determination shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry. When factors other than increased imports are causing injury, such injury shall not be attributed to increased imports."*

9.1. Serious Injury

Serious injury is defined under Section 4(o) of R.A. No. 8800 to mean:

> *"A significant impairment in the position of a domestic industry after evaluation by competent authorities of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry concerned, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in levels of sales, production, productivity, capacity utilization, profits and losses, and employment".*

Rules 12.1 and 12.2 of the IRRs of RA No. 8800 elaborate Section 12 of said RA with respect to the determination of serious injury:

"Rule 12.1. The Secretary and the Commission, at their respective stages of investigation, shall determine the presence and extent of serious injury or threat thereof to the domestic industry as a result of the increased importation of the products under consideration on the basis of positive evidence and shall require an objective examination of, but shall not be limited to, the following:

Rule 12.1.a. The rate and amount of the increase in imports of the products under consideration in absolute or relative terms;

Rule 12.1.b. The share of the domestic market taken by the increased imports; and

Rule 12.1.c. Changes in the levels of sales, prices, production, productivity, capacity utilization, inventories, profits and losses, wages and employment of the domestic industry.

The Secretary and the Commission, at their respective stages of investigation, shall evaluate information on injury and increased imports covering the previous five (5) year period prior to the submission of the application. x xx

Rule 12.2. In making their determination with respect to serious injury, the Secretary and the Commission, at their respective stages of investigation, shall take into account all economic factors which they consider relevant, including but not limited to:

Rule 12.2.a. significant idling of productive facilities in the domestic industry including the closure of plants or underutilization of production capacity;

Rule 12.2.b. inability of a significant number of firms to carry out domestic production at a profit; and

Rule 12.2.c. significant unemployment or underemployment within the domestic industry".

In its analysis of the injury factors, the years 2019 and 2020 were not considered as these years exhibit "not normal" trends due to the planned shutdown of the domestic industry from October 2019 to March 2020 as well as the onset of the COVID-19 pandemic in 2020.

9.1.1. Injury Factors: Market Share

a. Apparent Domestic Consumption

Apparent domestic consumption during the POI showed modest growth, rising from [redacted] MT in 2015 to [redacted] MT in 2018 with growth rates averaging around 10% annually (Table 9.1 and Figures 16 to 19). Growth in consumption was highest in 2017 at 20%, rising from [redacted] MT in 2016 to [redacted] MT in 2017.

Table 9.1. Apparent Domestic Consumption and Market Shares of HDPE: 2015-2018; January to June, 2018 and 2021

Year	Domestic Sales[1/]		Total Imports (MT) [2/]				Apparent Domestic Consumption		Market Share (%)		
			JGSOC		Other Importers/Traders						
	Indexed Sales [3/]	% Change	MT	% Change	MT	% Change	Indexed Consumption [3/ 4/]	% Change	Domestic Industry	Imports of Domestic Industry	Imports of Other Importers/ Traders
2015	100	-	35		75,888		100		[redacted]	[redacted]	[redacted]
2016	119	18.75	315	800.00	66,149	(12.83)	106	5.77	[redacted]	[redacted]	[redacted]
2017	138	15.98	221	(29.84)	85,550	29.33	127	20.48	[redacted]	[redacted]	[redacted]
2018	136	(1.11)	2	(99.10)	90,602	5.91	129	1.38	[redacted]	[redacted]	[redacted]
Average	**123**	**12.07**	**143**	**(31.43)**	**79,547**	**6.46**	**116**	**9.73**	[redacted]	[redacted]	[redacted]
January – June											
2018	100	-	-	-	40,404	-	100	-	[redacted]	[redacted]	[redacted]
2021	100	0.44	767	Undefined	61,410	51.99	120	20.15	[redacted]	[redacted]	[redacted]

Source of Manufacturing and Sales Data: JGSOC
1/ JGSOC's domestic sales of HDPE
2/ Source: BOC – EIEDs
3/ Base year is set at 2015 (full year); and 2018 (Jan.-June)
4/ Domestic Sales + Total Imports

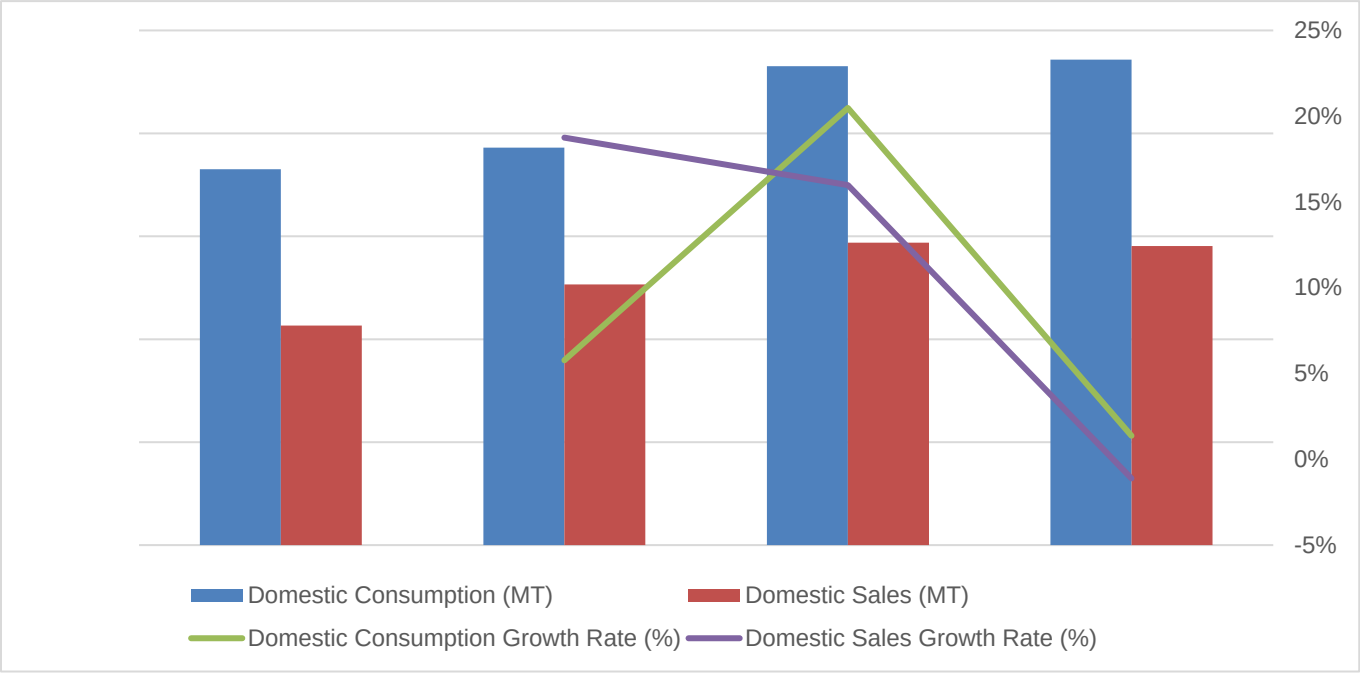
In the first semester of 2021, domestic consumption was 20% greater than in the same period of 2018. This was mainly fueled by an increase in demand for imports, which grew by 52% in 2021 compared to its 2018 half-year level. On the other hand, domestic sales stagnated between 2018 and 2021 (at approximately 69,000 MT).

b. Market Share

Market shares of the domestic industry moderately increased in 2016 but exhibited a decreasing trend throughout the rest of the POI. In 2015, at the start of the POI, the domestic industry's market share was at [redacted]%, the lowest level in the period before the import surge. The domestic industry achieved highest market share ([redacted]%) in 2016. However, its market shares slowly eroded over 2016 to 2018 by around 4 percentage points to [redacted]%. In the *normal* years before the import surge, the average market share of the domestic industry was around [redacted]%.

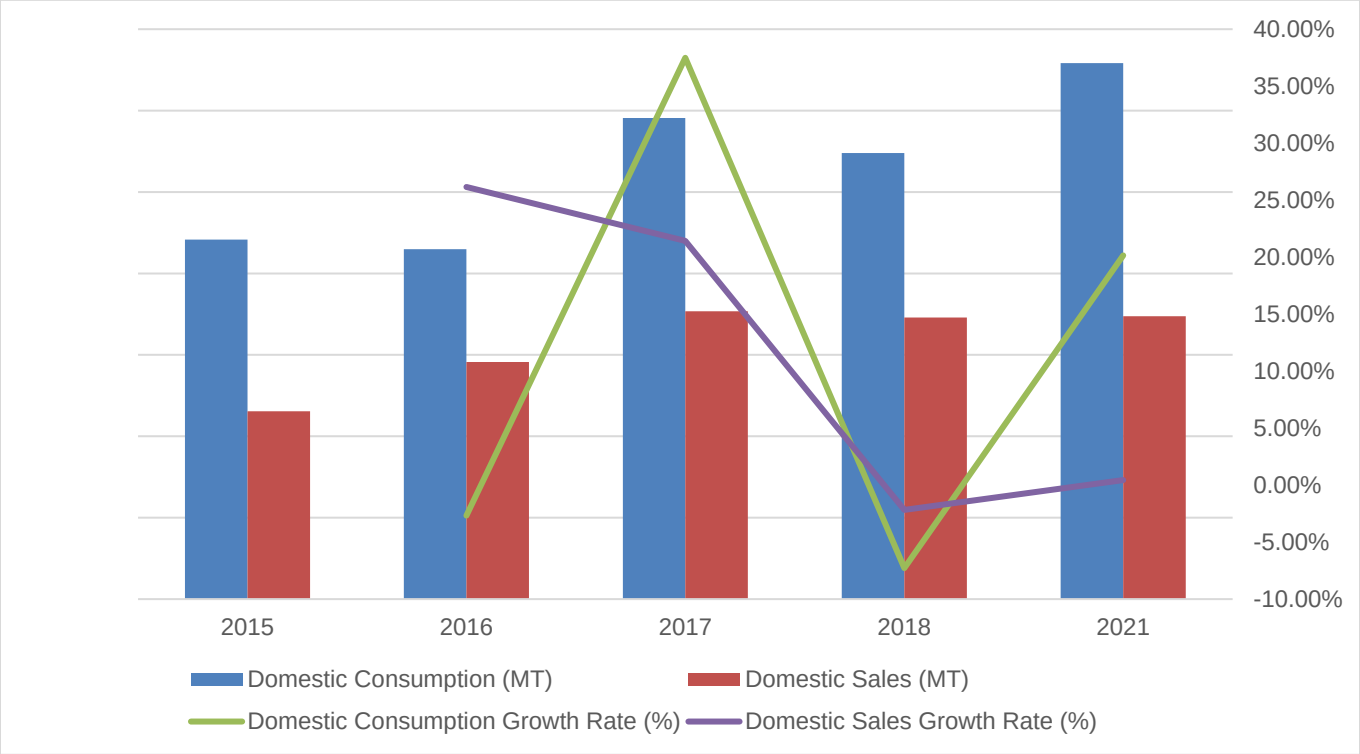
During the import surge in the first semester of 2021, the domestic industry's market share plummeted by 16% between the first semester of 2018 and the same period of 2021 when its share of domestic consumption declined from [redacted]% in 2018 to [redacted]%. Additionally, this is a decline of [redacted] % compared to the average market share of the domestic industry during the *normal* pre-surge years of 2015 - 2018.

Figure 16. Domestic Consumption (MT) and Growth Rates (%); Domestic Sales (MT) and Growth Rates (%): 2015-2018



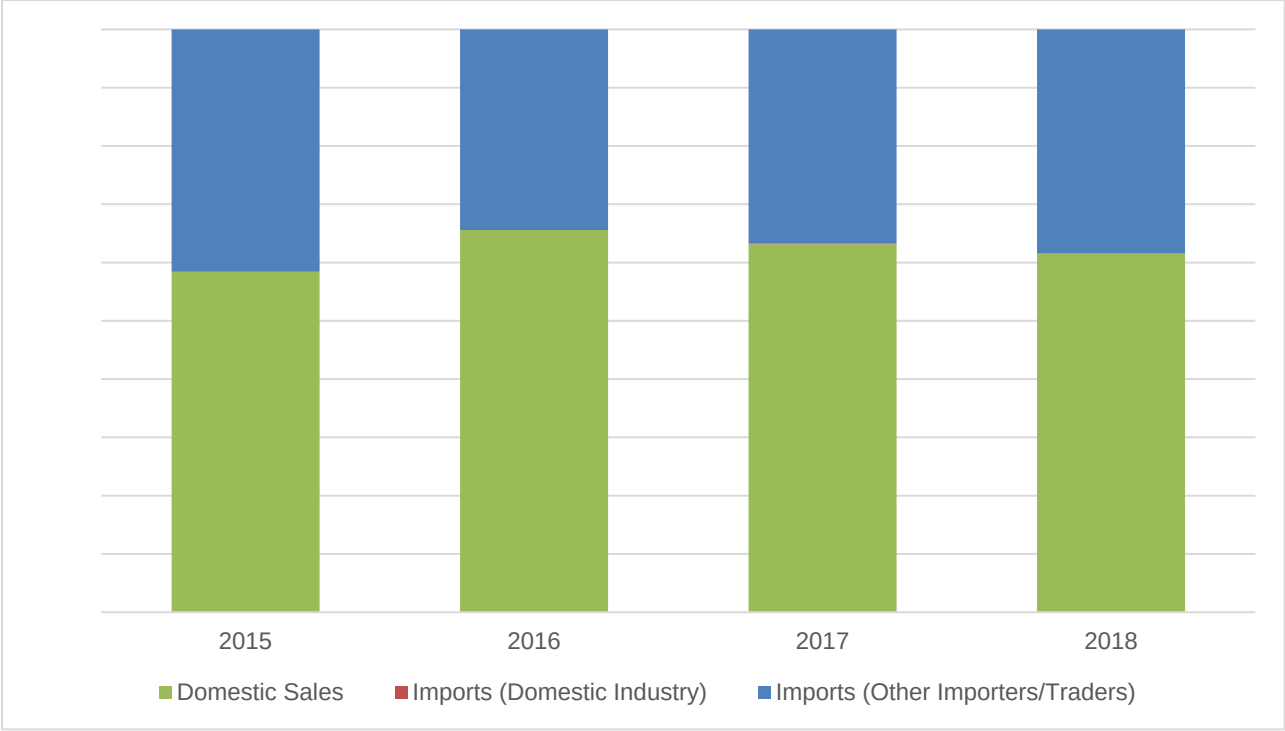
Source of basic data: JGSOC (Sales Data); BOC-EIEDs (Imports)

Figure 17. Domestic Consumption (in MT) and Growth Rates (%): January to June, 2015-2018 and 2021



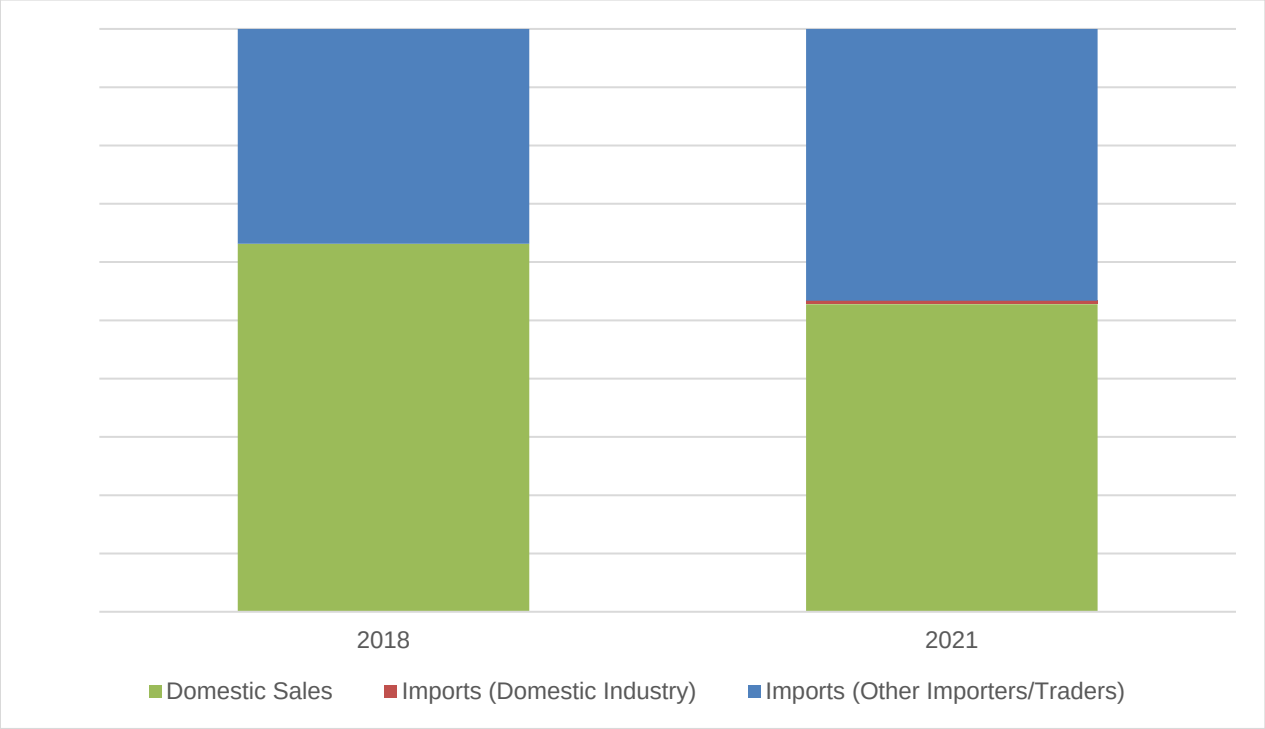
Source of basic data: JGSOC (Sales Data); BOC-EIEDs (Imports)

Figure 18. Market Shares of HDPE (%): 2015-2018



Source of basic data: JGSOC (Sales Data); BOC-EIEDs (Imports)

Figure 19. Market Shares of HDPE (%): January to June, 2018 and 2021



Source of basic data: JGSOC (Sales Data); BOC-EIEDs (Imports)

9.1.2. Injury Factors: Production, Sales and Ending Inventory

a. Product Flow

Product flow describes the movement of goods from supplier to consumer. For the HDPE industry, supply consists of existing stock and newly manufactured products. It may be: (i) sold, either domestically or to foreign buyers; (ii) otherwise disposed of or used for other purposes (e.g., used as product samples, for testing); or (iii) stored as inventory for future use.

In the *normal* period before the import surge (2015 – 2018), the domestic industry was able to dispose of, on average, 95% of its HDPE supply (Table 9.2). Breaking consumption down to its components, it is observed that 68% of supply went to domestic sales, 26% of the available domestic supply was exported, and 1% was used for other purposes. The remaining 5% remained as inventory to be used in the next period.

Focusing on first semester data, in 2015 – 2018 an average of 88% of total supply was disposed of by the domestic industry. Specifically, 64% of supply went to domestic sales, 24% was exported to other countries, and a minimal amount (<1%) was used for other purposes.

Comparing data from the first semester of 2018 (the latest *normal* period) and the first semester of 2021 (the period of the import surge), it is notable that the ratio of total disposals to total supply declined by six percentage points from 93% to 87%, with the largest impact being on domestic sales which decreased by seven percentage points from 69% to 62%, while exports grew slightly (from 24% to 25%). The amount kept as inventory also increased from 7% in 2018 to 12% in 2021. These results indicate decreased performance by the domestic industry during the import surge.

Comparing the data on production during the first semester of 2018 (the most recent *normal* period) and the first semester of 2021 (the period of the import surge), it is notable that production grew by 14% despite the increasing pressure on the domestic industry exerted by the boom in importations. Nevertheless, total sales grew sluggishly by only 1.80% between 2018 and 2021, fueled primarily by growth in exports (6.30%). On the other hand, domestic sales stagnated, increasing only by 0.44% between 2018 and 2021 (from [redacted] MT to [redacted] MT) despite a growth in market demand by some 20%. This indicates that the domestic industry suffered decreased competitiveness in the domestic market during the import surge.

Table 9.2. Production, Sales, and Inventory:
2015-2018; January to June, 2015-2018 and 2021

Year	2015	2016	2017	2018	January - June 2021
Indexed Quantity*					
Beginning Inventory	100	1,954	1,818	1,546	1,067
Production	100	110	114	115	63
Sales	100	116	120	113	60
Domestic	100	119	138	136	65
Export	100	109	86	68	50
Others	100	131	143	277	124
Ending Inventory	100	93	79	213	169
Growth Rate (%)					
Production		9.82	3.73	0.71	
Sales		15.52	4.03	-5.61	
Domestic		18.75	15.98	-1.11	
Export		9.19	-21.01	-20.82	
Others		31.11	8.92	94.01	
Ending Inventory		-6.93	-14.99	169.26	
First Semester (January to June)					
Year	**2015**	**2016**	**2017**	**2018**	**2021**
Indexed Quantity*					
Beginning Inventory	100	69	65	55	38
Production	100	134	138	139	159
Sales	100	129	138	140	147
Domestic	100	121	147	144	144
Export	100	150	115	130	152
Other	100	728	768	665	1,488
Ending Inventory	100	90	70	56	106
Growth Rate (%)					
Production		3.23	0.65	14.09	33.72
Sales		7.06	1.35	4.90	29.25
Domestic		21.43	(2.17)	0.44	20.92
Export		(23.48)	13.46	16.55	49.88
Other		5.50	(13.36)	123.68	627.50
Ending Inventory		(28.68)	(19.46)	89.19	(2.14)

Source of basic data: JGSOC
**Base year is set at 2015*

b. Production and Sales

Throughout the *normal* period before the import surge (2015 – 2018), production grew year-on-year. Thus, production was lowest in 2015, when less than [redacted] MT of HDPE was produced while peak production was attained in 2018 when over [redacted] MT of HDPE was produced (Table 9.3 and Figure 20).

Table 9.3. Production and Domestic Sales of HDPE: 2015-2018; January to June, 2018 and 2021

Year	Production		Domestic Sales		Domestic Sales/Production Ratio (%)
	Indexed Production*	% Change	Indexed Sales*	% Change	
(1)	(2)	(3)	(4)	(5)	(6) = (4)/(2)
2015	100		100		63
2016	110	9.82	119	18.75	68
2017	114	3.73	138	15.98	76
2018	115	0.71	136	(1.12)	74
Average	**110**	**4.75**	**123**	**7.72**	**70**
January – June					
2018	100		100		74
2021	114	14.09	101	1.80	65

Source of basic data: JGSOC
**Base year is set at 2015 (full year); and 2018 (Jan.-June)*

Domestic production during the *normal* pre-surge years of 2015 – 2018 averaged at [redacted] MT while the average domestic consumption of HDPE during those same years was at [redacted] MT (*refer back to Table 9.1*). Thus, the production growth rate failed to keep up with the growth in demand from 2015 to 2018.

Production during the first semester of the *normal* pre-surge period was increasing year-on-year before the import surge. Production was at its lowest in 2015 when [redacted] MT of HDPE was produced and peaked in 2018 at 94,073 MT. Despite the import surge, production in 2021 still increased compared to 2018 levels. Production in the first semester of 2021 amounted to [redacted] MT, for a 14% increase compared to 2018 levels.

Domestic sales of HDPE increased during the early part of the POI. Domestic sales were lowest in 2015 at [redacted] MT and peaked in 2017 when more than [redacted] MT of HDPE were sold to the domestic market. In 2018, sales declined by 1% to around [redacted] MT. Focusing on first semester data, domestic sales for January to June of 2021 amounted to [redacted] MT showing minimal growth (0.44%) from the [redacted] MT sales recorded in the first semester of 2018.

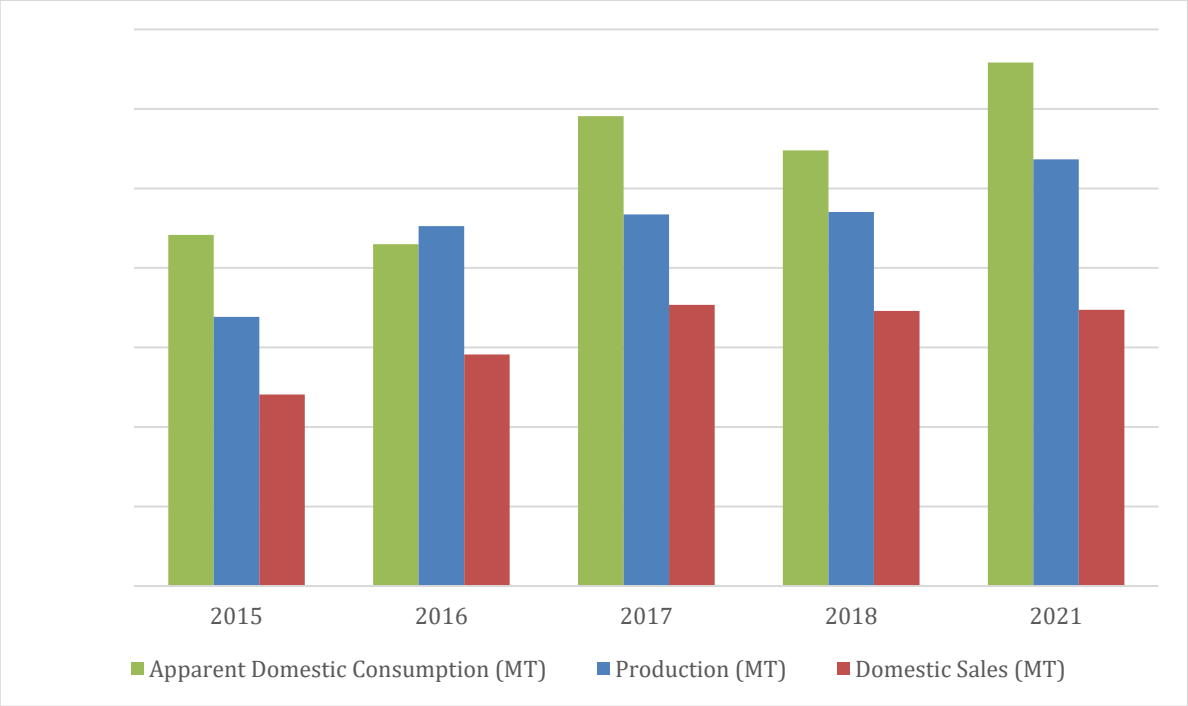
The domestic industry also exported, on average, around 26% of its total production. During the *normal* pre-surge years, exports were highest in 2016 at [redacted] MT and lowest in 2018 when [redacted] MT of HDPE were exported. Nevertheless, the ability to export throughout the POI, indicates a degree of competitiveness in the international market.

The domestic sales to production ratio of the domestic industry averaged around 68% throughout the POI. The ratio was highest in 2017 when total sales

amounted to 73% of production. On the other hand, the ratio was lowest in the first semester of 2021 at only 62%. This decline is not attributed to reduced sales, which was stable between 2018 and 2021, but rather to the domestic industry's increased actual production as the expansion of its naphtha cracker was brought online in April 2020.

Apparent domestic consumption increased by 20% between the first semester of 2018 and the first semester of 2021. Likewise, production increased by 14% to [redacted] MT in the first half of 2021 compared to [redacted] MT in the same period of 2018. However, there was a mere 2% increase (from [redacted] MT to [redacted] MT) in the total sales recorded in the first semester of 2021 compared to the same time interval in 2018. It is clear that domestic sales growth lagged behind production and consumption during the import surge in 2021.

Figure 20. Apparent Consumption, Production, and Sales: January to June, 2015-2018 and 2021



Source of basic data: JGSOC

c. Finished Goods Ending Inventory

The domestic industry can only maintain a maximum inventory equivalent to 45 days' worth of production (roughly [redacted] MT or 12% of total capacity).

In the *normal* years 2015 – 2018 before the import surge, inventory levels averaged [redacted] MT representing around 36% of their maximum inventory level (Table 9.4). Inventory was lowest in 2017 at [redacted] MT and highest in 2018 when it reached [redacted] MT, or about 61% of maximum levels.

Table 9.4. Ending Inventory of HDPE (in MT): 2015-2018; January to June, 2015-2018 and 2021

Year	Production		Ending Inventory		Maximum Inventory Level 1/ 2/		% Maximum Inventory	Inventory/ Production Ratio (%)
	Indexed Production 1/	% Change	Indexed Inventory 1/	% Change				
(1)	(2)	(3)	(4)	(5)	(6)		(7) = (4)/(6)	(8) = (4)/(2)
Full Year Data								
2015	100		100			[redacted]	31.03	4.87
2016	110	9.82	93	(6.93)		[redacted]	28.88	4.15
2017	114	3.73	79	(14.99)		[redacted]	24.55	3.40
2018	115	0.71	213	169.26		[redacted]	61.11	9.08
Average	110	-	121	-		[redacted]	**36.39**	**5.38**
First Semester Data								
2015	100		100			[redacted]	49.27	19.56
2016	134	33.72	98	-2.14		[redacted]	48.21	14.31
2017	138	3.23	70	-28.68		[redacted]	34.39	9.89
2018	139	0.65	56	-19.46		[redacted]	27.69	7.91
Average	128	-	**81**	-		[redacted]	**39.89**	**12.92**
2021	159	14.09	106	89.19		[redacted]	52.39	13.12

1/ Base year is set at 2015
2/ Maximum Inventory is based on 45 days' worth of production capacity or 12% of total production capacity of HDPE.
Source: JGSOC

In terms of inventory-to-production ratio, the same was lowest in 2017 when only 3% of production was stored up as inventory. The ratio reached its peak in 2018 when 9% of the year's production ended up as inventory by year-end. inventory levels during the POI averaged 5%.

In the period before the import surge, inventory pile-up was not evident. The growth in ending inventories in 2018 were seen as voluntary measures enacted by the domestic industry in preparation for the planned production shutdown in 2019 and 2020.

Focusing on first semester data, in the *normal* years before the import surge inventories exhibited a declining trend, with the peak being observed in 2015 when [redacted] MT (or 20% of total production for the period) remained as inventory. On the other hand, 2018 marked the low watermark of inventory levels as only [redacted] MT (or 8% of total production for the period) were kept as inventory.

As of June 2021, inventory levels were at [redacted] MT or 13% of production. This marks an 89% increase from the inventory level seen in the same period of 2018 and a marked reversal of the prevailing trend of declining inventory levels throughout the rest of the POI. This indicates the existence of an inventory pile-up for the year 2021 coinciding with the import surge.

9.1.3. Injury Factor: Price Effects

The importance of conducting a price analysis on the subject article is underscored by the Appellate Body in its Report on *Philippines – Distilled Spirits* (DS 396/403) in which it stated that:

> *"We consider that price is very relevant in assessing whether imported and domestic products stand in a sufficiently direct competitive relationship in a given market. This is because evidence of price competition indicates that the imported product exercises competitive constraints on the domestic product and vice versa."*

a. Cost of Production

The domestic industry's cost of production (COP) consists of the following three general categories: (1) Raw Materials; (2) Direct Labor; and (3) Manufacturing Overhead [such as indirect materials (packaging and fuel), depreciation, rent, utilities, and repair and maintenance costs].

In utilizing COP as an indicator of injury, another factor to consider is that rising average fixed costs during the import surge would have been a red flag indicating a decline in the economies of scale experienced by the domestic industry as it lowers its production levels.

Raw Materials were the major cost component, accounting for an average 91% of HPDE COP during the *normal* years of 2015 to 2018 and 87% in the first semester of 2021 (Table 9.5). A far second was Manufacturing Overhead with 9% average share from 2015 to 2018 and 13% in the first half of 2021. Direct Labor accounted for less than 1%.

Table 9.5. Average Cost of Production of HDPE (PHP/MT): 2015-2018; January to June, 2021

Year	Indexed Production Volume *	Indexed Cost of Direct Raw Materials*	% Share to COP	Indexed Cost of Direct Labor*	% Share to COP	Indexed Cost of Manufactu-ring Overhead*	% Share to COP	Indexed Cost of Production*	% Change in COP
2015	100	100	89.18	100	0.84	100	9.98	100	
2016	110	100	91.71	83	0.72	74	7.57	97	(2.59)
2017	114	113	91.35	23	0.18	93	8.47	110	13.08
2018	115	129	90.30	27	0.18	121	9.52	127	15.34
Average	**110**	**110**	**90.64**	**58**	**0.48**	**97**	**8.89**	**109**	**8.61**
January - June 2021	63	108	87.21	26	0.20	139	12.59	110	-

Source of Basic Data: JGSOC
**Base year is set at 2015*

The primary raw material for HDPE is the olefin [redacted] which accounts for bulk of the overall raw material costs of the domestic industry. JGSOC sources its [redacted] from its own upstream naphtha cracker which started operations in 2014. The rest of the raw materials are imported.

Before the import surge, COP increased by an average of 9% per annum. This was primarily driven by an increase in the cost of raw materials, particularly, the cost of naphtha. Naphtha, being a derivative of crude oil, is especially sensitive to trends in the international crude oil trade. This is evident in Table 9.6 where the price of raw materials tends to follow the price trends of Brent Crude, albeit in a more subdued manner (i.e., when the price of Brent Crude increased by 24% between 2016 and 2017, the price of raw materials rose by a lesser 9%). COP peaked in 2018 when it averaged PHP [redacted]/MT and lowest in 2016 at only PHP [redacted]/MT. COP for the first semester of 2021, during the period of import surge, rose to PHP [redacted]/MT. This is still 10% lower than the COP in the most recent *normal* year of 2018 and is comparable to the average COP of 2017.

Table 9.6. Brent Crude Oil Prices Compared to Raw Material Costs: 2015-2018; 2021

Year	Brent Crude Price (USD/Barrel)	% Change	Indexed Price of Raw Material	% Change
2015	52.32		100	
2016	43.67	(17)	90	(10)
2017	54.25	24	97	9
2018	71.34	32	111	14
2021	70.68	68	96	29

Source of basic data: JGSOC (Price of Raw Materials), Statista (Brent Crude Price)
**Base year is set at 2015*

b. Price Undercutting

Price undercutting is the extent to which the imported product is consistently sold at a price below the domestic selling price of the like product.

During the period before the import surge in 2015 – 2018, the weighted average landed cost of imported HDPE (PHP [redacted]/MT) was higher than the domestic industry's weighted average domestic selling prices for its HDPE products (PHP [redacted]/MT) (Table 9.7 and Figure 21). Thus, price undercutting was not evident as imported HDPE was more expensive than the locally produced HDPE.

Table 9.7. Comparison of Ex-Plant Prices and Landed Costs: 2015-2018; January to June, 2021

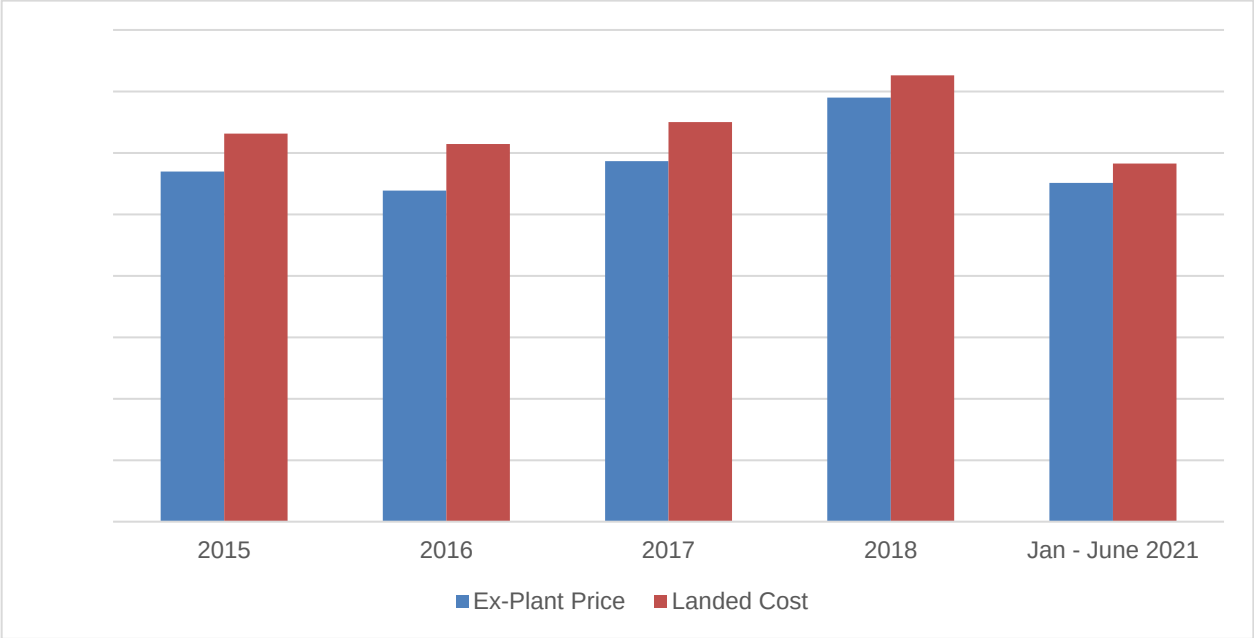
Year	Weighted Average Domestic Ex-Plant Price of Locally Produced HDPE		Weighted Average Landed Cost of Imported HDPE		Price Undercutting	
	Value (PHP/MT)	% Change	Value (PHP/MT)	% Change	Value (PHP/MT)	% Share to Domestic Ex-Plant Price
2015	[redacted]		[redacted]		[redacted]	(10.86)
2016	[redacted]	(5.45)	[redacted]	(2.71)	[redacted]	(14.06)
2017	[redacted]	8.93	[redacted]	5.84	[redacted]	(10.83)

Year	Weighted Average Domestic Ex-Plant Price of Locally Produced HDPE		Weighted Average Landed Cost of Imported HDPE		Price Undercutting	
	Value (PHP/MT)	% Change	Value (PHP/MT)	% Change	Value (PHP/MT)	% Share to Domestic Ex-Plant Price
2018	[redacted]	17.60	[redacted]	11.67	[redacted]	(5.24)
Average	[redacted]	**-**	[redacted]	**-**	[redacted]	**(10.25)**
January - June 2021	[redacted]	(20.11)	[redacted]	(19.77)	[redacted]	(5.69)

Source of Basic Data: JGSOC (Ex-Plant Price); BOC-EIEDs (Landed Cost)

During the import surge in the first semester of 2021, the weighted average landed cost of imported HDPE fell to PHP [redacted]/MT. Similarly, the domestic industry's ex-plant prices declined to PHP [redacted]/MT. Imported HDPE remained more expensive (by PHP 5,932/MT or [redacted]% of the domestic industry's prices) during the period of import surge.

Figure 21. Comparison of Ex-Plant Prices and Landed Costs (PHP/MT): 2015-2018; January to June, 2021



Source of Basic Data: JGSOC (Ex-Plant Price); BOC-EIEDs (Landed Cost)

c. Price Suppression

Price suppression is the extent to which the imported product prevents the domestic producer from increasing its selling price to a level that will allow full recovery of its costs of production.

It is notable that the Petitioner is the sole producer of HDPE in the Philippines. However, this status does not automatically mean that JGSOC is a monopolist in the domestic HDPE market as it faces competition from imported HDPE. Furthermore, the findings of price suppression indicate that the Petitioner is not a price leader in the domestic HDPE market, but rather a price taker, as a price leader will not choose

to set prices at unprofitable levels. Rather, the domestic industry practices import parity pricing in order to remain competitive against imported HDPE.

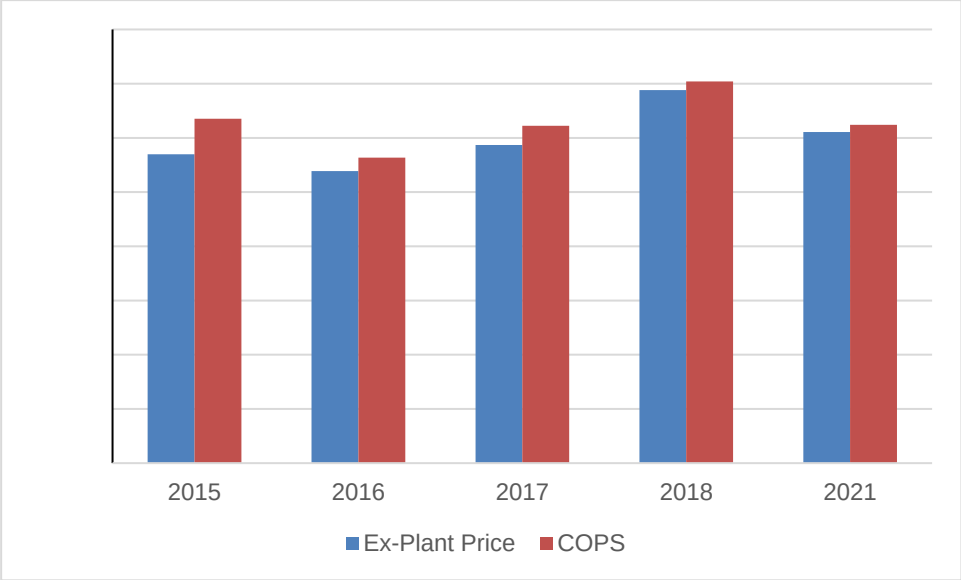
Throughout the period before the import surge, the weighted average domestic selling prices of the domestic industry were lower than the Cost of Production and Sales (COPS) (Table 9.8 and Figure 22). This means that the domestic industry was unable to fully recover its cost of production and sales, indicating price suppression. During the import surge in 2021, this trend continued with ex-plant prices being set at PHP [redacted] lower than the COPS.

Table 9.8. Domestic Selling Prices and Cost of Production and Sales: 2015-2018; January to June, 2021

Year	Weighted Average Domestic Selling Price of Locally Produced HDPE		Cost of Production and Sales		Earnings (Losses) from Sales	
	Value (PHP/MT)	% Change	Value (PHP/MT)	% Change	Value (PHP/MT)	% Change
2015	[redacted]		[redacted]		[redacted]	
2016	[redacted]	(4.50)	[redacted]	(2.54)	[redacted]	(346.41)
2017	[redacted]	7.90	[redacted]	11.24	[redacted]	238.25
2018	[redacted]	17.79	[redacted]	16.36	[redacted]	(14.68)
Average	[redacted]	-	[redacted]	-	[redacted]	-
January - June 2021	[redacted]	(20.44)	[redacted]	(12.82)	[redacted]	(451.42)

Source of basic data: JGSOC
**Base year was set at 2015*

Figure 22. Domestic Selling Prices and Cost of Production and Sales: 2015-2018; January to June, 2021



Source of basic data: JGSOC

d. Price Depression

Price depression is the extent to which the domestic producer decreases its selling price in order to compete with the imported product.

As discussed in the previous sections, the weighted average landed costs of imported HDPE were higher than the domestic industry's weighted average domestic selling prices for its HDPE products over the POI (*refer back to Table 9.7*). However, the domestic industry, being a price taker, was not able to set prices above its COPS and was thus unable to fully recover its costs (*refer back to Table 9.8*).

Throughout the period before the import surge, the domestic industry's prices moved with landed costs. Specifically, when landed costs decrease, ex-plant prices also fell and vice-versa.

As the sole local manufacturer of HDPE, if the domestic industry was a price leader the relationship between the Petitioner's ex-plant price and imports should be inversely proportional. That is, when ex-plant prices increase, domestic consumers will seek out imports as a substitute for the relatively more expensive domestic product. However, there are periods when both imports and ex-plant prices increased such as in 2017 and 2018 (Table 9.9 and Figure 23). On the other hand, there were also periods when the ex-plant price and imports both declined, such as in 2016, wherein it could be said that there was price depression. These trends show that the domestic industry practices import parity pricing in order to be competitive against imported HDPE.

Table 9.9. Comparison of Ex-Plant Prices and Landed Costs: 2015-2018; January to June, 2021

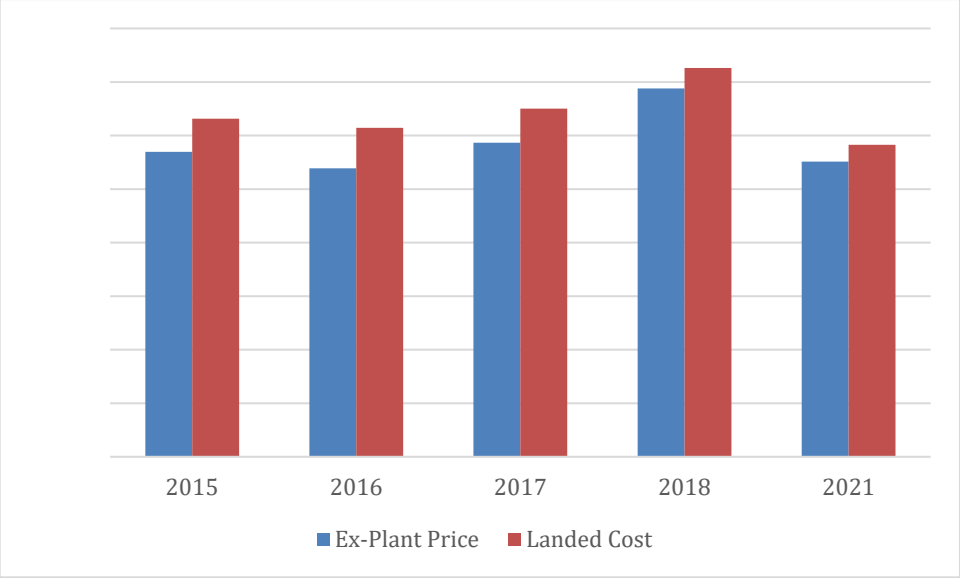
Year	Weighted Average Domestic Ex-Plant Price[1/] of Locally Produced HDPE		Weighted Average Landed Cost of Imported HDPE	
	Value (PHP/MT)	% Change	Value (PHP/MT)	% Change
2015	[redacted]		[redacted]	-
2016	[redacted]	(5.45)	[redacted]	(2.71)
2017	[redacted]	8.93	[redacted]	5.84
2018	[redacted]	17.60	[redacted]	11.67
Average	[redacted]	**-**	[redacted]	**-**
January - June 2021	[redacted]	(20.11)	[redacted]	(19.77)

Source of basic data: JGSOC; BOC-EIEDs

In the first half of 2021, the domestic industry lowered its prices to PHP [redacted]/MT, from PHP [redacted]/MT in 2018. The reason for this may be inferred to be caused by the decreased COPS faced by the industry. Declining price of raw materials notwithstanding, this price drop happened alongside a contraction in the landed costs of imported HDPE (from PHP [redacted]/MT in 2018 to PHP [redacted]/MT), in line with the domestic industry's observed practice of pricing its product close to

that of imported HDPE (i.e., import parity pricing) to remain competitive in the domestic market.

Figure 23. Comparison of Ex-Plant Prices and Landed Costs (PHP/MT): 2015-2018; January to June, 2021



Source of basic data: JGSOC; BOC-EIEDs

9.1.4. Injury Factor: Financial Performance/Profitability

a. Profitability

In its evaluation of profitability, the Commission puts more weight on income (loss) from operation over net income (loss) so as not to consider other income (e.g., interest income; foreign exchange gains) and expenses (e.g., interest expense, finance cost, foreign exchange loss) which are not directly related to manufacturing operations.

In the period before the import surge, losses from operations worsened by 517% from PHP [redacted] million in 2015 to PHP [redacted] million in 2018 (Table 9.10). One cause of the mounting losses faced by the domestic industry was the growing gap between ex-plant prices and COPS.

Table 9.10. Income (Loss) Statement – HDPE: 2015-2018; January to June, 2021

Particulars	PHP '000					
	2015	2016	2017	2018	Average (2015-2018)	January - June 2021
Sales Volume (MT)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Sales Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Less: Cost of Sales	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit (Loss)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Less: Operating Expense	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Particulars	PHP '000					
	2015	2016	2017	2018	Average (2015-2018)	January - June 2021
Income (Loss) from Operation	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other Income (Expenses) - Net	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Income Before Income Tax	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Income Tax Expense	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Net Income (Loss)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% Changes						
Sales Revenue	--	12.50	25.15	16.48	**18.04**	-
Less: Cost of Sales	--	11.09	29.09	17.85	**19.34**	-
Gross Profit (Loss)	--	76.49	(87.67)	(392.45)	**(134.54)**	-
Less: Operating Expense	--	16.99	(15.84)	48.31	**16.49**	-
Income (Loss) from Operation	--	(39.62)	183.92	101.54	**81.95**	-
Other Income (Expenses) - Net	--	48.92	(38.75)	13.66	**7.94**	-
Income Before Income Tax	--	(22.57)	101.44	91.64	**56.84**	-
Income Tax Expense	--	(164.03)	8.54	(23.86)	**(59.78)**	-
Net Income	--	123.31	73.97	70.33	**89.20**	-

Source of basic data: JGSOC

During the import surge in the first semester of 2021, the domestic industry continued to experience substantial losses. Losses from operations in the first semester of 2021 reached PHP [redacted] million, nearly equal to the losses experienced by the industry in the whole year of 2018.

b. Return on Sales

Return on sales was derived by dividing income (loss) from operations by sales revenue. Income from operations was used, instead of net incomes, so that interest expenses, foreign exchange losses and other income and/or expenses, which do not form part of the operating costs/earning are not considered. Return on sales measures operating efficiency, i.e., ability to create profits from operating activities.

Throughout the POI, the domestic industry experienced negative returns on sales. In 2018, losses worsened to 5% of sales revenue (Table 9.11) As of the first semester of 2021, losses did not revert to the pre-surge average of -3%. On the contrary, losses as a percent of sales deteriorated to 13%, more than two times higher than the 2018 level.

Table 9.11. Return on Sales of HDPE: 2015-2018; January to June, 2021

Year	PHP '000		Return on Sales (%)
	Losses from Operations	Sales Revenue	
2015	[redacted]	[redacted]	(2.26)
2016	[redacted]	[redacted]	(1.21)
2017	[redacted]	[redacted]	(2.76)
2018	[redacted]	[redacted]	(4.77)
Average	[redacted]	[redacted]	**(2.75)**
January – June 2021	[redacted]	[redacted]	(12.86)

Source of basic data: JGSOC

Rates of return on sales were inversely correlated with the direction of the change in imports. Periods of positive import growth (such as 2017 and 2018) were generally associated with decreasing Return on Sales.

c. Loss Minimization Rule and the Shutdown Point

Throughout the POI, the domestic industry experienced negative sales returns on its HDPE operations since its ex-plant prices were observed to be below COPS throughout the POI (*refer back to Table 9.11*). However, it may be observed that the domestic industry continued operations despite these losses.

An answer to this apparent paradox may be found in the Loss Minimization Rule[66] which states that a firm will continue operations in the short run even when price (P) is below average costs as long as it is able to continue paying its average variable costs (AVC). Thus, the firm's short run shutdown point is reached when price is less than average variable cost (P<AVC).

In 2015 to 2018, there was a positive difference between the ex-plant price (P_{JG}) and average variable cost (AVC_{JG}), $P_{JG} - AVC_{JG}$ (Table 9.12). This means that JGSOC is able to keep operating at a loss in the short run as it awaits the completion of its planned long-run cost-cutting measures[67]. The average difference of P_{JG} and AVC_{JG} during this period was PHP [redacted]/MT, above the shutdown point.

Table 9.12. Difference Between Ex-Plant Prices and Average Variable Costs: 2015-2018; January to June, 2021

Year	Ex-Plant Price (PHP/MT)	Average Variable Cost (PHP/MT)	Price – Variable Cost	
			Indexed Value	% Change
2015	[redacted]	[redacted]	[redacted]	-
2016	[redacted]	[redacted]	[redacted]	-60
2017	[redacted]	[redacted]	[redacted]	-52
2018	[redacted]	[redacted]	[redacted]	207
Average	[redacted]	[redacted]	[redacted]	**-15**

[66] North Dakota State University (2022). "Loss Minimization". Retrieved on 15 June 2022. From: https://www.ag.ndsu.edu/aglawandmanagement/agmgmt/coursematerials/productiontheory/lossminimization

[67] These measures are discussed in more depth in Chapter 4 of this Report.

Year	Ex-Plant Price (PHP/MT)	Average Variable Cost (PHP/MT)	Price – Variable Cost	
			Indexed Value	% Change
January - June 2021	[redacted]	[redacted]	[redacted]	-743

Source of basic data: JGSOC

In the first semester of 2021, the period of the import surge, the difference between the ex-plant price and the average variable cost became negative, indicating that the firm experienced increased strain on its ability to continue production during the import surge as it is no longer able to fully pay its variable costs. Thus, it may be concluded that the domestic industry has reached, or indeed already crossed the short-run shutdown point during the period of import surge.

The domestic industry utilizes the same facilities (i.e., the naphtha cracker) for the manufacture of its other product lines (e.g., polypropylene, olefins, and LLDPE). This circumstance could also one factor why the domestic industry continues to operate and produce HDPE despite year-on-year high losses.

9.1.5. Injury Factor: Capacity Utilization

The domestic industry has two PE plants that can produce both HDPE and LLDPE. The total design capacity[68] of these two plants is [redacted] MT per annum. The domestic industry can interchangeably produce HDPE and LLDPE.

In the *normal* years 2015 – 2018 before the import surge, the domestic industry utilized, on average, around 83% of its capacity to manufacture both HDPE and LLDPE (Table 9.13). Around 58% of total capacity was dedicated to HDPE and 24% for LLDPE. Capacity utilization was lowest in 2015 when the domestic industry only managed to produce 77% of the total design capacity. Peak capacity utilization was achieved in 2017 at 94%. HDPE capacity utilization was highest in 2018 when it accounted for 61% of total capacity.

Table 9.13. Capacity Utilization:
2015-2018; January to June, 2015-2018 and 2021

Year	Indexed Design Capacity*	Indexed Actual Production*			Capacity Utilization Rate (%)		
		HDPE	LLDPE	Total	HDPE	LLDPE	Total
2015	100	100	100	100	53.30	23.99	77.29
2016	100	110	102	107	58.53	24.48	83.01
2017	100	114	138	121	60.71	33.05	93.76
2018	100	115	67	100	61.15	16.18	77.32
Average	**100**	**110**	**102**	**107**	**58.42**	**24.43**	**82.85**

[68] Per JGSOC's submission, design capacity is calculated at [redacted]. On the other hand, effective capacity is calculated at [redacted] for 2015, 2017, 2018, and 2019; for 2016 due to it being a leap year; and for 2021.

Year	Indexed Design Capacity*	Indexed Actual Production*			Capacity Utilization Rate (%)		
		HDPE	LLDPE	Total	HDPE	LLDPE	Total
January-June:							
2015	100	100	100	100	42.32	21.33	63.55
2016	100	134	92	120	56.59	19.69	76.28
2017	100	138	135	137	58.41	28.88	87.30
2018	100	139	98	125	58.80	20.87	79.66
Average	100	128	106	121	**54.03**	**22.69**	**76.70**
2021	100	159	100	164	67.08	37.07	104.15

Source of basic data: JGSOC
** Base year is set at 2015*

Focusing on first semester data, capacity utilization was not observed to be negatively impacted during the period of import surge in 2021 as it was able to produce 104% of its plants' total design capacity. The 4% excess production vis-à-vis design capacity for this period can be explained by JGSOC's reduction of plant downtime, thus exceeding the normal operational limit.

Total utilization was 27 percentage points higher than the average capacity utilization for 2015 to 2018 (at 77%). Additionally, capacity utilization for HDPE reached 67% in 2021, higher than the pre-surge peak of 59% in the same period of 2018.

9.1.6. Injury Factors: Employment and Labor Productivity

Employment by the domestic industry consistently grew throughout the POI from [redacted] employees in 2015 to [redacted] in 2018 (Table 9.14). However, labor productivity shrunk during the same period by around 28% (from [redacted] MT/employee/annum to [redacted] MT/employee/annum).

Table 9.14. Employment and Labor Productivity: 2015-2018; January to June, 2021

Year	Indexed Number of Employees Directly Involved in Production*	% Change	Indexed Production*						Indexed Labor Productivity*	% Change
			HDPE	% Change	LLDPE	% Change	Total	% Change		
2015	100		100		100		100		100	
2016	116	16.34	110	9.82	102	2.03	107	7.40	92	(7.68)
2017	129	11.06	114	3.73	138	35.02	121	12.95	94	1.77
2018	138	6.90	115	0.71	67	(51.05)	100	(17.54)	72	(22.96)
Average	121	**11.43**	110	**4.75**	102	**-4.67**	107	**0.94**	90	(9.62)
January – June 2021	166	20.43	63	N/A	44	N/A	67	N/A	N/A	N/A

Source of basic data: JGSOC
** Base year is set at 2015*

The largest factor in declining labor productivity was the difference in the growth rates between the number of employees and production volumes. As shown in Table 9.14, when the growth rate for a particular period for the number of employees directly involved in production was greater than the growth rate of actual production, labor productivity declined. For example, in 2016, the number of employees expanded by 16% but the increase in output lagged at 7% thus causing an 8% decline in labor productivity. On the other hand, the year 2017 saw a 2% improvement in labor productivity as production growth (by 13%) outstripped personnel expansion (11%).

In 2015 to 2018, before the import surge, employment continuously increased despite growing imports. The number of personnel grew from [redacted] in 2015 to [redacted] by 2018, with the biggest increase (16%) recorded in 2016. As of June 2021, an additional [redacted] employees were added.

Despite the growth in employment in the industry, the trend of declining employee productivity is expected to reverse in the near future. This is because the planned PE Plant expansion is targeted to be completed by 2022, increasing the need for manpower and allowing optimization of available human resources.

9.1.7. Findings

The Commission finds that:

a. The domestic industry's market shares declined during the period of import surge. In the first semester of 2021, the share of the domestic industry fell by 16% to [redacted]%, from [redacted]% in the same period of 2018. This 2021 market share was also 10% lower than the pre-surge average market share of [redacted]%.

b. Domestic production was not adversely impacted during the period of import surge as it improved by 14% in the first semester of 2021 compared to production during the same period of 2018.

c. While apparent consumption increased by 20% and production rose by 14% in the first half of 2021, the period of import surge, domestic sales hardly moved. From [redacted]MT in the first half of 2018, sales remained flat at [redacted]MT for the same period in 2021. The industry also suffered a significant decline in its sales-to-production ratio, from 74% in 2018 to 65% in 2021, indicating a decreased ability to sell its products in the domestic market during the period of import surge. Taken together, the sluggish growth of domestic sales and lower sales-to-production ratio show decreased performance by the domestic industry despite its practice of import parity pricing.

d. The domestic industry experienced increasing inventory levels during the period of import surge. In the first semesters of the *normal* pre-surge years, inventory levels showed a consistently declining trend. However, 2021 marked a stark reversal of this trend when ending inventories for the period increased by 89% from [redacted]MT in the first semester of 2018 to [redacted]MT in the same period of 2021.

e. During the period of import surge, cost of production (COP) of PHP [redacted]/MT was a mere 2% higher than the *normal* pre-surge average of PHP [redacted]/MT. Likewise, the COP in 2021 was comparable to the COP in 2015 and 2017 as well as 13% lower than the peak COP recorded in 2018 (PHP [redacted]/MT). Notably, the driver of changes in cost of production was the variability in raw material costs, primarily the costs of imported crude oil, and not increasing average fixed costs which would have indicated declining production.

f. Throughout the *normal* pre-surge years of 2015 to 2018, prices of locally produced HDPE were generally lower, by 10% on average, than landed costs of imported HDPE. This trend continued during the import surge in 2021 when local HDPE prices were 6% lower than average landed costs of the imported counterpart. In sum, there was no price undercutting during the POI.

g. In the *normal* period prior to the import surge, price suppression and depression were detected. In terms of price suppression, the domestic industry was unable to recover its Cost to Produce and Sell (COPS) throughout the POI. Price depression was observed in 2016 when the domestic industry decreased its prices to remain competitive with the landed costs of imported HDPE. In the first semester of 2021, price suppression and price depression were still evident as the domestic industry decreased its selling prices between 2018 and 2021, and the domestic industry remained unable to recover its COPS, losing on average PHP [redacted]/MT of HDPE produced.

h. Due to price suppression, the domestic industry was unable to recoup production costs throughout the POI. Nevertheless, operations continued despite these losses. This can be explained by the Loss Minimization Rule whereby the domestic industry was still able to maintain operations as ex-plant prices remained significantly above variable costs, by an average of PHP [redacted]/MT. However, during the period of import surge, the difference between the ex-plant price and variable cost dropped below zero to PHP[redacted]/MT, indicating an inability by the domestic industry to fully recover even just their variable costs with revenues from its sales of HDPE.

i. From 2015 to 2018, or during the *normal* pre-surge period, the domestic industry consistently experienced losses from operations. Between 2015 and 2018, the industry's losses from operations deteriorated by 162% from PHP [redacted] million to PHP [redacted] million. During the period of import surge, the domestic industry incurred losses of PHP [redacted] million, greater than the losses incurred in the whole year of 2018. Likewise, Return on Sales was lowest in the first semester of 2021. Specifically, the return rate of -13.85% was more than three times the average losses suffered throughout the *normal* period before the import surge (-3%).

j. During the period of import surge, total capacity utilization was at 67%, which represents a 14% increase compared to the 59% rate attained in 2018.

k. Employment grew during the period of import surge. Between the end of 2018 and June 2021, [redacted] new employees were added. Additionally, labor

productivity is seen to increase as employees assume their positions in the new PE plant.

Based on its evaluation of the preceding relevant factors, the Commission finds that, despite the deterioration in several factors (i.e., market shares, domestic sales, price suppression and depression resulting in substantial financial losses, and increasing inventories), there was no significant overall impairment in the position of the domestic industry during the POI that constitutes serious injury in accordance with RA No. 8800.

There being no finding of serious injury to the domestic HDPE industry, due to the recentness of the surge and the short timeframe of analysis available, the Commission proceeded to the determination of the existence of threat of serious injury to the HDPE industry.

9.2. Threat of Serious Injury

Rule 12.3 of the IRRs of RA No. 8800 elaborates on the determination of threat of serious injury provided in Section 12 of said RA, *to wit:*

> *Rule 12.3. A determination of threat of serious injury shall be based on facts and not merely on allegations, conjectures or remote possibilities. In making a determination regarding the existence of a threat of serious injury, the Secretary and the Commission, at their respective stages of investigation, shall consider the following among others:*
>
> *Rule 12.3.a. significant rate of increase in imports into the Philippines indicating the likelihood of substantially increased importation, evidenced inter alia by the existence of letters of credit, supply or sales contract, the award of a tender, an irrevocable offer or other similar contracts;*
>
> *Rule 12.3.b. 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;*
>
> *Rule 12.3.c. 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 maintain existing levels of expenditures for research and development; and*
>
> *Rule 12.3.d. growing inventories of the product being investigated whether maintained by the Philippine producers, importers, wholesalers or retailers.*

9.2.1. Rate of Increase of Imports of HDPE into the Philippines

While imports of HDPE by importers/traders slowed down in the second semester of 2021 from 61,410 MT to 52,846 MT, the whole year growth rate of imports of HDPE into the Philippines in 2021 was a significant 26% greater than the levels recorded in 2018, indicating a continuation of the increasing imports detected in the first semester of 2021 (Table 9.15). Likewise recorded importations during the first four months of 2022 (January to April) amounting to 41,328 MT is equivalent to 67% of the importations recorded during the first semester of 2021. Thus, imports in 2022 have continued to enter into the country at the increased levels recorded in 2021.

Table 9.15. Imports of HDPE By Importers/Traders: 2018; 2021; January to April, 2022

Year	Imports by Importers/Traders (MT)	Growth Rate (%)
2018	90,602	-
2021	114,256	26.11
January to June	61,410	-
July to December	52,846	(13.95)
2022		-
January to April	41,328	-

Source of basic data: BOC-EIEDs

9.2.2. Production Capacities of Foreign Exporters

As direct evidence of production capacity of specific countries' HDPE industries was exceedingly difficult to find, the balance of trade (BOT) was instead used as a proxy for a country's production capacity. BOT was used because it shows the net trade flows to a country of a product, taking into account both its ability to manufacture products for export as well as its domestic market's ability to absorb imports of the same product.

Of the top exporters of HDPE to the Philippines, five countries are party to a Free Trade Agreement with the Philippines, namely: Thailand, Malaysia, Singapore, Indonesia, and China. Imports of HDPE from Thailand, Malaysia, Singapore, and Indonesia are subject to zero tariffs under the ATIGA, whereas imports from China are subject to 5% tariffs under the ACFTA which is 50% lower than the equivalent MFN tariff of 10%.

In 2021, the cumulative BOT of these trade partners amounted to -4.57 Million MT, an improvement of 13% compared to the BOT recorded in 2018 (-5.26 Million MT) (Table 9.16). This BOT improvement was fueled primarily by an expansion of China's domestic HDPE industry in a bid to become more self-sufficient in HDPE, by increasing production by over 2 Million MT between 2020 and 2021[69]. As China's imports of HDPE decline, major exporters to China seek to offload their HDPE products to alternative markets such as the Philippines. Additionally, the capacity

[69] ICIS. (09 September 2021). China HDPE self-sufficiency risks increase as more new capacity is announced. Retrieved on 20 June 2022. From: https://www.icis.com/asian-chemical-connections/2021/09/china-hdpe-self-sufficiency-risks-increase-as-more-new-capacity-is-announced/.

expansion of Indonesian PE plants in Banten and West Java[70] as well as the completion of the Long Son PE plant in Vietnam in 2022[71] will generate an additional 900,000 MT of HDPE production capacity to the region.

As shown in Table 9.17, a decline in exports of these ASEAN Partners to China was accompanied by an increase in importations of generally the same scale by the Philippines from said countries between 2018 and 2021. As may be recalled from Section 8 of this Report, the listed ASEAN FTA partners were the source of 78% of all HDPE imports of the Philippines throughout the POI and can readily divert their excess capacities to the Philippines due to the zero ATIGA rates applied to imports of HDPE.

Table 9.16. Balance of Trade of Major Exporters-FTA Partners ('000 MT): 2018 and 2021

Exporter	2018			2021			% Change Balance of Trade
	Exports	Imports	Balance of Trade	Exports	Imports	Balance of Trade	
Thailand	1,644	144	1,500	1,421	131	1,290	(14.00)
Malaysia	506	623	(117)	424	470	(46)	60.68
Singapore	1000	631	369	901	509	392	6.23
Indonesia	46	456	(410)	51	384	(333)	18.78
China	130	6,729	(6,599)	264	6,137	(5,873)	11.00
Total	**3,326**	**8,583**	**(5,257)**	**3,061**	**7,631**	**(4,570)**	**13.07**

Source of basic data: International Trade Centre (ITC) TradeMap

Table 9.17. Trade Diversion from China to Philippines: 2018 and 2021

Country	Exports to China				Exports to the Philippines			
	2018	2021	Change	% Change	2018	2021	Change	% Change
Thailand	251,438	212,215	(39,223)	(15.60)	34,123	39,053	4,930	14.45
Malaysia	190,293	80,962	(109,331)	(57.45)	26,188	40,110	13,922	53.16
Singapore	437,117	342,725	(94,392)	(21.59)	20,798	26,055	5,257	25.28
Indonesia	32,649	24,158	(8,491)	(26.01)	2,508	4,629	2,121	84.57

Source of basic data: International Trade Centre (ITC) TradeMap

9.2.3 Decline in the Domestic HDPE Industry's Performance Indicators

a. Market Share of the Domestic HDPE Industry

The decreased market shares suffered by the domestic industry in the first semester of 2021, the period of import surge, continued until the close of the year. In the second semester of 2021, total apparent domestic consumption declined by 11% (Table 9.18). This decrease in demand affected both the domestic industry and importers. The domestic industry's sales declined by 7% between June and December 2021, while imports fared worse, declining by 14% during this period.

[70] Argus (13 September 2019). Indonesian polymer producers tighten domestic grip. Retrieved on 21 June 2022. From: https://www.argusmedia.com/en/news/1976773-indonesian-polymer-producers-tighten-domestic-grip.
[71] ICIS (2020). *Global Chemicals Outlook 2020*.

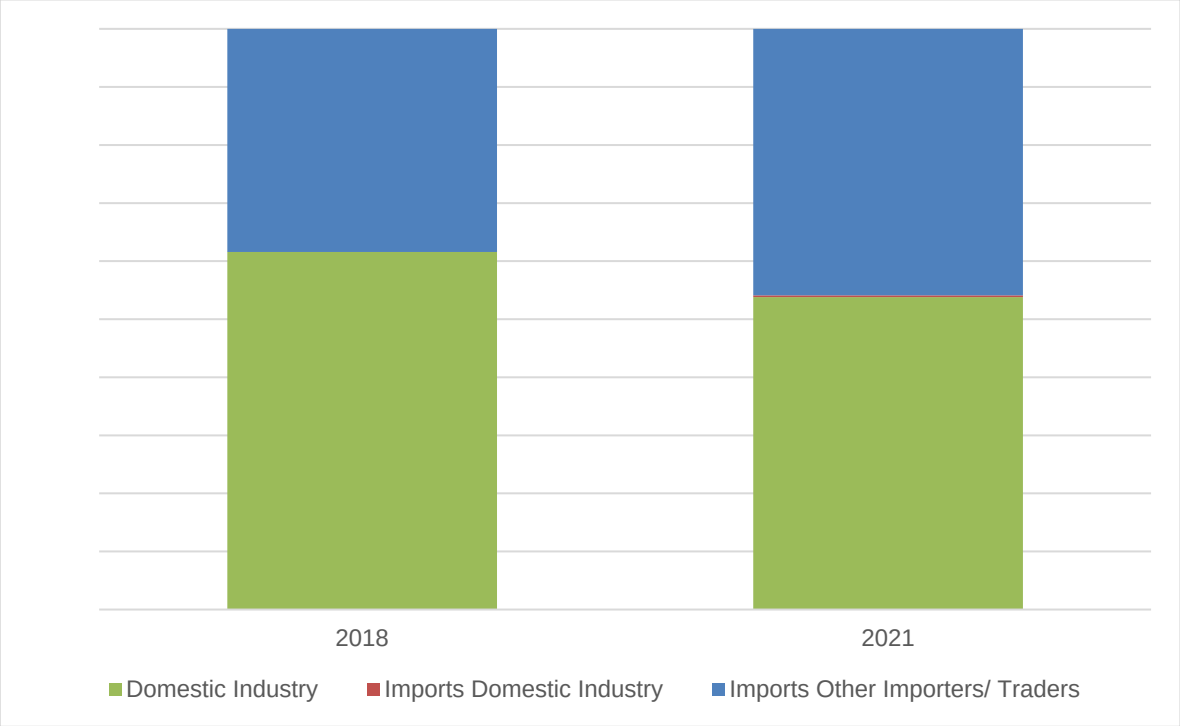
Table 9.18. Market Shares of Local and Imported HDPE: 2018 and 2021

Year	Apparent Domestic Consumption		Domestic Sales		Total Imports				Market Share (%)		
					Imports by Domestic Industry		Other Imports		Domestic Industry	Imports of Domestic Industry	Imports of Other Importers/ Traders
	Indexed Consumption*	% Change	Indexed Sales*	Growth Rate (%)	MT	% Change	MT	% Change			
2018	100		100		2		90,602		[redacted]	[redacted]	[redacted]
2021	106	5.24	92	(7.80)	767	38,250	114,256	26.11	[redacted]	[redacted]	[redacted]
January - June	56		48	-	767	-	61,410	-	[redacted]	[redacted]	[redacted]
July - December	50	(10.92)	44	(7.27)	0	-	52,846	-13.95	[redacted]	[redacted]	[redacted]

Source of basic data: JGSOC (Sales); BOC-EIEDs (Imports)
**Base year is set at 2018*

The foregoing results notwithstanding, for the whole year of 2021 it was found that the domestic industry's market share did not improve significantly from its share of 53% by the end of June 2021. The whole year market share of 54%, as imports continued to enter in increased quantities in the second semester, represents a substantial 12% decline compared to the 62% share the domestic industry held in the last *normal* pre-surge year of 2018. In contrast, the share of imports grew from 38% in 2018 to 46% by yearend 2021, equivalent to a 21% increase in market share in a domestic market that had grown by only 5%.

Figure 24. Market Shares of Local and Imported HDPE (%): 2018 and 2021



Source of basic data: JGSOC (Sales); BOC-EIEDs (Imports)

b. Sales of HDPE by the Domestic Industry

Between the first and second semesters of 2021, apparent domestic consumption declined by almost 11% (Table 9.19). This reduction in consumption affected domestic sales which likewise shrank by 7% compared to its level in the first semester of 2021, as imports continued to enter in increased quantities in the second half of 2021.

Table 9.19. Domestic Consumption and Domestic Sales of HDPE, 2018 and 2021

Year	Indexed Apparent Domestic Consumption*		Indexed Domestic Sales*	
	MT	% Change	MT	Growth Rate (%)
2018	100	-	100	-
2021	106	5.24	92	(7.80)
January - June	56	-	48	-
July - December.	50	(10.92)	44	(7.27)

Source of basic data: JGSOC (Sales); BOC-EIEDs (Imports)

Focusing on annual figures however, which provide a more complete picture, apparent domestic consumption increased by [redacted] MT (or by 5%) between 2018 and 2021. On the other hand, domestic sales declined by 8%, from [redacted] MT to [redacted] MT. This is a reversal of the findings during the first semester of 2021 wherein domestic sales merely *stagnated* compared to 2018 levels.

c. Production of HDPE by the Domestic Industry

In the first semester of 2021, production of HDPE was at [redacted] MT. It may be remembered[72] that this figure represented an increase of 14% compared to production levels in the same period of 2018. However, this increase in production was not sustained in the second semester of 2021, as imports in increased quantities were recorded. By the end of December 2021, production was only at [redacted] MT, a 19% decrease compared to the previous semester (Table 9.20).

Table 9.20. Domestic Consumption and Domestic Production of HDPE: 2018 and 2021

Year	Indexed Apparent Domestic Consumption		Indexed Domestic Production	
	MT	% Change	MT	Growth Rate (%)
2018	100		100	
2021	106	5.24	99	(0.97)
January - June	56		55	-
July - December.	50	(10.92)	44	(19.47)

Source of basic data: JGSOC (Production and Sales); BOC-EIEDs (Imports)
**Base year is set at 2018*

Focusing on whole-year data, actual production of HDPE declined by 1% in 2021 compared to 2018, from [redacted] MT to [redacted] MT, despite a 5% growth in the domestic HDPE market. This finding is not surprising, however, as the production

[72] Section 9.1.2(a) of this Report

slowdown is a logical outcome of both the inability of the firm to minimize losses as it is no longer able to pay for its variable costs from revenues generated by the sale of HDPE[73], as well as the overall decline in consumption in the second semester of 2021.

d. Capacity Utilization of the Domestic HDPE Industry

As production contracted between June and December 2021, capacity utilization likewise declined. From utilizing 67% of total capacity by the end of June 2021, the domestic industry was only able to utilize 53% of total capacity by the end of December 2021, representing a 14 percentage point decline across the two periods (Table 9.21).

Table 9.21. Capacity Utilization for HDPE: 2018 and 2021

Year	Indexed Domestic Production*		Capacity Utilization (%)
	MT	Growth Rate (%)	
2018	100		61.14
2021	99	(0.97)	60.55
January - June	55		67.08
July - December	44	(21.34)	52.77

Source of basic data: JGSOC
**Base year is set at 2018*

The results of the semestral data extend to the full year of 2021 as well. Due to the decline in domestic production between 2018 and 2021, and as imports in increased quantities continued to enter in the second half of 2021, capacity utilization of the domestic industry for HDPE remained stagnant at 61% between 2018 and 2021 despite a 5% increase in market demand.

e. Profitability of the Domestic HDPE Industry

The domestic HDPE industry's losses increased by 84% from PHP [redacted] million in 2018 to PHP [redacted] million by yearend 2021 as imports continued to enter in increased volumes in the second semester (Table 9.22). This is to be expected especially as the difference between ex-plant prices and average variable costs became negative and the domestic industry was thus unable to recoup even just its variable costs in the first semester.[74] This finding is also evident in a semestral analysis, i.e., a 20% reduction in losses in the 2nd semester of 2021 occurred only because production was reduced by 20%, indicative of the distress caused by the industry's inability to recoup costs.

Table 9.22. Domestic Industry Income/Loss from Operations: 2018 and 2021

Year	Income/Loss (in PHP '000 PhP)	% Change
2018	[redacted]	
2021		-84%
January - June		-
July - December		20

Source of basic data: JGSOC
**Base year is set at 2018*

[73] Section 9.1.2(b) of this Report
[74] Section 9.1.4(d) of this Report

9.2.4 Findings

The Commission finds the following:

a. Imports of HDPE (excluding those of the domestic industry) grew by 26% to [redacted] MT in 2021 compared to [redacted] MT in 2018. Additionally, the volume of imports for the first four months of 2022 were of comparable scale to the level in the same period of 2021. The significant rates of increase in imports in 2021 and 2022 indicate a high likelihood of the continuation of substantially increased imports of HDPE pellets and granules in the near future.

b. Attempts by China to limit its imports and achieve a degree of self-sufficiency in HDPE have led to shifts in trade patterns. Between 2018 and 2021, top sources of HDPE who also happen to be major FTA Partners, successfully offloaded their excess capacities to the Philippines as they seek greater entry to alternative markets.

c. There was a significant deterioration in the overall position of the domestic HDPE industry during the period of the import surge up to yearend 2021.

   The domestic industry's market share and sales both deteriorated despite an increase in consumption. The growth in imports far outpaced the expansion in market demand, and allowed it to corner a larger share of the domestic market.

   The domestic industry was forced to reduce production volumes as a direct effect of its inability to pay for its variable costs. Capacity utilization correspondingly declined as a result of the reduction in production, i.e., effective capacities were not fully utilized in an expanding market.

   The local HDPE industry's profitability was severely affected due to the price pressure exerted by significantly increased importations of HDPE on the local manufacturer.

9.3. Conclusion

Based on its evaluation of the preceding relevant factors and in accordance with RA No. 8800, the Commission finds the existence of an imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future.

10. DETERMINATION OF CAUSALITY

Rule 9.4.d of the IRRs of RA No. 8800 provides that the Commission shall determine "*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."* Rule 12.5 further provides that the determination of the existence of said causal link shall be made *"on the basis of objective evidence*" and that "*any known factors, other than the increased importation of the products under consideration, which at the same time injure the domestic industry, shall also be examined and the injuries caused by these factors must not be attributed to the increased importation of the product under consideration*."

10.1 Impact of Increased Imports on the Domestic HDPE Industry

The surge in imports of HDPE, which commenced in 2021, directly caused the deterioration in the overall position of the domestic HDPE industry in the final period of the six-and-a half-year POI. In particular, increased volumes of HDPE imports by traders prevented the local HDPE industry from improving its performance and reaping the growth potential of an expanding Philippine market for HDPE.

The decline in the domestic HDPE industry's performance due to the surge in HDPE imports starting in 2021 was evidenced by the following:

a. Despite growth in the domestic market, the local HDPE industry's shares declined by a substantial 10%. From servicing [redacted]% of the domestic market in 2018, the domestic industry held only [redacted]% of the Philippine HDPE market by 2021, with imports by traders filling the difference.

b. Due to the increasing market presence of HDPE imports in 2021, domestic sales and production by the local HDPE industry declined despite an increase in domestic consumption. This is in contrast to the relatively stable but modest growth in production shown in the *normal* years of 2015 to 2018.

c. Although the domestic industry was able to anticipate larger requirements for HDPE in the future and has set about installing additional capacities to service the domestic market, utilization of its current facilities weakened significantly due to the surge in imports which displaced sales of the local industry. Effective capacities were not fully utilized despite the expanding market.

c. While the local HDPE industry remains the dominant player in the domestic HDPE market, this is only possible due to: (i) a pricing strategy (import parity pricing) adopted by the industry to remain competitive with HDPE imports by traders; and (ii) minimizing and absorbing *short-term* losses in anticipation of cost reductions that will be brought about by the planned PE plant expansion and the associated benefits an increase in the economies of scale will bring. However, as prices have dipped even below the domestic industry's average

variable costs, losses scaled proportionately to production, necessitating a slowdown in production by the second semester of 2021.

10.2 Impact of Other Factors on the Domestic HDPE Industry

Volatility of Crude Oil Prices. The domestic HDPE industry had some difficulty achieving cost competitiveness because of the volatility in the cost of its raw materials, specifically, the cost of crude oil which acts as the feedstock in order to produce the raw material, naphtha, used by the domestic industry.

While contributory to the impairment of the domestic HDPE industry, the price volatility of crude oil affects every other major manufacturer of HDPE worldwide which also utilize naphtha as their primary feedstock.

Impact of the COVID-19 Pandemic The COVID-19 pandemic may have contributed to the overall impairment of the domestic HDPE industry due to production slowdown (or shutdown) caused by the imposition of quarantines and other health-promoting measures. Logistical costs also increased as a result of transit and travel restrictions placed upon logistics providers.

The most restrictive measures were implemented in 2020 and by 2021 the impact of these measures have largely abated with the opening up of the country to economic activity. Additionally, logistics costs for 2021 had gone down almost to pre-pandemic levels.

10.3 Conclusion

On the basis of the foregoing, the Commission finds the existence of a direct causal relationship between increased imports of HDPE and the imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future. While there were other factors that contributed to the impairment of the domestic HDPE industry, these were not substantial to cause serious injury to the local HDPE industry during the period of the import surge.

11. OTHER ISSUES

11.1 Article XIX of GATT 1994 and the WTO Agreement on Safeguards

Article XIX of the GATT 1994 and the WTO Agreement on Safeguards set out the general WTO regime pursuant to which WTO Members may apply safeguard measures to prevent or remedy "serious injury" to an import-competing industry sector resulting from unforeseen import surges in their markets. Thus, according to the WTO Appellate Body, a member country must comply with the requirements of Article XIX of GATT 1994 and the Agreement on Safeguards in a safeguard measures action.

Article XIX:1(a) of GATT 1994 states that "*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 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.*"

In Argentina – Footwear (EC), the Appellate Body interpreted the meaning of the phrase "as a result of unforeseen developments" which, although not included in the Agreement on Safeguards, is set forth in Article XIX:1(a) of GATT 1994. The Appellate Body held that "*the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been 'unexpected'*". Further, the Appellate Body also held that the requirement of "unforeseen developments" does not establish a separate "condition" for the imposition of safeguard measures but described a set of "circumstances".

The basis of the Commission's investigation is RA No. 8800, a domestic legislation enacted to promote the competitiveness of domestic industries by providing temporary protection from increased imports which cause or threaten to cause serious injury to domestic industries and producers. Under said Philippine law, there is no explicit requirement to establish "unforeseen developments" in order for the action to prosper. Nevertheless, the Commission establishes unforeseen developments in this case if only to respond to the issue of unforeseen development raised by the identified parties.

Unforeseen Development: Increase in Production and Capacity of HDPE Worldwide

The increased HDPE exportations of Thailand, Malaysia, Indonesia, and South Korea in response to market saturation in East and South East Asia were unexpected developments which happened long after the conclusion of the ATIGA and AKFTA negotiations[75]. The Argentina – Footwear (EC) Panel Report cited that "*the term 'unforeseen developments' should be interpreted to mean developments occurring after the negotiations of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."*

Global Market. Entering into 2021, the global polyethylene markets faced oversupply due to increasing capacities in Asia and oversaturation of domestic markets in the region. Supply tightened in 2020 due to temporary shutdowns and logistical issues caused by the COVID-19 pandemic. As restrictions became more relaxed entering into 2021, plant shutdowns came to an end and capacities increased, which placed downward pressure on prices[76].

Thailand. From 2020 to 2022, the Thai polyethylene industry was projected to grow, supported by pro-industry government policies, an increase in supply, and stabilization of export markets. The growth of Thailand's domestic demand for PE products lags behind supply. Demand grew by 2.3% between 2019 and 2020 while supply increased by 2.6%[77]. The demand for excess production is met by exports. China serves as the primary market for Thailand's HDPE exports. However, export volumes declined in recent years due to capacity expansions in China reducing their need for HDPE imports from Thailand[78]. This resulted in trade diversion to other countries such as neighboring Indonesia, Myanmar, the Philippines, and Cambodia as well as more faraway markets in Oceania and South America.

Malaysia. Malaysia's primary export markets prior to 2021 included Vietnam, China, Indonesia, and the Philippines. However, due to capacity expansions in Vietnam, China, and Indonesia, their markets became too saturated to absorb Malaysian exports. Thus, Malaysian exports in 2021 were refocused to the Philippines, Bangladesh, and Pakistan.

Indonesia. By the end of 2019, Indonesia unveiled new expansions of their existing polyethylene plants in Banten and West Java resulting in a cumulative increase of HDPE capacity by 400,000 MT/year. Although serving primarily domestic needs, these expansions represent roughly 29% of domestic demand, adding to the

[75] The ASEAN Trade in Goods Agreement was signed on 26 February 2009 while the ASEAN-Korea Trade in Goods Agreement was signed on 24 August 2006.
[76] S&P Global. (04 December 2020). *Commodities 2021: Global polyethylene markets expecting oversupply in H1 2021.* Retrieved on: 20 June 2022. From: www.spglobal.com/commodityinsights/en/market-insights/latest-news/petrochemicals/120420-commodities-2021-global-pe-markets-expecting-oversupply-in-h1-2021.
[77] Krungsri Research. (June 2020). *Thailand Industry Outlook 2020-22: Petrochemicals.* Retrieved on 20 June 2022. From: https://www.krungsri.com/getmedia/cb439bc6-cb88-42f2-82df-0f1ec18e0df8/IO_Petrochemicals_200610_EN_EX.pdf.aspx?fbclid=IwAR3aH8rQIX1e1KkvTjtthk_ElkeKx8FTqkNlroqLDIQcs57flyjgsC_fpS0.
[78] ICIS. (09 September 2021). *China HDPE self-sufficiency risks increase as more new capacity is announced.* Retrieved on 20 June 2022. From: https://www.icis.com/asian-chemical-connections/2021/09/china-hdpe-self-sufficiency-risks-increase-as-more-new-capacity-is-announced/.

glut of HDPE supply in the region[79]. Shutdowns and logistical issues caused by the COVID-19 pandemic delayed the effects of the added supply to regional markets, but by 2021 the additional capacities made Indonesia a less attractive market for HDPE exports. The result is traditional suppliers to Indonesia are constrained to find new markets for their HDPE products, with Singapore, Thailand, and Malaysia diverting their exports to Indonesia to other trade partners.

South Korea. South Korea's HDPE capacity increased by 20% between 2020 (2.8 Million MT) and 2021 (3.4 Million MT)[80]. Net exports of HDPE from South Korea increased proportionately during the same period, growing by 21% from 1.4 Million MT in 2020 to 1.7 Million MT in 2021[81]. Major export markets for South Korean HDPE included China and Vietnam which themselves experienced an increase in HDPE production in 2021 [82] resulting in increased exports to alternative markets in neighboring South East Asia such as Thailand, Malaysia, and the Philippines.

11.2 Public Interest

Public interest is among the primary consideration in providing for safeguard measures to protect Philippine industries from serious injury, or threat thereof, due to increased imports[83]. The Safeguard Measures Act requires the Secretary of Trade and Industry (or the Secretary of Agriculture in the case of agricultural products) to establish that the application of the safeguard measures will be in the public interest.

In establishing whether the imposition of a safeguard measure will be in the public interest, the Secretary of Trade and Industry is required, under the law, to consider factors such as possible political or economic crisis and shortage of the product under consideration in the domestic market[84].

Accordingly, Rule 9.3 of the IRRs to RA No. 8800 requires the Commission, in the course of its formal investigation, to receive submissions of parties as to whether or not the application of a safeguard measure would be in the public interest.[85]

11.3. Tariff Concessions Under FTAs

A WTO member may take safeguard action (i.e., restrict imports of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing, or which is threatening to cause, serious injury to the industry. As discussed earlier, this course of action was already available under Article XIX of the GATT. The Philippines, by so applying it, does not renege on its

[79] Argus. (13 September 2019). *Indonesian polymer producers tighten domestic grip.* Retrieved on 21 June 2022. From: https://www.argusmedia.com/en/news/1976773-indonesian-polymer-producers-tighten-domestic-grip.
[80] ICIS. (20 January 2022). *New supply chain problems prolong the big HDPE divide as imbalances build.* Retrieved on 20 June 2021. From https://www.icis.com/asian-chemical-connections/2022/01/new-supply-chain-problems-prolong-the-big-hdpe-divide-as-imbalances-build/.
[81] ICIS. (25 October 2021). *Here is your guide to Asian and Global HDPE markets in Q4 this year and in 2022.* Retrieved on 20 June 2022. From: https://www.icis.com/asian-chemical-connections/2021/10/here-is-your-guide-to-asian-and-global-hdpe-markets-in-q4-this-year-and-in-2022/.
[82] *Ibid.*
[83] Sec. 2 *Declaration of Policy.* Republic Act 8800 (Safeguard Measures Act).
[84] Rule 5.2 of the IRRs to RA 8800
[85] Rule 9.3 of the IRRs to RA 8800

treaty/contractual obligations to provide tariff concessions to an FTA Partner because the difference between MFN tariffs and preferential FTA tariffs is maintained.

12. CONCLUSION

In accordance with RA No. 8800, the Commission hereby concludes the following:

1. JG Summit Olefins Corporation is the country's sole producer of High-Density Polyethylene (HDPE) pellets and granules. As the sole manufacturer of HDPE products, its output complies with the domestic industry requirement under Section 4(f) of RA No. 8800.

2. Locally produced HDPE pellets and granules are intended for (i) film extrusion process, (ii) injection molding process, (iii) blow molding process, (iv) pipe extrusion process and (v) monofilament extrusion process, and their respective applications, and are **like products** to imported HDPE pellets and granules classified under AHTN 2017 subheading 3901.20.00 which are intended for the same processes and applications.

3. HDPE pellets and granules were imported into the Philippines in increased quantities both in absolute terms and relative to domestic production starting in the first semester of 2021. The increase in volume of imports was recent, sudden, sharp, and significant enough.

4. While the domestic HDPE industry suffered injury, as evidenced by deterioration in industry market share, sales, and profitability during the period of import surge, the overall impairment in its position was not of a degree that may constitute serious injury.

5. There exists an imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future, as shown by: (a) the significant rate of increase in HDPE importations in 2021, pointing to the high likelihood that substantially increased imports will continue into the near future; (b) the substantial freely disposable production capacities of top suppliers Malaysia, Thailand, Singapore, and Indonesia in the form of trade diversion from their primary export markets and the importance of the Philippines as an alternative market, indicating a high likelihood of substantially increased exports of HDPE to the Philippines in the near future; and (c) the significant deterioration in the overall position of the domestic HDPE industry during the period of import surge (i.e., declines in market share, sales, production, capacity utilization, and profits).

6. There is a direct causal relationship between increased imports of HDPE and the imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future. While there were other factors that contributed to the impairment of the domestic

HDPE industry, these were not substantial to cause serious injury to the local HDPE industry during the period of import surge.

7. Serious injury to the domestic HDPE industry would occur imminently if a definitive safeguard measure against importations of HDPE is not applied.

8. The circumstances provided in Article XIX of GATT 1994 does not need to be demonstrated since the product under consideration is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by national legislation (RA No. 8800) and the terms and conditions of the Agreement on Safeguards.

13. RECOMMENDATION

The following Rules of the IRRs of RA No. 8800 provide guidance on the imposition of definitive safeguard measures:

> "*Rule 13.1.a. Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure, in the form of:*
> *i) An increase in, or imposition of, any duty on the imported product;*
> *ii) A decrease in, or the imposition of a tariff-rate quota (MAV) on the product;*
> *iii) A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;*
> *iv) One or more appropriate adjustment measures adjustment measures including the provision of trade adjustment assistance; or*
> *v) Any combination of actions described in subparagraphs (i) to (iv).*
>
> *xxx*
>
> *Rule 13.1.c. The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports. Provided, however, that when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.*
>
> *xxx*
>
> *Rule 15.1 The duration of the period in which an action is taken under the General Safeguard Measures provisions of these IRRs shall not exceed four (4) years. Such period shall include the period, if any, in which provisional relief under Rule 8 was in effect.*
>
> *xxx*
>
> *Rule 15.5 Any action described in Rule 13 that has an effective period of more than a year shall be phased down at regular intervals within the period in which the action is in effect;*"

The final determination shall be made by the Secretary pursuant to the following Rule of the same IRRs:

"*Rule 13.2 Final Determination by the Secretary*

Rule 13.2.a. Within fifteen (15) calendar days from receipt of the Report of the Commission, the Secretary shall make a decision, taking into consideration the measures recommended by the Commission."

13.1 Recommendation

Based on its positive determination that domestic HDPE is "like" to imported HDPE and that HDPE is being imported into the Philippines in increased quantities, and having established the existence of a causal link between the imminent threat of serious injury to the local HDPE industry in the near future and increased imports of HDPE, the Commission hereby recommends the application of the appropriate definitive general safeguard measure on importations of HDPE to prevent the imminent occurrence of serious injury to the Philippine HDPE industry. The Commission further recommends that the definitive safeguard measure be applied for a period of three years.

13.1.1 Amount of Definitive Safeguard Measure

The Commission recommends an *ad valorem* safeguard duty of 2%. The safeguard duty is calculated by comparing the domestic industry's ex-plant prices with the COPS of locally produced HDPE for the period of the import surge (2021) (Table 13.1).

Table 13.1 Estimated Definitive Safeguard Duty, 2021

Domestic Industry's Ex-Plant Price, 2021 (PHP/MT)	Domestic Industry's Cost of Production and Sales (COPS) (PHP/MT)	Difference between Ex-Plant Price and COPS	Ad Valorem Equivalent (%)
(1)	(2)	(3) = (2) – (1)	(4) = (3)/(1)
[redacted]	[redacted]	[redacted]	2

Source of basic data: JGSOC

This rate of duty will allow the domestic industry to adjust its selling prices to a level that will allow full recovery of its cost of production.

13.1.2 Requirement of Certificate of Origin

All importers of HDPE, regardless of port of exportation, are required to secure a Certificate of Country of Origin issued by the authorized agency/office in the source country of manufacture as authenticated by the Philippine Embassy/Consulate thereat.

13.1.3 Application of De Minimis Rule

Following Rule 13.1.d of the IRRs of RA No. 8800, a definitive safeguard measure shall not be applied to imports of HDPE originating from developing countries with *de minimis* exports. Based on 2021 import data, imports from developing countries list under Annex M were *de minimis*.

For new exporting countries, except developing countries covered by the *De Minimis* Rule, their exports shall automatically be levied the safeguard duty. The determination of new countries to be covered by the *De Minimis* Rule is to be made by the DTI.

13.2 Notification/Consultations Under International Trading Arrangements

13.2.1 WTO

Rule 17 of the IRRs of RA No. 8800 provides that:

"*The Secretary shall notify the Committee on Safeguards of the World Trade Organization:*

Rule 17.1. When initiating an action relating to serious injury or threat thereof and the reasons for it;

Rule 17.2. When adopting a provisional general safeguard measure following a positive preliminary determination; and

Rule 17.3. When applying or extending a definitive general safeguard measure following a positive final determination."

13.2.2 Other International Trading Arrangements

As HDPE may be covered by the FTAs that the Philippines has entered into (i.e., ATIGA, ACFTA, PJEPA, AJCEPA, AKFTA, AIFTA, AANZFTA, PH-EFTA FTA, and AHKFTA), the Philippines shall follow the notification and/or consultation requirements provided under said FTAs.

13.3 Review of Definitive Safeguard Measure

Rule 15.6 of the IRRs to RA 8800 reads:

"*The decision imposing a general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity. The industry benefitting from the application of a general safeguard measure shall be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefitting industry fails to show any improvement, as may be determined by the Secretary.*"

On the other hand, Rule 16.1 of the same IRRs provides that:

> "*So long as any action taken under Rule 13 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.*"

Pursuant to the aforementioned Rules, the Commission shall review the application of a definitive safeguard measure regularly and monitor developments in the domestic industry benefitting from the safeguard measure. The domestic industry shall be required to show its progress and specific efforts undertaken to make a positive adjustment to import competition.

14. EFFECTS OF THE AFFIRMATIVE RECOMMENDATION

Section 14 of RA No. 8800 provides that:

"*The report (of the Commission) shall also include a description of the short and long-term effects of the affirmative or negative recommendation, as the case may be, on the petitioner, the domestic industries, the consumers, the workers, and the communities where production facilities of such industry are located.*"

The likely impact of the Commission's affirmative recommendation is described below:

On Competition

- Locally produced HDPE pellets and granules is a like product of imported HDPE; hence, consumers' right to choose between locally manufactured HDPE and imported HDPE is preserved.

- Since the proposed measure is only temporary and will be progressively liberalized, competition will return to its normal level in due time.

On the Domestic HDPE Industry

- The domestic industry will be afforded time to complete the implementation of the efficiency measures indicated in its adjustment plans. With the realization of said adjustment plans in the medium term, the domestic industry's HDPE manufacturing plant will be more environmentally-friendly, cost-efficient, and technologically-advanced. The domestic industry will also be able to enhance its international competitiveness.

- The temporary imposition of a definitive safeguard measure on imports of HDPE pellets and granules would allow the domestic industry to adjust its selling prices to be able to absorb production costs and operating expenses and generate reasonable margins. Serious injury to the domestic industry would be averted.

- With improved price competitiveness, the domestic HDPE industry will remain a reliable partner in the national government's development agenda.

On User Industries and Consumer Welfare

- With the domestic industry's commitment to upgrade its facilities to improve production efficiency, consumers are assured of a better and wider range of products at competitive prices.

On Employment

- The expected increase in the domestic industry's production and sales will generate additional employment in the domestic industry and ensure continuity of employment for the domestic industry's existing employees.

On Regional Development

- The increase in operations of the HDPE industry will spur economic activity in the province of Batangas, where the domestic industry's PE plant is located.

- With the continuation of the domestic industry's corporate social responsibility programs, continued support of existing beneficiaries is assured. Additionally, expansion of these programs is likely with more beneficiaries being enrolled and supported.

15. SUBMISSION

Pursuant to Section 14 of RA No. 8800, the Commission hereby submits this Report to the Secretary of Trade and Industry. Thereafter, a non-confidential version of this Report will be made available to the public by posting on the Commission's website (www.tariffcommission.gov.ph) and a summary will be published in two newspapers of general circulation.

27 June 2022

MARILOU P. MENDOZA
Chairperson

ERNESTO L. ALBANO
Commissioner

MARISSA MARICOSA A. PADERON
Commissioner

ANNEX A

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES FROM VARIOUS COUNTRIES

(AHTN 2017 Heading 3901.20.00)

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

NOTICE OF FORMAL INVESTIGATION AND PRELIMINARY CONFERENCE

Pursuant to Section 9 of Republic Act (RA) No. 8800 (*Safeguard Measures Act*), notice is hereby given that the Tariff Commission (TC) commenced on 30 September 2021 its Formal Investigation on the merits of imposing a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules from various countries, following receipt of a request from the Secretary of Trade and industry and the complete case records.

All interested parties, including those on record in the preliminary investigation by the Department of Trade and Industry, are required to appear at a Preliminary Conference which will be held on 07 October 2021 at 10:00 a.m. to 12:00 p.m. (via Videoconferencing through Microsoft Teams). Matters for discussion include the timelines, nature of investigation, appearance of counsel and parties, number of witnesses, notification, accessibility of documents and public file, confidentiality of documents, submission of position paper/s and memoranda, adjustment plan, conduct of inspection and verification of data, schedules of public hearings and other activities, and other topics that may aid in the prompt disposition of the case.

Interested parties are required to register their participation to the preliminary conference from 01 October 2021 using the registration link posted on the Commission's website *http://tariffcommission.gov.ph/*. For inquiries, please contact Acting Director Elvira C. Ignacio, Head of the TC Task Force for this case, at email address *TC.Assist@mail.tariffcommission.gov.ph*.

Issued this 30th day of September 2021, at Quezon City, Metro Manila.

Digitally signed

MARILOU P. MENDOZA
Chairperson

4th Floor, West Insula Condominium, 135 West Avenue, Quezon City, 1105 Philippines
Tel. Nos.: (632) 8926-8731 / (632) 8928-8419 / (632) 8936-3315 / (632) 8936-3318 • Telefax Number: (632) 8921-7960
Website: tariffcommission.gov.ph • Philippine Tariff Finder: finder.tariffcommission.gov.ph
Email Address: TC.Assist@mail.tariffcommission.gov.ph

ANNEX B

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HOPE) PELLETS AND GRANULES FROM VARIOUS COUNTRIES

(AHTN 2017 Heading 3901.20.00)

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

NOTICE OF FORMAL INVESTIGATION AND PRELIMINARY CONFERENCE

Pursuant to Section 9 of Republic Act (RA) No. 8800 *(Safeguard Measures Act)*, notice is hereby given that the Tariff Commission (TC) commenced on 30 September 2021 its Formal Investigation on the merits of imposing a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules from various countries, following receipt of a request from the Secretary of Trade and Industry and the complete case records.

All interested parties, including those on record in the preliminary investigation by the Department of Trade and Industry, are required to appear at a Preliminary Conference which will be held on 07 October 2021 at 10:00 a.m. to 12:00 p.m. (via Videoconferencing through Microsoft Teams). Matters for discussion include the timelines, nature of investigation, appearance of counsel and parties, number of witnesses, notification, accessibility of documents and public file, confidentiality of documents, submission of position papers and memoranda, adjustment plan, conduct of inspection and verification of data, schedules of public hearings and other activities, and other topics that may aid in the prompt disposition of the case.

Interested parties are required to register their participation to the preliminary conference from 01 October 2021 using the registration link posted on the Commission's website http://tariffcommission.gov.ph/. For inquiries, please contact Acting Director Elvira C. Ignacio, Head of the TC Task Force for this case, at email address TC.Assist@mail.tariffcommission.gov.ph.

Issued this 30th day of September 2021 , at Quezon City, Metro Manila.

MARILOU P. MENDOZA
Chairperson

(SG-SEPT 30, 2021)

ANNEX B

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES FROM VARIOUS COUNTRIES

(AHTN 2017 Heading 3901.20.00)

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

NOTICE OF FORMAL INVESTIGATION AND PRELIMINARY CONFERENCE

Pursuant to Section 9 of Republic Act (RA) No. 8800 (*Safeguard Measures Act*), notice is hereby given that the Tariff Commission (TC) commenced on 30 September 2021 its Formal Investigation on the merits of imposing a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules from various countries, following receipt of a request from the Secretary of Trade and Industry and the complete case records.

All interested parties, including those on record in the preliminary investigation by the Department of Trade and Industry, are required to appear at a Preliminary Conference which will be held on 07 October 2021 at 10:00 a.m. to 12:00 p.m. (via Videoconferencing through Microsoft Teams). Matters for discussion include the timelines, nature of investigation, appearance of counsel and parties, number of witnesses, notification, accessibility of documents and public file, confidentiality of documents, submission of position papers and memoranda, adjustment plan, conduct of inspection and verification of data, schedules of public hearings and other activities, and other topics that may aid in the prompt disposition of the case.

Interested parties are required to register their participation to the preliminary conference from 01 October 2021 using the registration link posted on the Commission's website http://tariffcommission.gov.ph/. For inquiries, please contact Acting Director Elvira C. Ignacio, Head of the TC Task Force for this case, at email address TC.Assist@mail.tariffcommission.gov.ph.

Issued this 30th day of September 2021, at Quezon City, Metro Manila.

MARILOU P. MENDOZA
Chairperson

MT - Sept. 30, 2021

Trade Remedy Cases

Formal Investigation on the Imposition of Safeguard Measure against importations of High-Density Polyethylene (HDPE) Pellets and Granules from various countries [TCI (SG) No. SG-2021-OC-HDPE]

Please see the following Notices / References:

- Notice of Formal Investigation and Preliminary Conference issued on 30 September 2021

Formal Investigation on the Imposition of Safeguard Measure against importations of Linear Low-Density Polyethylene (LLDPE) Pellets and Granules from various countries [TCI (SG) No. SG-2021-OC-LLDPE]

Please see the following Notices / References:

- Notice of Formal Investigation and Preliminary Conference issued on 30 September 2021

ANNEX C

List of Parties Notified for the FORMAL INVESTIGATION AND PRELIMINARY CONFERENCE on the Imposition of Safeguard Measure Against Importations of High-Density Polyethylene Pellets and Granules

DOMESTIC INDUSTRY	
1	**MS. MARIA VERON M. MARASIGAN** *Representative / Manager, Business Development, Research and Communication* JG Summit Petrochemical Corporation (now JG Summit Olefins Corporation) Email: Veron.Munar@jgspetrochem.com **ATTY. JOSE SALVADOR M. RIVERA JR**. Counsel Email: jmr@macropharmacorp.com

IMPORTER	
2	**MR. MICHAEL ANG** *Representative / General Manager* Apollo Bag Industrial Corporation Email: apollobag@eyp.ph; info@astrobagcorp.com
3	**MS. MA. VILMA P. MONTANO** *Representative / Assistant Manager* Artpack Philippines, Inc. Email: artpackph@yahoo.com
4	**MS. MARY JANE YANG** *Corporate Secretary* AstroBag Manufacturing Corporation Email: info@astrobag.com
5	**MR. RICHARD V. MERCADO** *Representative / President* Cebu Sentra Plastics Corporation Email: sentra.cebu@gmail.com
6	**MR. MARVIN LEE** *Representative / Manager* Citiplas Plastic Servicing Center Email: hotbodz888@yahoo.com
7	**MR. ALBERT ANG** *Import Coordinator* Cornerstore International Philippines Email: Amang888@yahoo.com
8	**MS. CHARMAINE JUSTO** Purchasing Manager Crown Asia Chemicals Corporation Email: Purchasing@crownpvc.com.ph

ANNEX C

IMPORTER	
9	**MR. GERARD RALPH L. QUA** *Representative / President and General Manager* ESTA Fine Color Corporation Email: info@estafinecolor.com
10	**MR. JERICSON F. CO** *Representative / Business Development Manager* Filpet Incorporated Email: sales@filpet.com.ph
11	**Mr. Ralph A. Cabrera** President & CEO INCA Philippines Inc. Email: Incaplastic@yahoo.com
12	**MR. EDUARDO UY** *General Manger* Jason Manufacturing Phils Corp Email: jason_mktg@yahoo.com
13	**MR. KOJI KANATANI** *President* J-Film Philippines, Inc. Email: kanatani.kouji@me.jfilm.co.jp
14	**MR. ALDEN MICHAEL TAYONG** *Purchasing Manager* Liquid Packaging Corporation Email: marketingofficercebu@lpc.com.ph
15	**MR. VIRGILIO L. CO** *President* Manly Plastics Inc. Email: sales@manlyplastics.com; corp@manlyplastics.com
16	**MR. KENDRICK N. TRAJANO** *Vice President – Finance* Marulas Industrial Corporation Email: info.marulas@gmail.com; kntrajano@gmail.com
17	**MR. RANNIEL BOONGALING** *Supply Chain Manager* PACT Closure Systems (Philippines) Inc. Email address: ranniel.boongaling@pactgroup.com
18	**MR. ALEX C. IGNACIO** Chief Operating Officer Phelps Dodge Philippines Energy Products Corporation Email address: Alex.Ignacio@phelpsdodge.com. **MR. CESAR GATPO** Vice President, Business Development Email address: Cesar.Gatpo@phelpsdodge.com.ph
19	**MR. WILLIE SY**

ANNEX C

IMPORTER	
	Representative / Chief Operating Officer PhilPlastic & Polymers, Inc.
20	**MR. MICEL A. YAP** Importation Officer Philippine Spring Water Resources, Inc. Email: cebufo@naturespring.com.ph
21	**MR. JEFFREY CO** *Representative* Plastmann Industrial Corporation Email: info@wcb.com.ph / pmann@wcb.com.ph
22	**MR. CHRISTOPHER S. CHUA** *Chief Executive Officer/President* Plastic Container Packaging Corporation Email: sales@pcpc.com.ph
23	**MR. MARION P. ALLAM** *General Manager* Premier Creative Packaging Inc. Email: purchasing2@pcpi.com.ph
24	**MR. WILLY GO** *Chief Operating Officer* Prima Plastic Manufacturing Corporation Email: willygo331@yahoo.com
25	**MR. TEDISON LIAO** *President* Shrinkpack Philippines Corporation Email: shrinkpack@shrinkpack.com.ph
26	**MR. AARON LAO** *President* TAT Recyclables & Renewables Corporation Email: sales@tatrecyclabes.com
27	**MR. CARLOS LANSANGAN** *Plastics Sales Head* Tradeton Corporation Email address: clansangan@tradeton.com
27	**MR. JOSELITO UY SOON** *Vice President and Manufacturing Director* United Polyresins, Inc. Email address: up-plant@unitedpolyresins.com.ph
28	**MR. DINO L. ELEGADO** *Operations Manager* WEIDA Philippines, Inc. Email: dino.elegado@weida.com.ph

ANNEX C

EXPORTER	
29	**MR. RICK WU** *Asia Pacific Product Director, Polyolefin Elastomers* Dow Chemical Pacific Ltd. (DCPL) **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com;
30	**MR. RICK WU** *Asia Pacific Product Director, Polyolefin Elastomers* Dow Chemical Pacific (Singapore) Pte. Ltd. (DCPS) **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com
31	**MS. SIRINAPA JINNAKULLASIT** *Division Manager, Trading Supply Chain Management* GC Marketing Solutions Company Limited Email: sirinapa.j@pttgcgroup.com **QUISUMBING TORRES** *Counsel* Email: ronald.bernas@quisumbingtorres.com
32	**MR. LIM ENG LEE** *Acting Director, Polymer Sales* LOTTE Chemical Titan Corporation Sdn. Bhd. Email: ellim@lotte.net
33	**MR. EDI RIVA'I** *Representative* PT Chandra Asri Petrochemical Tbk Email: krishna.sukarya@capcx.com
34	**MR. ZAHID BAFARAT** *Head of Marketing Planning and Coordination* Rabigh Refining and Petrochemical Co. Email: BAFARAZM@petrorabigh.com **QUISUMBING TORRES** *Counsel* Email:Kristine.Mercado-Tamayo@quisumbingtorres.com; MikaelaArmina.Aurelio@quisumbingtorres.com
35	**MR. TAKASI YONEMURA**[1] *General Manager, Marketing & Business Planning Department*

[1] Note, per email of Counsel of Sumitomo on 24 March 2022, the the General Manager for Marketing & Business Planning Department for the said company is now Mr. Takahiro Deguchi.

ANNEX C

EXPORTER	
	Sumitomo Chemical Asia Pte. Ltd. *Email: deguchi@sumitomo-chem.com.sg* **QUISUMBING TORRES** *Counsel* Email:Kristine.Mercado-Tamayo@quisumbingtorres.com; MikaelaArmina.Aurelio@quisumbingtorres.com
36	**MR. SUPOT KATETOPRAGRAN** *Representative / Commercial Director* Siam Polyethylene Company Limited (SPE) Email: skatetopragran@dow.com **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com
37	**MR. SUPOT KATETOPRAGRAN** *Commercial Director* Siam Synthetic Latex Company Limited (“SSLC”) skatetopragran@dow.com **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com

ASSOCIATION	
38	**MR. DANNY NGO** *President* Philippine Plastics Industry Association, Inc. Email: secretariat.ppia@gmail.com **ABAD ALCANTARA AND ASSOCIATES** *Counsel* Email: AAALaw@tradelawyers.ph
39	**MR. VICTOR JOSEPH M. VARGAS** *Purchasing Manger* American Wire & Cable Co., Inc. Email: sales@amwire.com.ph; mail@amwire.com.ph; purchasingdepartment@amwire.com.ph
40	**MR. JOAQUIN SAVELLANO, JR** Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCM Inc.) Email: joaquin.Savellano@phelpsdodge.com.ph
41	**The Secretariat** European Free Trade Association (EFTA)

ANNEX C

ASSOCIATION	
	Email: mail.gva@efta.int

EMBASSY	
42	**HIS EXCELLENCY PEIYUNG HSU** Ambassador Taipei Economic and Cultural Office in the Philippines **MR. WEN-CHUNG CHANG** Director Taipei Economic and Cultural Office in the Philippines Email: teco.economicdivision@gmail.com
43	**HIS EXCELLENCY JORGE MORAGAS** Ambassador Embassy of Spain in the Philippines Email: emb.manila@maec.es
44	**HIS EXCELLENCY AGUS WIDJOJO** Ambassador Designate Embassy of the Republic of Indonesia Email: unitkom.manila@kemlu.go.id
45	**HIS EXCELLENCY KAZUHIKO KOSHIKAWA** Ambassador Embassy of Japan Email: jicc-mnl@ma.mofa.go.jp; ryoji@ma.mofa.go.jp
46	**HIS EXCELLENCY GERARDO LOZANO ARREDONDO** Ambassador Embassy of the Mexico Email: embfilipinas@sre.gob.mx
47	**HIS EXCELLENCY ALI IBRAHIM A.I. AL-MALKI** Ambassador Embassy of the State of Qatar Email: manila@mofa.gov.qa
48	**MR. THAWAT SUMITMOR** Charge d'Affaires Royal Thai Embassy Email: infomnl@pldtdsl.net
49	**HER EXCELLENCY ARTEMIZ SUMER** Ambassador Embassy of the Republic of Türkiye Email: manila@ticaret.gov.tr; embassy.manila@mfa.gov.tr
50	**HIS EXCELLENCY HOANG HUY CHUNG** Ambassador Embassy of the Socialist Republic of Viet Nam Email: ph@moit.gov.vn

ANNEX C

EMBASSY	
51	**HIS EXCELLENCY ANTONIO JOSE MARIA DE SOUZA E SILVA** Ambassador Embassy of Brazil Email: brasemb.manila@itamaraty.gov.br
52	**HIS EXCELLENCY HISHAM SULTAN ABDULLAH ALQAHTANI** Ambassador Royal Embassy of Saudi Arabia Email: ph_amboffice@yahoo.com
53	**MR. SHAIKH SAOUD ALI MOHAMMED ALI ALMUALLA** Charge D'Affaires Embassy of the United Arab Emirates Email: manilaemb@mofaic.gov.ae
54	**HIS EXCELLENCY KIM INCHUL** Ambassador Emabssy of the Republic of Korea Email: philippines@mofa.go.kr; esan21@mofa.go.kr; polph2@mofa.or.kr

Annex D

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES

(AHTN 2017 Subheading No. 3901.20.00)

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

ORDER OF PRELIMINARY CONFERENCE

Pursuant to paragraph 2, Section 6 of Commission Order No. 2021-02 *(Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8800)*, this Commission hereby issues this Order covering matters that were taken up and agreed upon by the parties present during the Preliminary Conference held on 07 October 2021.

1. TIMELINES

Activity	Date / Deadline
Issuance of Order of Preliminary Conference	12 October 2021
Submission of Initial Memoranda / Position Papers	22 October 2021
Submission of Adjustment Plan	22 November 2021
Issuance of Tariff Commission (TC) Staff Report	26 November 2021
Submission of: (1) Affidavits of Witnesses (2) List of Proposed Additional Issues for the Public Hearing	29 November 2021
Submission of Comments on TC Staff Report	03 December 2021
Conduct of TC Public Hearings	06-10 December 2021
Submission of Amended Memoranda/Position Papers	20 December 2021

2. ADOPTION OF COMMISSION ORDER NO. 2021-02

The Commission is adopting Commission Order (CO) No. 2021-02 on the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8800*, which will take effect on 13 October 2021, as the procedure that will govern the conduct of the Formal Investigation of the present petition for the imposition of safeguard measure against importations of HDPE Pellets and Granules.

The new CO is more liberal for procedural requirements before its effectivity date and will not infringe on or violate any rights or privilege provided in CO No. 00-02 (*Rules and Regulations to Govern Conduct of Investigation by the Tariff Commission Pursuant to Republic Act 8800 "An Act Protecting Local Industries By Providing Safeguard Measures To Be Undertaken In Response To Increased Imports and Providing Penalties For Violation Thereof"*) issued in November 2000.

4th Floor, West Insula Condominium, 135 West Avenue, Quezon City, 1105 Philippines
Tel. Nos.: (632) 8926-8731 / (632) 8928-8419 / (632) 8936-3315 / (632) 8936-3318 • Telefax Number: (632) 8921-7960
Website: tariffcommission.gov.ph • Philippine Tariff Finder: finder.tariffcommission.gov.ph
Email Address: TC.Assist@mail.tariffcommission.gov.ph

3. NATURE OF INVESTIGATION

The investigation of the Commission is fact-finding and administrative in nature. It shall be conducted in a summary manner. However, the Commission may require interested parties to formally present evidence for purposes of determining and clarifying factual matters that are relevant in the conduct of the investigation.

The Commission may, in the course of its investigation, issue and apply procedural directions to secure just and expeditious determination of matters in issue.

4. APPLICATION OF THE RULES OF COURT

Rules of Court may be applied suppletory or by analogy in the implementation of this Order. However, no dilatory tactics or unnecessary or unjustified delays shall be allowed, and the technical rules of evidence shall not be applied.

5. APPEARANCE OF COUNSEL AND PARTIES

Parties may appear by themselves or through their authorized representative/s or counsel/s. Should parties be represented by counsel/s or authorized representative/s, the necessary authority, and the contact details of said counsel/s or representative/s must be submitted on or before the Preliminary Conference. Counsel/s or authorized representative/s of parties shall have authority to bind their clients in all matters of procedure.

6. INCLUSION AND EXCLUSION OF PARTIES

As a rule, parties who did not submit answers to the required questionnaires during the preliminary investigation have no legal personality to appear at the public hearings nor participate in the formal investigation. However, for valid reasons, an interested party may file, a written request with the Commission for inclusion as party within seven (7) working days after the Preliminary Conference. Once the request is approved, the party shall be required to submit a fully accomplished Commission questionnaire and other relevant data and information that can be subjected to verification within fifteen (15) working days from receipt of notice.

7. FORMAL REQUIREMENTS

Initial applications/petitions or other documents/evidence filed with the Commission must indicate the names of all persons in whose behalf the filing is made. Subsequent filings must indicate the case number/docket designation assigned by the Commission.

The original copy of all written submissions must be signed by the party or authorized representative and shall show the contact details of the same.

8. MODES OF SERVICE/NOTICE

Services of pleadings and notices may be made using personal service, registered mail, special courier, facsimile, or electronic mail. The date of the transmission for fax and electronic mail shall be deemed to be the date of service. A notice of counsel representing a party is considered notice to the latter.

In case of voluminous pleadings, the Commission may, upon proper motion, waive the requirements of service, provided that a copy of such pleadings or documents together with its annexes is filed with the Commission and made available for examination and reproduction and the notice of such filing and availability is duly served on the parties by the party filing it.

9. TREATMENT OF CONFIDENTIAL INFORMATION

Information which is confidential shall not be disclosed to the public without the express authority of the owner of the information. Parties providing confidential information shall submit two (2) copies of non-confidential summaries thereof to be placed in the Commission's public file and made available to all interested parties upon initiation of the investigation. In exceptional circumstances wherein summarization of confidential information is not possible, the party must state the reason/s why it cannot be provided.

A party claiming confidentiality is required to provide justifications for why said information can be considered as such. Should there be an issue on the nature of the information, the Commission shall issue an appropriate Order stating the reasons for its finding/s.

In any case, where any request for confidentiality is not warranted or the party is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded by the Commission, unless it can be demonstrated to the Commission's satisfaction from appropriate sources that the information is correct.

10. MAINTENANCE OF PUBLIC FILE

A public file shall be maintained by the Commission. Except for confidential information, the public file contains a copy of all submissions from interested parties and all relevant correspondences concerning the investigation. Upon written request, the Commission may make available for examination and reproduction to the parties all relevant information in its custody that are not considered confidential.

11. CONDUCT OF ON-SITE INVESTIGATIONS

The Commission may, in the course of the proceedings, conduct on-site investigations, to include ocular inspections and visits, and/or conduct online data verification to verify information provided or to obtain further details. Any interested party shall, when required, allow the Commission access to necessary information, or otherwise provide the necessary information, to enable the Commission to expedite the investigation. The Commission may also visit other domestic producers, importers, foreign exporters, or producers who have not provided a submission to the investigation. Visits or inspections may be conducted by the Commission even without the presence of other interested parties.

Prior to the scheduled visit, parties shall be advised of the general nature of the information to be verified and the pertinent documents that may be required during the investigation. However, the Commission is not precluded from conducting further verification and inquiry on other relevant information during the said on-site investigation.

12. SUBMISSION OF ADJUSTMENT PLAN

The concerned domestic industry, or other parties representing the domestic industry, shall submit to the Commission their adjustment plan to import competition within forty-five (45) calendar days from receipt of the notice of submission

The adjustment plan shall provide a clear quantification of the domestic industry's proposed goals and detail the efforts that the domestic industry and other concerned parties will make to place the domestic industry in a more competitive position.

13. SUBMISSION OF AFFIDAVITS OF WITNESSES AND LIST OF ADDITIONAL ISSUES FOR THE PUBLIC HEARING

At least five (5) working days from the scheduled public hearing, parties are required to submit to the Commission affidavits of their witnesses which shall serve as the direct examination of the witness, copy the opposing parties.

Should a party desire to submit additional issues for the public hearing, the same shall be submitted at least five (5) working days before the scheduled public hearing for consideration of the Commission.

14. ISSUANCE OF STAFF REPORT

Prior to the scheduled public hearing, the Commission shall issue a public version of a Staff Report which shall cover, among others, the Commission's findings on product comparability, volume of increased imports, and other relevant data and information pertinent to the investigation duly verified.

All identified interested parties shall be provided a copy of the Staff Report and within five (5) working days from receipt thereof submit their comments on the aspects of product comparability and volume of increased imports as these matters will be binding and excluded for discussion in the public hearing

If no comment is filed, the factual findings on product comparability and volume of increased imports of the Commission contained in the Staff Report will be binding to the party who did not submit its comment.

15. CONDUCT OF PUBLIC HEARING

The Commission, after due notice, shall conduct a public hearing to give all interested parties who submitted themselves to the jurisdiction of the Commission the opportunity to be heard, and to present evidence including the opportunity to respond to the presentations of other parties and to submit their views, among others, on the effect of imposing a safeguard measure on the welfare of consumers and/or the general public, and other related local industries. The public hearing shall be conducted continuously for not more than five (5) working days unless otherwise determined or earlier terminated by the Commission.

All interested parties may appear at the public hearing and present, under oath, evidence relevant and material to the subject matter of the investigation

The order of the hearing shall be as follows:

a. Presentation of evidence by the petitioner or domestic industry;
b. Clarificatory questions/examination by oppositor/s or other interested parties;
c. Presentation of evidence by the oppositor/s or other interested parties; and
d. Clarificatory questions/examination by the petitioner or domestic industry

A party who did not submit a list of issues may be deemed to have no controversial matter to raise and hence, will be given less priority in the order of parties to ask clarificatory questions during the public hearing.

Failure to appear on the scheduled public hearings is considered a waiver to propound clarificatory questions to the witnesses who were presented on that day.

16. SUBMISSION OF AMENDED AND/OR FINAL MEMORANDA/POSITION PAPER

Parties may submit amended and/or final memoranda/position papers to the Commission within ten (10) calendar days from the termination of the public hearing.

17. TERMINATION OF THE INVESTIGATION

The Commission shall terminate its investigation if:

a. there is no domestic like or directly competitive product to the imported product under consideration; or
b. if the product is not being imported into the Philippines in increased quantities whether absolute or relative to domestic production.

The Commission shall give public notice of the termination of the investigation through publication in two (2) newspapers of general circulation. Said Notice shall also be posted on the website of the Commission.

18. OTHER ISSUES RAISED

All other issues raised that were not fully resolved during the Preliminary Conference shall be addressed in later issuance/s of the Commission

SO ORDERED.

Issued at Quezon City, Metro Manila, 12 October 2021.

Digitally signed

MARILOU P. MENDOZA
Chairperson

Comments on the Staff Report

Party	Position
Product Comparability	
Dow Chemical Pacific Ltd. (DCPL)	To ensure orderly proceedings and to avoid any possible confusion in the implementation of the Honorable Commission's findings in the Staff Report, DCPS respectfully lists below the product brands of the W&C compounds which it imports into the Philippines and which should be excluded from the investigation and from the coverage of any potential safeguard measure: • AXELERON™ CC 3485 NT CPD • AXELERON™ CC B-3487 NT • AXELERON™ CS 7540 NT • AXELERON™ CS K- 3364 NT CPD • AXELERON™ CS L-3364 NT • AXELERON™ FO 8864 NT CPD • AXELERON™ GP 6059 BK CPD • ENDURANCE™ HFDA-0693 BK • ENDURANCE™HFDA-0801 BK • ENDURANCE™HFDC-4202 EC • SI-LINK™ DFDA-6451 NT DCPL respectfully prays that the Honorable Commission confirm that the above-mentioned product brands are excluded from the scope of the investigation. This confirmation will aid the relevant government agencies in properly enforcing the Honorable Commission's finding that W&C compounds are not covered by the investigation and will not be subject to any potential safeguard measure. For the avoidance of doubt, the above list of product brands is by no means exclusive and DCPS respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to DCPL and to any such HDPE products it may import into the Philippines
Dow Chemical Pacific (Singapore) Private Limited	To ensure orderly proceedings and to avoid any possible confusion in the implementation of the Honorable Commission's findings in the Staff Report, DCPS respectfully lists below the product brands of the W&C compounds which it imports into the Philippines and which should be excluded from the investigation and from the coverage of any potential safeguard measure: • AXELERON™ CS K-3364 NT • AXELERON™ FO 8864 NT • AXELERON™ GP 6059 BK • DOW™ DGDK-3479 BK • SI-LINK™ DFDA-6451 NT DCPS respectfully prays that the Honorable Commission confirm that the above-mentioned product brands are excluded from the scope of the investigation. This confirmation will aid

Party	Position
	the relevant government agencies in properly enforcing the Honorable Commission's finding that W&C compounds are not covered by the investigation and will not be subject to any potential safeguard measure. For the avoidance of doubt, the above list of product brands is by no means exclusive and DCPS respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to DCPS and to any such HDPE products it may import into the Philippines.
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	No consumer preference considerations (tastes and habits) were taken into account in the Report. In *EC-Asbestos,* the Appellate Body emphasized that consumers' habits and tastes play a central role in the determination of likeness. Consumers' tastes and habits vary across consumer segments based on geographic, demographic, socioeconomic, or psychographic/behavioral considerations. To this end, while imported and domestic HDPE pellets and granules may be "*like*" from the point of view of their production process, composition, characteristic, and end-used application they have different qualities and may differ significantly from the perspective and perception of consumers. In the case of HDPE resin HS211PC, a material for the manufacturing of pressure pipes (PE80), consumers prefer imported HDPE resins from Thailand to the domestic ones, since they are in a black compound, which are compatible with pipe production process of certain consumers, while the domestic like product is in a natural color form. The quality and speciality of the products are important factors for determining product comparability and should not be ignored. For HDPE resin HS1000P/PC, a material for the manufacturing of pressure pipes (PE100), this grade has not been produced by the Philippines' domestic industry and cannot be substituted by the domestic products. Furthermore, the DFT finds that the HDPE resins for the manufacturing of caps and closures for carbonatre soft drink must pass the Environmental Stress Cracking Resistance (ESCR) testing but the domestic products have not passed this test. Hence, the domestic product cannot be substituted to the imported product from Thailand. No price analysis was presented in the Report. The Appellate Body stated in *Philippines – Distilled Spirits* that *price is very relevant in assessing whether imported and domestic products stand in a sufficiently direct competitive relationship in a given market. This is because evidence of price competition indicates that the imported product exercises competitive constraints on the domestic product and vice-versa*. The TC did not consider the prices of domestic and imported products in the product comparability analysis.

Party	Position
GC Marketing Solutions Company Limited (GCM)	<u>The quality of JGSPC's products are not comparable to higher quality imports. GCM's products should not be considered as a like or directly competitive product.</u> The Commission has concluded that because both imported and local HDPE products undergo either of the three established processes of polymerization and have similar processing techniques and end-use applications, they may then be considered like products. We refer to the Appellate Body in *US-Lamb* where it expressed skepticism that the degree of integration processes within an industry should have any bearing on the determination of the domestic industry and identification of the products *Although we do not disagree with the Panel's analysis of the USITC Report nor with the conclusions it drew from that analysis, we have reservations about the role of an examination of the degree of integration of production processes for the products at issue. As we have indicated, under the Agreement on Safeguards, the determination of the "domestic industry" is based on the 'producers… of the like or directly competitive products.' The focus, must, therefore be on the identification of the products, and their 'like or directly competitive' relationship, and not on the processes by which those products are produced.* It is apparent that the Appellate Body has excluded generally that *production structures* may have an impact on deciding whether two products are "like" or "directly competitive." The Appellate Body has clarified that the focus of the Agreement on Safeguards should be the products and whether they are in a relationship of "like product or direct competition" and not on the production process. The raw materials being produced by JGSPC are outdated. Their Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines. The differences in the physical properties between the imported and locally produced HDPE are determinant of in characterizing their quality, and therefore the quality of the products made of them. Imported HDPE and the locally produced HDPE do not serve the same of similar end-uses due to the difference in quality and performance. They cannot be considered as alternative or substitute products and easily interchangeable. Respondent Philippine Spring Water Resources Inc. (PSWRI) claims that the quality of the locally produced resin cannot meet

Party	Position
	the standard to produce the closure caps being manufactured by PSWRI for its business of processing, bottling, selling, and distribution of mineral water. GCM's products have a different melt index and/or density from JGSPC's products. As such, GCM's products can be used for more applications compared to the HDPE produced by JGSPC. Additionally, GCM's products are certified and meets global standards. GCM's products have also been evaluated and certified by its end customers in the Philippines for their specific needs. The same cannot be said of the HDPE products being produced by JGSPC. GCM's products should not be considered as a "Like Product" for the purposes of this safeguard investigation and should be excluded from the investigation.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The HDPE products of Sumitomo and the locally-produced HDPE pellets and granules are not "like products." To make a comparison between the imported and locally-produced HDPE products based solely on the criteria used by the Honorable Commission is insufficient to establish that the products are "like products" for the purpose of this Formal Investigation. <u>Process of Polymerization</u> The Commission has concluded that because both imported and local HDPE products undergo either of the three established processes of polymerization and have similar processing techniques and end-use applications, they may then be considered like products. We note that, as outlined in Table 6.2 of the Staff Report, all reaction conditions in the three processes are not in any way similar, i.e., reactor used, operating temperature, operating pressure, and features. The difference in all reactor conditions essentially results in the difference in the quality of the end-product using each process. Further to this, the Petitioner produces its HDPE resin products using the UNIPOL PE Process licensed under Univation Technologies for its two existing reactor lines. This is classified as a gas phase process. On the other hand, the Respondent uses the Lyondell Basell (Hostalen) Process. This is classified as a slurry process. The slurry process has wide density range, short transition time, able to make very high MW grade, PE wax generation, and high solvent costs. Meanwhile, the gas phase process has longer transition time, broad product range, higher productivity and lower production cost, wide catalyst options, and clean resin (low solvent residue).

Party	Position
	We refer to the Appellate Body in *US-Lamb* where it expressed skepticism that the degree of integration processes within an industry should have any bearing on the determination of the domestic industry and identification of the products: *Although we do not disagree with the Panel's analysis of the USITC Report nor with the conclusions it drew from that analysis, we have reservations about the role of an examination of the degree of integration of production processes for the products at issue. As we have indicated, under the Agreement on Safeguards, the determination of the "domestic industry" is based on the 'producers… of the like or directly competitive products.' The focus, must, therefore be on the identification of the products, and their 'like or directly competitive' relationship, and not on the processes by which those products are produced.* It is apparent that the Appellate Body has excluded generally that *production structures* may have an impact on deciding whether two products are "like" or "directly competitive." The Appellate Body has clarified that the focus of the Agreement on Safeguards should be the products and whether they are in a relationship of "like product or direct competition" and not on the production process. <u>Product Composition</u> Although it is correct that both locally-produced and imported HDPE consist of ethylene, co-monomers, and additives, we respectfully submit that it is erroneous to conclude that they are like products merely because of the similarity in the product composition without taking into consideration the particular kind used which have varying properties. [redacted] Based on the evidence provided by the Petitioner, "only one HDPE grade (HM10561) uses [redacted] as co-monomer while the remaining 12 HDPE grades produced by JGSPC (HF09522, HF14522, HJ04551, HJ04601, HJ04602, HJ08601, HJ20571, HB09521, HB23551, HB33531, HP10441 and HP06491) utilizes [redacted]." Both HDPE grades of the Respondent, i.e., B2555 and F0554, do not make use of [redacted] co-monomer, but rather [redacted] co-monomer. The two HDPE grades of the Respondent are not comparable with any of the Petitioner's hexene-based products for blow mold and film application. <u>Physical Properties Depending on their Processing and Application/End-Use</u> The raw materials being produced by JGSPC are outdated. Their Bimodal HDPE products are very limited. For example,

Party	Position
	the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200). Petitioner still employs UNIPOL gas phase technology from Union Carbide, which is a Unimodal process technology. Meanwhile, the market is looking for producers that employ Bimodal process technology because this results to higher quality, higher performance, and specialty HDPE applications. During the period of investigation ("POI"), no other local Philippine company produces HDPE made using Bimodal process technology. This, in effect, led the domestic market participants to resort to imports that can provide them with higher quality, higher performance, and specialty HDPE that Petitioner could not provide. The differences in the physical properties between the imported and locally produced HDPE are determinant in characterizing their quality, and therefore the quality of the products made of them. Imported HDPE and the locally produced HDPE do not serve the same of similar end-uses due to the difference in quality and performance. They cannot be considered as alternative or substitute products and easily interchangeable. <u>Tariff Classification</u> In *Japan - Alcoholic Beverages II*, in addition to tariff classification, the Appellate Body also examined the relevance of tariff bindings for the determination of "like products." There is a risk in using tariff bindings that are too broad as a measure of product "likeness." In contrast to tariff classification, the Appellate Body expressed reservations about the reliability of tariff bindings as a criterion in establishing "likeliness". The classification under AHTN 2017 subheading 3901.20.00 is insufficient to support "likeness" of the imported and locally produced HDPE. <u>Distribution Channels</u> The factor of marketing or distribution channels which was one of the basis in the Staff Report for their conclusion is not used in the traditional approach or methodology of the World Trade Organization ("WTO") in the determination of like products. Such factor in determining whether products are like or directly competitive would be unfair as most if not all producers or marketers are distributing their products through the same distribution channel. The change in the end users to whom products are supplied may mean that the distribution flowchart will no longer apply

Party	Position
	squarely to the foreign manufacturer or foreign distributor/trader. In the case of the Respondent, the distribution channel as shown in the flowchart does not apply consistently at all times during the POI. In fact, like in the current situation, the distribution channel may even be from the foreign manufacturer directly to the plastic product manufacturer in the Philippines, in situations where it only has one end user purchasing the products. Based on all the foregoing, we respectfully submit that the HDPE products that Petro Rabigh(/Sumitomo) produces to export to the Philippines cannot be considered as "like products" in relation to the locally-produced HDPE and should thus be excluded from the coverage of the Formal Investigations.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The HDPE products of Petro Rabigh and the locally-produced HDPE pellets and granules are not "like products." To make a comparison between the imported and locally-produced HDPE products based solely on the criteria used by the Honorable Commission is insufficient to establish that the products are "like products" for the purpose of this Formal Investigation. <u>Process of Polymerization</u> The Commission has concluded that because both imported and local HDPE products undergo either of the three established processes of polymerization and have similar processing techniques and end-use applications, they may then be considered like products. We note that, as outlined in Table 6.2 of the Staff Report, all reaction conditions in the three processes are not in any way similar, i.e., reactor used, operating temperature, operating pressure, and features. The difference in all reactor conditions essentially results in the difference in the quality of the end-product using each process. Further to this, the Petitioner produces its HDPE resin products using the UNIPOL PE Process licensed under Univation Technologies for its two existing reactor lines. This is classified as a gas phase process. On the other hand, the Respondent uses the Lyondell Basell (Hostalen) Process. This is classified as a slurry process. The slurry process has wide density range, short transition time, able to make very high MW grade, PE wax generation, and high solvent costs. Meanwhile, the gas phase process has longer transition time, broad product range, higher productivity and lower production cost, wide catalyst options, and clean resin (low solvent residue).

Party	Position
	We refer to the Appellate Body in *US-Lamb* where it expressed skepticism that the degree of integration processes within an industry should have any bearing on the determination of the domestic industry and identification of the products: *Although we do not disagree with the Panel's analysis of the USITC Report nor with the conclusions it drew from that analysis, we have reservations about the role of an examination of the degree of integration of production processes for the products at issue. As we have indicated, under the Agreement on Safeguards, the determination of the "domestic industry" is based on the 'producers… of the like or directly competitive products.' The focus, must, therefore be on the identification of the products, and their 'like or directly competitive' relationship, and not on the processes by which those products are produced.* It is apparent that the Appellate Body has excluded generally that *production structures* may have an impact on deciding whether two products are "like" or "directly competitive." The Appellate Body has clarified that the focus of the Agreement on Safeguards should be the products and whether they are in a relationship of "like product or direct competition" and not on the production process. <u>Product Composition</u> Although it is correct that both locally-produced and imported HDPE consist of ethylene, co-monomers, and additives, we respectfully submit that it is erroneous to conclude that they are like products merely because of the similarity in the product composition without taking into consideration the particular kind used which have varying properties. Based on the evidence provided by the Petitioner, "only one HDPE grade (HM10561) uses [redacted] as co-monomer while the remaining 12 HDPE grades produced by JGSPC (HF09522, HF14522, HJ04551, HJ04601, HJ04602, HJ08601, HJ20571, HB09521, HB23551, HB33531, HP10441 and HP06491) utilizes [redacted]." Both HDPE grades of the Respondent, i.e., B2555 and F0554, do not make use of [redacted] co-monomer, but rather [redacted] co-monomer. The two HDPE grades of the Respondent are not comparable with any of the Petitioner's hexene-based products for blow mold and film application. <u>Physical Properties Depending on their Processing and Application/End-Use</u>

Party	Position
	The raw materials being produced by JGSPC are outdated. Their Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200). Petitioner still employs UNIPOL gas phase technology from Union Carbide, which is a Unimodal process technology. Meanwhile, the market is looking for producers that employ Bimodal process technology because this results to higher quality, higher performance, and specialty HDPE applications. During the period of investigation ("POI"), no other local Philippine company produces HDPE made using Bimodal process technology. This, in effect, led the domestic market participants to resort to imports that can provide them with higher quality, higher performance, and specialty HDPE that Petitioner could not provide. The differences in the physical properties between the imported and locally produced HDPE are determinant in characterizing their quality, and therefore the quality of the products made of them. Imported HDPE and the locally produced HDPE do not serve the same of similar end-uses due to the difference in quality and performance. They cannot be considered as alternative or substitute products and easily interchangeable. <u>Tariff Classification</u> In *Japan - Alcoholic Beverages II*, in addition to tariff classification, the Appellate Body also examined the relevance of tariff bindings for the determination of "like products." There is a risk in using tariff bindings that are too broad as a measure of product "likeness." In contrast to tariff classification, the Appellate Body expressed reservations about the reliability of tariff bindings as a criterion in establishing "likeliness". The classification under AHTN 2017 subheading 3901.20.00 is insufficient to support "likeness" of the imported and locally produced HDPE. <u>Distribution Channels</u> The factor of marketing or distribution channels which was one of the basis in the Staff Report for their conclusion is not used in the traditional approach or methodology of the World Trade Organization ("WTO") in the determination of like products. Such factor in determining whether products are like or directly competitive would be unfair as most if not all producers or marketers are distributing their products through the same distribution channel.

Party	Position
	The change in the end users to whom products are supplied may mean that the distribution flowchart will no longer apply squarely to the foreign manufacturer or foreign distributor/trader. In the case of the Respondent, the distribution channel as shown in the flowchart does not apply consistently at all times during the POI. In fact, like in the current situation, the distribution channel may even be from the foreign manufacturer directly to the plastic product manufacturer in the Philippines, in situations where it only has one end user purchasing the products. Based on all the foregoing, we respectfully submit that the HDPE products that Petro Rabigh(/Sumitomo) produces to export to the Philippines cannot be considered as "like products" in relation to the locally-produced HDPE and should thus be excluded from the coverage of the Formal Investigations.
On Increased Imports	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	DFT is of a view that the increase in imports has not been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'. Therefore, the requirement under Article XIX of the GATT 1994 and Article 2.1 of the SGA is not satisfied. The TC must show that products are imported in significantly increased quantities. In order to comply with this requirement, the Appellate Body in *Argentina – Footwear (EC)* held that investigating authorities are required to demonstrate that the increase in imports has been *recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury*. Moreover, the Panel in *Ukraine – Passenger Cars* explained that the terms *sharp enough* and *sudden enough* should be interpreted as "*involving sudden change of direction; abrupt, steep"; "happening or coming without warning; unexpected", or "abrupt, sharp."* The increase in imports of HDPE products, as shown in the Report, therefore, has not satisfied this requirement.
Dow Chemical Pacific Ltd. (DCPL)	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that *"the trends in imports over the period of investigation must be duly considered and a mere comparison of the data in the beginning and end points will not suffice."* <u>The Honorable Commission must take into account the intervening trends during the entire period of investigation.</u> That there was an increase between the starting point and the end point of the period of investigation will simply not be sufficient. The WTO Appellate Body, in its Report on *U.S. – Steel (EC)* affirmed the ruling of the WTO Panel that in determining whether there has been an increase in the volume of imports sufficiently to justify

Party	Position
	the imposition of safeguard measures, "*any significant decrease during the period of investigation should be considered and its impact on the trend of imports should be appropriately taken into account.*" In this case, the WTO Appellate Body agreed with the WTO Panel that within the period of investigation, there was a decrease in the import volume for two years. According to the WTO Appellate Body, this decrease in imports should have been duly considered even when there was a subsequent increase in import volumes. Changes in absolute terms [Pertaining to Table 7.5] The information relied upon by the Honorable Commission clearly shows that there is no increasing trend in the volume of imports during the entire period of investigation. It cannot be concluded that there was a sudden, sharp, and significant increase in the volume of imports and that there is a definitive increasing trend in the volume of imports during the period of investigation. At best, it can only be concluded that were alternating modest increases and dips during the period from 2015 to 2020. Changes in Absolute Terms - First Semester Data In concluding that there was sudden, sharp, and significant increase in the first semester import volume during the period of investigation, the Honorable Commission appears to have relied on the fact that there was an increase in the import volume in the first semester of 2021. The Honorable Commission's findings contradict the data and are not supported by the standards set in the Safeguard Measures Act and the relevant WTO cases mentioned above. The Honorable Commission's pronouncement that 2021 data are "*indicative of the likely situation in the very near future*" is highly speculative and not supported by the figures available from 2015 to 2021. At most, it can only be concluded that the import volumes are indeed *"erratic"* and that there is no adequate reason to believe that there will be an increasing trend in the import volume especially considering that no such trend was ever observed during the Period of Investigation, even for those years when there was no pandemic. Moreover, this conclusion does not even take into account the coming on stream of the domestic industry's purported increased capacity. Changes in relative terms It is significant that the Honorable Commission confirms that there was a decrease in the share of imports to local production in the first semester of 2021. Specifically, while the import shares relative to production were at [redacted]% for 2020, this declined to [redacted]% in 2021. Instead of fully assessing its impact, the Honorable Commission, with due respect, appears to have glossed over the fact that there was a 31-percentage point dip

Party	Position
	in import shares to domestic production in 2021. This decrease belies any claim that there is an increasing trend in import shares during the period of investigation. Any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact the JGSPC shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion, which contributed in no small part to the domestic industry's inability to meet local demand. Any perceived increase in import volumes during this period did not arise suddenly and unexpectedly. Instead, the increase in import volumes was simply a predictable market response to the domestic industry's foreseen – indeed, *planned* – inability to meet local demand, and any perceived increase in imports during this period was brought about by the fact that importers had to respond to local demand. The increase in imports during this period therefore ultimately benefited the consuming public by providing them with access to HDPE which JGSPC was in no position to supply.
Dow Chemical Pacific (Singapore) Private Limited	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that *"the trends in imports over the period of investigation must be duly considered and a mere comparison of the data in the beginning and end points will not suffice."* The Honorable Commission must take into account the intervening trends during the entire period of investigation. That there was an increase between the starting point and the end point of the period of investigation will simply not be sufficient. The WTO Appellate Body, in its Report on *U.S. – Steel (EC)* affirmed the ruling of the WTO Panel that in determining whether there has been an increase in the volume of imports sufficiently to justify the imposition of safeguard measures, "*any significant decrease during the period of investigation should be considered and its impact on the trend of imports should be appropriately taken into account."* In this case, the WTO Appellate Body agreed with the WTO Panel that within the period of investigation, there was a decrease in the import volume for two years. According to the WTO Appellate Body, this decrease in imports should have been duly considered even when there was a subsequent increase in import volumes. Changes in absolute terms [Pertaining to Table 7.5] The information relied upon by the Honorable Commission clearly shows that there is no increasing trend in the volume of imports during the entire period of investigation. It cannot be concluded that there was a sudden, sharp, and significant increase in the volume of imports and that there is a definitive increasing trend in the volume of imports during the period of investigation. At best, it can only be concluded that were alternating modest increases and dips during the period from 2015 to 2020.

Party	Position
	Changes in Absolute Terms - First Semester Data In concluding that there was sudden, sharp, and significant increase in the first semester import volume during the period of investigation, the Honorable Commission appears to have relied on the fact that there was an increase in the import volume in the first semester of 2021. The Honorable Commission's findings contradict the data and are not supported by the standards set in the Safeguard Measures Act and the relevant WTO cases mentioned above. The Honorable Commission's pronouncement that 2021 data are "*indicative of the likely situation in the very near future"* is highly speculative and not supported by the figures available from 2015 to 2021. At most, it can only be concluded that the import volumes are indeed *"erratic"* and that there is no adequate reason to believe that there will be an increasing trend in the import volume especially considering that no such trend was ever observed during the Period of Investigation, even for those years when there was no pandemic. Moreover, this conclusion does not even take into account the coming on stream of the domestic industry's purported increased capacity. Changes in relative terms It is significant that the Honorable Commission confirms that there was a decrease in the share of imports to local production in the first semester of 2021. Specifically, while the import shares relative to production were at [redacted]% for 2020, this declined to [redacted]% in 2021. Instead of fully assessing its impact, the Honorable Commission, with due respect, appears to have glossed over the fact that there was a 31-percentage point dip in import shares to domestic production in 2021. This decrease belies any claim that there is an increasing trend in import shares during the period of investigation. Any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact the JGSPC shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion, which contributed in no small part to the domestic industry's inability to meet local demand. Any perceived increase in import volumes during this period did not arise suddenly and unexpectedly. Instead, the increase in import volumes was simply a predictable market response to the domestic industry's foreseen – indeed, *planned* – inability to meet local demand, and any perceived increase in imports during this period was brought about by the fact that importers had to respond to local demand. The increase in imports during this period therefore ultimately benefited the consuming public

Party	Position
	by providing them with access to HDPE which JGSPC was in no position to supply.
Siam Polyethylene Company Limited (SPE)	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that *"the trends in imports over the period of investigation must be duly considered and a mere comparison of the data in the beginning and end points will not suffice."* The Honorable Commission must take into account the intervening trends during the entire period of investigation. That there was an increase between the starting point and the end point of the period of investigation will simply not be sufficient. The WTO Appellate Body, in its Report on *U.S. – Steel (EC)* affirmed the ruling of the WTO Panel that in determining whether there has been an increase in the volume of imports sufficiently to justify the imposition of safeguard measures, "*any significant decrease during the period of investigation should be considered and its impact on the trend of imports should be appropriately taken into account."* In this case, the WTO Appellate Body agreed with the WTO Panel that within the period of investigation, there was a decrease in the import volume for two years. According to the WTO Appellate Body, this decrease in imports should have been duly considered even when there was a subsequent increase in import volumes. Changes in absolute terms [Pertaining to Table 7.5] The information relied upon by the Honorable Commission clearly shows that there is no increasing trend in the volume of imports during the entire period of investigation. It cannot be concluded that there was a sudden, sharp, and significant increase in the volume of imports and that there is a definitive increasing trend in the volume of imports during the period of investigation. At best, it can only be concluded that were alternating modest increases and dips during the period from 2015 to 2020. Changes in Absolute Terms - First Semester Data In concluding that there was sudden, sharp, and significant increase in the first semester import volume during the period of investigation, the Honorable Commission appears to have relied on the fact that there was an increase in the import volume in the first semester of 2021. The Honorable Commission's findings contradict the data and are not supported by the standards set in the Safeguard Measures Act and the relevant WTO cases mentioned above. The Honorable Commission's pronouncement that 2021 data are "*indicative of the likely situation in the very near future"* is highly speculative and not supported by the figures available from 2015 to 2021. At most, it can only be concluded that the import volumes are indeed *"erratic"* and that there is no adequate reason to believe that there will be an increasing trend in the import volume especially considering that no such trend was ever observed during the Period of Investigation, even for

Party	Position
	those years when there was no pandemic. Moreover, this conclusion does not even take into account the coming on stream of the domestic industry's purported increased capacity. Changes in relative terms It is significant that the Honorable Commission confirms that there was a decrease in the share of imports to local production in the first semester of 2021. Specifically, while the import shares relative to production were at [redacted]% for 2020, this declined to [redacted]% in 2021. Instead of fully assessing its impact, the Honorable Commission, with due respect, appears to have glossed over the fact that there was a 31-percentage point dip in import shares to domestic production in 2021. This decrease belies any claim that there is an increasing trend in import shares during the period of investigation. Any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact the JGSPC shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion, which contributed in no small part to the domestic industry's inability to meet local demand. Any perceived increase in import volumes during this period did not arise suddenly and unexpectedly. Instead, the increase in import volumes was simply a predictable market response to the domestic industry's foreseen – indeed, *planned* – inability to meet local demand, and any perceived increase in imports during this period was brought about by the fact that importers had to respond to local demand. The increase in imports during this period therefore ultimately benefited the consuming public by providing them with access to HDPE which JGSPC was in no position to supply.
GC Marketing Solutions Company Limited (GCM)	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that there must be an examination of the rate and amount of the increase in imports during the period of investigation. Otherwise stated, the Honorable Commission must take into account the intervening trends of importation volume of the entire period of investigation. The WTO Appellate Body legal standard called for an examination of the intervening trends as well as a reasoned and adequate explanation on the downward trends to support the positive determination of increased imports. Here, not only was there erratic patterns of contraction in imported volume disproving claims of increased volume, but the Honorable Commission also did not provide for an explanation why the downward trends in the intervening years support its conclusion of increased imports. Import Surge in Absolute Terms

Party	Position
	While an examination of the data on import volumes show that the imports at the end of the investigation is higher than the imports at the beginning of the investigation, such is insufficient to conclude that there was increased imports in absolute terms. [Based on Table 7.5 of the Staff Report] The Staff Report data on import volume and growth rate during the period of investigation show that there exists no increasing trend, let alone a "sudden, sharp, and significant" increase. In fact for the years 2016 and 2020, there was negative growth at -13% and -5%, respectively. While there was an import growth rate of 29% and 28% in the years 2017 and 2019, this was tempered by the low growth rate in the intervening year at just 6% and must be considered in the context of the negative growth rate in their respective previous years. This shows that the import volume during the period of investigation was a normal contraction and expansion of importation. <u>Import Surge in Absolute Terms (First Semester Data)</u> An examination of the import volumes show that the imported volume on the first quarter [sic] of 2021 is numerically higher than the imported volume on the first quarter [sic] of 2021. To reiterate, the WTO Appellate Body Reports provide that examination of end-point data is an insufficient yardstick to conclude increase in imports and there must be an examination of rates and intervening trends. A closer look on the first semester import volume data actually show no increasing pattern, with years 2016, 2018, and 2020 showing negative growth rate. The positive growth rates in the years 2017, 2019, and 2021 must also be considered relative to the negative growth in their respective previous years. The Honorable Commission's conclusion is unexplained by the available data nor is it in keeping with the standards set forth in aforementioned WTO Appellate Body Reports. The Honorable Commission also stated in the Staff Report that the first quarter [sic] data of 2021 has the highest import volume of investigation, which is "indicative of the likely situation in the very near future." This is merely speculative and unsupported by data. The numerical figures in 2021 may only show the natural expansion and contraction of import volumes. There is no reasonable and adequate explanation that would show that there would only be an increasing trend <u>Import Surge in Relative Terms</u> There cannot be a positive determination that there was indeed a "sudden, sharp, and significant" increase in imported volumes during the entire period of investigation. In fact, the Honorable Commission itself stated that the import shares relative to

Party	Position
	domestic production was at [redacted]% in 2020 and at [redacted]% in 2021, resulting to a significant 31% decrease in import shares
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that there must be an examination of the rate and amount of the increase in imports during the period of investigation. Otherwise stated, the Honorable Commission must take into account the intervening trends of importation volume of the entire period of investigation. The WTO Appellate Body legal standard called for an examination of the intervening trends as well as a reasoned and adequate explanation on the downward trends to support the positive determination of increased imports. Here, not only was there erratic patterns of contraction in imported volume disproving claims of increased volume, but the Honorable Commission also did not provide for an explanation why the downward trends in the intervening years support its conclusion of increased imports. <u>Import Surge in Absolute Terms</u> While an examination of the data on import volumes show that the imports at the end of the investigation is higher than the imports at the beginning of the investigation, such is insufficient to conclude that there was increased imports in absolute terms. [Base on Table 7.5 of the Staff Report] The Staff Report data on import volume and growth rate during the period of investigation show that there exists no increasing trend, let alone a “sudden, sharp, and significant” increase. In fact for the years 2016 and 2020, there was negative growth at -13% and -5%, respectively. While there was an import growth rate of 29% and 28% in the years 2017 and 2019, this was tempered by the low growth rate in the intervening year at just 6% and must be considered in the context of the negative growth rate in their respective previous years. This shows that the import volume during the period of investigation was a normal contraction and expansion of importation. <u>Import Surge in Absolute Terms (First Semester Data)</u> An examination of the import volumes show that the imported volume on the first quarter [sic] of 2021 is numerically higher than the imported volume on the first quarter [sic] of 2021. To reiterate, the WTO Appellate Body Reports provide that examination of end-point data is an insufficient yardstick to conclude increase in imports and there must be an examination of rates and intervening trends. A closer look on the first semester import volume data actually show no increasing pattern, with years 2016, 2018, and 2020 showing negative growth rate. The positive growth rates in the

Party	Position
	years 2017, 2019, and 2021 must also be considered relative to the negative growth in their respective previous years. The Honorable Commission's conclusion is unexplained by the available data nor is it in keeping with the standards set forth in aforementioned WTO Appellate Body Reports. The Honorable Commission also stated in the Staff Report that the first quarter [sic] data of 2021 has the highest import volume of investigation, which is "indicative of the likely situation in the very near future." This is merely speculative and unsupported by data. The numerical figures in 2021 may only show the natural expansion and contraction of import volumes. There is no reasonable and adequate explanation that would show that there would only be an increasing trend. <u>Import Surge in Relative Terms</u> There cannot be a positive determination that there was indeed a "sudden, sharp, and significant" increase in imported volumes during the entire period of investigation. In fact, the Honorable Commission itself stated that the import shares relative to domestic production was at [redacted]% in 2020 and at [redacted]% in 2021, resulting to a significant 31% decrease in import shares.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The WTO Appellate Body clarified in *Argentina – Footwear (EC)* that there must be an examination of the rate and amount of the increase in imports during the period of investigation. Otherwise stated, the Honorable Commission must take into account the intervening trends of importation volume of the entire period of investigation. The WTO Appellate Body legal standard called for an examination of the intervening trends as well as a reasoned and adequate explanation on the downward trends to support the positive determination of increased imports. Here, not only was there erratic patterns of contraction in imported volume disproving claims of increased volume, but the Honorable Commission also did not provide for an explanation why the downward trends in the intervening years support its conclusion of increased imports. <u>Import Surge in Absolute Terms</u> While an examination of the data on import volumes show that the imports at the end of the investigation is higher than the imports at the beginning of the investigation, such is insufficient to conclude that there was increased imports in absolute terms. [Base on Table 7.5 of the Staff Report] The Staff Report data on import volume and growth rate during the period of investigation show that there exists no increasing trend, let alone a "sudden, sharp, and significant" increase. In fact

Party	Position
	for the years 2016 and 2020, there was negative growth at -13% and -5%, respectively. While there was an import growth rate of 29% and 28% in the years 2017 and 2019, this was tempered by the low growth rate in the intervening year at just 6% and must be considered in the context of the negative growth rate in their respective previous years. This shows that the import volume during the period of investigation was a normal contraction and expansion of importation. <u>Import Surge in Absolute Terms (First Semester Data)</u> An examination of the import volumes show that the imported volume on the first quarter [sic] of 2021 is numerically higher than the imported volume on the first quarter [sic] of 2021. To reiterate, the WTO Appellate Body Reports provide that examination of end-point data is an insufficient yardstick to conclude increase in imports and there must be an examination of rates and intervening trends. A closer look on the first semester import volume data actually show no increasing pattern, with years 2016, 2018, and 2020 showing negative growth rate. The positive growth rates in the years 2017, 2019, and 2021 must also be considered relative to the negative growth in their respective previous years. The Honorable Commission's conclusion is unexplained by the available data nor is it in keeping with the standards set forth in aforementioned WTO Appellate Body Reports. The Honorable Commission also stated in the Staff Report that the first quarter [sic] data of 2021 has the highest import volume of investigation, which is "indicative of the likely situation in the very near future." This is merely speculative and unsupported by data. The numerical figures in 2021 may only show the natural expansion and contraction of import volumes. There is no reasonable and adequate explanation that would show that there would only be an increasing trend. <u>Import Surge in Relative Terms</u> There cannot be a positive determination that there was indeed a "sudden, sharp, and significant" increase in imported volumes during the entire period of investigation. In fact, the Honorable Commission itself stated that the import shares relative to domestic production was at [redacted]% in 2020 and at [redacted]% in 2021, resulting to a significant 31% decrease in import shares.
On Serious Injury or Threat of Serious Injury	
Dow Chemical Pacific Ltd. (DCPL)	The HDPE products subject of the investigation were not imported into the country in increased quantities so as to be a substantial cause of injury or threat to the domestic production.

Party	Position
	As explained by the WTO Appellate Body in its Report in *Argentina – Footwear (EC):* *The determination of whether the requirement of imports 'in such increased quantities' is not merely a mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, it bears repeating, not just any increased quantities of imports will suffice. There must be 'such increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both qualitatively and quantitatively, to cause or threaten to cause 'serious injury'.* Applying the foregoing standard to the data on imports in this case, DCPL respectfully submits that there is no increase in imports that would warrant the imposition of safeguard measures. The Honorable Commission concluded that there was an increase in the volume of imports in absolute terms. As to the increase in import volume in relative terms the Honorable Commission concluded [that there is also an increase]. The data, when analyzed based on the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions.
Dow Chemical Pacific (Singapore) Private Limited	The HDPE products subject of the investigation were not imported into the country in increased quantities so as to be a substantial cause of injury or threat to the domestic production. As explained by the WTO Appellate Body in its Report in *Argentina – Footwear (EC):* *The determination of whether the requirement of imports 'in such increased quantities' is not merely a mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, it bears repeating, not just any increased quantities of imports will suffice. There must be 'such increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been*

Party	Position
	recent enough, sudden enough, sharp enough, and significant enough, both qualitatively and quantitatively, to cause or threaten to cause 'serious injury'. Applying the foregoing standard to the data on imports in this case, DCPS respectfully submits that there is no increase in imports that would warrant the imposition of safeguard measures. The Honorable Commission concluded that there was an increase in the volume of imports in absolute terms. As to the increase in import volume in relative terms the Honorable Commission concluded [that there is also an increase]. The data, when analyzed based on the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions.
Siam Polyethylene Company Limited (SPE)	The HDPE products subject of the investigation were not imported into the country in increased quantities so as to be a substantial cause of injury or threat to the domestic production. As explained by the WTO Appellate Body in its Report in *Argentina – Footwear (EC):* *The determination of whether the requirement of imports 'in such increased quantities' is not merely a mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. Again, it bears repeating, not just any increased quantities of imports will suffice. There must be 'such increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both qualitatively and quantitatively, to cause or threaten to cause 'serious injury'.* Applying the foregoing standard to the data on imports in this case, SPE respectfully submits that there is no increase in imports that would warrant the imposition of safeguard measures. The Honorable Commission concluded that there was an increase in the volume of imports in absolute terms. As to the increase in import volume in relative terms the Honorable Commission concluded [that there is also an increase]. The data, when analyzed based on the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions.

Party	Position
GC Marketing Solutions Company Limited (GCM)	The increase in import volume in absolute and relative terms during the POI may be attributed to the shutdown of JGSPC operations from October 2019 to March 2020. The close of operations for almost half a year contributed to the domestic industry's decrease in production and consequent increase of import volume. JGSPC's close of operations adequately explains the increase in import volume in relative and absolute terms in 2019. Since JGSPC's production decreased that year, any numerical increase in import volumes may not be considered to have been a sudden and unexpected increase caused by the import market… Since the increase in imported volume was largely caused by the domestic industry's cease of operations during the period of investigation, it would then be highly unreasonable for the Honorable Commission to impose safeguard measure on the import market that merely filled the gap caused by the domestic industry. even assuming that there was a, "sudden, sharp and significant" increase in import volume, it cannot be said that such was attributable to the measured and deliberate acts by the importers to usurp the domestic industry's market. Rather, should there be a, "sudden, sharp and significant" increase, such is attributable to JGSPC's failure to meet local demand. JGSPC's inadequacies was what forced the hand of the local market to source HDPE and LLDPE from the import market. Thus, an imposition by the government of the safeguard measures would jeopardize the local consumers and downstream industries and their respective consumers since they are left with no choice but to rely on the domestic industry, which is not in the position to meet their demand. Ultimately, it is the consumers and the public who would be adversely affected by the imposition of the safeguard measures
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The increase in import volume in absolute and relative terms during the POI may be attributed to the shutdown of JGSPC operations from October 2019 to March 2020. The close of operations for almost half a year contributed to the domestic industry's decrease in production and consequent increase of import volume. JGSPC's close of operations adequately explains the increase in import volume in relative and absolute terms in 2019. Since JGSPC's production decreased that year, any numerical increase in import volumes may not be considered to have been a sudden and unexpected increase caused by the import market… Since the increase in imported volume was largely caused by the domestic industry's cease of operations during the period of investigation, it would then be highly unreasonable for the Honorable Commission to impose safeguard measure on the

Party	Position
	import market that merely filled the gap caused by the domestic industry. even assuming that there was a, "sudden, sharp and significant" increase in import volume, it cannot be said that such was attributable to the measured and deliberate acts by the importers to usurp the domestic industry's market. Rather, should there be a, "sudden, sharp and significant" increase, such is attributable to JGSPC's failure to meet local demand. JGSPC's inadequacies was what forced the hand of the local market to source HDPE and LLDPE from the import market. Thus, an imposition by the government of the safeguard measures would jeopardize the local consumers and downstream industries and their respective consumers since they are left with no choice but to rely on the domestic industry, which is not in the position to meet their demand. Ultimately, it is the consumers and the public who would be adversely affected by the imposition of the safeguard measures
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The increase in import volume in absolute and relative terms during the POI may be attributed to the shutdown of JGSPC operations from October 2019 to March 2020. The close of operations for almost half a year contributed to the domestic industry’s decrease in production and consequent increase of import volume. JGSPC’s close of operations adequately explains the increase in import volume in relative and absolute terms in 2019. Since JGSPC's production decreased that year, any numerical increase in import volumes may not be considered to have been a sudden and unexpected increase caused by the import market… Since the increase in imported volume was largely caused by the domestic industry's cease of operations during the period of investigation, it would then be highly unreasonable for the Honorable Commission to impose safeguard measure on the import market that merely filled the gap caused by the domestic industry. even assuming that there was a, "sudden, sharp and significant" increase in import volume, it cannot be said that such was attributable to the measured and deliberate acts by the importers to usurp the domestic industry's market. Rather, should there be a, "sudden, sharp and significant" increase, such is attributable to JGSPC's failure to meet local demand. JGSPC's inadequacies was what forced the hand of the local market to source HDPE and LLDPE from the import market. Thus, an imposition by the government of the safeguard measures would jeopardize the local consumers and downstream industries and their respective consumers since they are left with no choice but to rely on the domestic industry, which is not in the position to meet their demand. Ultimately, it is the consumers and the public who would be adversely affected by the imposition of the safeguard measures

Party	Position
On Unforeseen Development	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	The unforeseen development requirement is a strict prerequisite for the application of a safeguard measure. What is an unforeseen development is to be determined objectively by considering what was not "reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated". However, no concessions have been made on behalf of the Philippines. It is unclear from the Report how cost-advantages of the US and Middle East petrochemical plants, the US-China trade war, rising exports of the US product to Asian markets, and a price increase of the product in Russia resulted in increased HDPE imports into the Philippines. Against this background, it is apparent that there is no logical connection between these alleged unforeseen developments and the allegedly increased imports of HDPE.
On Public Interest	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	DFT is of the view that the imposition of the safeguard measure against importations of HDPE would directly create an adverse effect upon other industries as well as consumers, since HDPE is an essential input material of plastic products. It has also been established that some HDPE grades have not been produced by the domestic industry. As a consequence, the imposition of a safeguard measure will cause a deadweight loss to the users that need to import those HDPE grades as well as the society as a whole.
On De Minimis Volumes	
Government of Indonesia	Exempt Indonesia from this investigation and any safeguard duty based on the following reasons: 1) The share of imports of HDPE from Indonesia during the Period of Investigation were under 3% or *de minimis*. The GOI is of the view that Indonesia does not cause any injury or threat thereof to the Philippines domestic industry. Any possible serious injury of threat thereof claimed by the Philippines domestic industry has nothing to do with Indonesia. 2) The share of total imports of the Philippines from developing countries which are below 3% is only 5.70% (less than 9%) 3) Article 9.1 of the WTO Agreement on Safeguards provides that: *Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not*

Party	Position
	more than 9 per cent of total imports of the product concerned." Based on the above provision, as a developing country, Indonesia is qualified to excluded from this investigation. The GOI requests the Tariff Commission to consider the fact presented in Para 2, Part 7.6 on *De Minimis Volumes* (p.57) that there were 14 developing countries, including Indonesia, were found to have individual shares of HDPE imports below 3% threshold and collectively did not exceed the 9% benchmark and therefore exclude Indonesia from the investigation or exempted from any duties that may have resulted from the investigation.
Other Issues	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	The Philippines has no binding tariff obligation for the HDPE products under investigation in its WTO schedule of concessions. According to Article XIX:1 of GATT 1994 safeguard measures are *measures that suspend a GATT obligation and/or withdraw or modify a GATT concession.* In the absence of a suspension, withdrawal or modification of a GATT obligation or concession, a measure cannot be characterized as a safeguard measure.

ANNEX F

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES

(AHTN 2017 Subheading No. 3901.20.00)

x----------x

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

NOTICE OF PUBLIC HEARING

Pursuant to Section 712 of Republic Act (RA) No. 10863, or the *Customs Modernization and Tariff Act*, which adopts the provisions of RA No. 8800, or the *Safeguard Measures Act*, and in relation to Section 20 of Commission Order No. 2021-02, entitled the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8800*, notice is hereby given that public hearings on the determination of the merits of the imposition of a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules (AHTN 2017 Subheading No. 3901.20.00) from various countries shall be conducted **via Videoconferencing through the Microsoft Teams Application** on the following dates and times:

DATE	TIME (GMT+8)
21 February 2022 (Monday)	9:00 A.M.
22 February 2022 (Tuesday)	9:00 A.M.
23 February 2022 (Wednesday)	9:00 A.M.
24 February 2022 (Thursday)	9:00 A.M.
28 February 2022 (Monday)	9:00 A.M.

All interested parties are hereby directed to attend the first day of the Public Hearing via Videoconferencing (PHV). Likewise, prior to the conduct of the PHV, interested parties are required to register their participation to the same until **18 February 2022 at 12:00 NN (GMT+8)**, using the registration link posted on the Commission's website *https://tariffcommission.gov.ph* or by scanning the QR Code provided.

Should a party desire to submit additional issues for the Public Hearing, other than issues on product comparability and volume of increased imports, the said party shall submit the same at least five (5) working days before the scheduled Public Hearing, or on or before **14 February 2022.** Finally, parties are likewise required to submit affidavits of their witnesses on the same date, copy furnished other parties. The list of parties and their respective counsel/s or authorized representative/s shall be posted on the Commission's website.

For inquiries and other details, please contact Acting Director Elvira C. Ignacio, Head of the Task Force created for this investigation, at *TC.Assist@mail.tariffcommission.gov.ph.*

Issued this 7th day of February 2022 in Quezon City, Metro Manila.

MARILOU P. MENDOZA
Chairperson

MT - Feb. 8, 2022

ANNEX F

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

IN THE MATTER OF THE FORMAL INVESTIGATION ON THE IMPOSITION OF SAFEGUARD MEASURE AGAINST IMPORTATIONS OF HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES

(AHTN 2017 Subheading No. 3901.20.00)

FOR: SAFEGUARD MEASURE
TCI (SG) No. SG-2021-OC-HDPE

NOTICE OF PUBLIC HEARING

Pursuant to Section 712 of Republic Act (RA) No. 10863, or the *Customs Modernization and Tariff Act*, which adopts the provisions of RA No. 8800, or the *Safeguard Measures Act*, and in relation to Section 20 of Commission Order No. 2021-02, entitled the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8800*, notice is hereby given that public hearings on the determination of the merits of the imposition of a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules (AHTN 2017 Subheading No. 3901.20.00) from various countries shall be conducted **via Videoconferencing through the Microsoft Teams Application** on the following dates and times:

DATE	TIME (GMT+8)
21 February 2022 (Monday)	9:00 A.M.
22 February 2022 (Tuesday)	9:00 A.M.
23 February 2022 (Wednesday)	9:00 A.M.
24 February 2022 (Thursday)	9:00 A.M.
28 February 2022(Monday)	9:00 A.M.

All interested parties are hereby directed to attend the first day of the Public Hearing via Videoconferencing (PHV). Likewise, prior to the conduct of the PHV, interested parties are required to register their participation to the same until **18 February 2022 at 12:00 NN (GMT+8)**, using the registration link posted on the Commission's website https://tariffcommission.gov.ph or by scanning the QR Code provided.

PHV Registration Form

Should a party desire to submit additional issues for the Public Hearing, other than issues on product comparability and volume of increased imports, the said party shall submit the same at least five (5) working days before the scheduled Public Hearing, or on or before **14 February 2022**. Finally, parties are likewise required to submit affidavits of their witnesses on the same date, copy furnished other parties. The list of parties and their respective counsel/s or authorized representative/s shall be posted on the Commission's website.

For inquiries and other details, please contact Acting Director Elvira C. Ignacio, Head of the Task Force created for this investigation, at TC.Assist@mail.tariffcommission.gov.ph.

Issued this 7th day of February 2022 in Quezon City, Metro Manila.

MARILOU P. MENDOZA
Chairperson

(MS-FEB. 8, 2022)

ONGOING INVESTIGATIONS

Petitions for Tariff Modification

As of 21 December 2021, all investigations were concluded.

Trade Remedy Cases

Formal Investigation on the Imposition of Safeguard Measure against importations of High-Density Polyethylene (HDPE) Pellets and Granules from various countries [TCI (SG) No. SG-2021-OC-HDPE]

Please see the following Notices / References:

- Notice of Public Hearing issued on 07 February 2022
- Registration Link: https://forms.office.com/r/JQxgMnebyN issued on 07 February 2022

ANNEX G

List of Parties Notified of the PUBLIC HEARING on the Imposition of Safeguard Measure Against Importations of High-Density Polyethylene Pellets and Granules

DOMESTIC INDUSTRY	
1	**MS. MARIA VERON M. MARASIGAN** *Representative / Manager, Business Development, Research and Communication* JG Summit Petrochemical Corporation (now JG Summit Olefins Corporation) Email: Veron.Munar@jgspetrochem.com **ATTY. JOSE SALVADOR M. RIVERA JR**. Counsel Email: jmr@macropharmacorp.com

IMPORTER	
2	**MR. MICHAEL ANG** *Representative / General Manager* Apollo Bag Industrial Corporation Email: apollobag@eyp.ph; info@astrobagcorp.com
3	**MS. MA. VILMA P. MONTANO** *Representative / Assistant Manager* Artpack Philippines, Inc. Email: artpackph@yahoo.com
4	**MS. MARY JANE YANG** *Corporate Secretary* AstroBag Manufacturing Corporation Email: info@astrobag.com
5	**MR. RICHARD V. MERCADO** *Representative / President* Cebu Sentra Plastics Corporation Email: sentra.cebu@gmail.com
6	**MR. MARVIN LEE** *Representative / Manager* Citiplas Plastic Servicing Center Email: hotbodz888@yahoo.com
7	**MR. ALBERT ANG** *Import Coordinator* Cornerstore International Philippines Email: Amang888@yahoo.com
8	**MS. CHARMAINE JUSTO** Purchasing Manager Crown Asia Chemicals Corporation Email: Purchasing@crownpvc.com.ph

9	**MR. GERARD RALPH L. QUA** *Representative / President and General Manager* ESTA Fine Color Corporation Email: info@estafinecolor.com
10	**MR. JERICSON F. CO** *Representative / Business Development Manager* Filpet Incorporated Email: sales@filpet.com.ph
11	**Mr. Ralph A. Cabrera** President & CEO INCA Philippines Inc. Email: Incaplastic@yahoo.com
12	**MR. EDUARDO UY** *General Manger* Jason Manufacturing Phils Corp Email: jason_mktg@yahoo.com
13	**MR. KOJI KANATANI** *President* J-Film Philippines, Inc. Email: kanatani.kouji@me.jfilm.co.jp
14	**MR. ALDEN MICHAEL TAYONG** *Purchasing Manager* Liquid Packaging Corporation Email: marketingofficercebu@lpc.com.ph
15	**MR. VIRGILIO L. CO** *President* Manly Plastics Inc. Email: sales@manlyplastics.com; corp@manlyplastics.com
16	**MR. KENDRICK N. TRAJANO** *Vice President – Finance* Marulas Industrial Corporation Email: info.marulas@gmail.com; kntrajano@gmail.com
17	**MR. RANNIEL BOONGALING** *Supply Chain Manager* PACT Closure Systems (Philippines) Inc. Email address: ranniel.boongaling@pactgroup.com
18	**MR. ALEX C. IGNACIO** Chief Operating Officer Phelps Dodge Philippines Energy Products Corporation Email address: Alex.Ignacio@phelpsdodge.com. **MR. CESAR GATPO** Vice President, Business Development Email address: Cesar.Gatpo@phelpsdodge.com.ph

19	**MR. WILLIE SY** *Representative / Chief Operating Officer* PhilPlastic & Polymers, Inc.
20	**MR. MICEL A. YAP** Importation Officer Philippine Spring Water Resources, Inc. Email: cebufo@naturespring.com.ph
21	**MR. JEFFREY CO** *Representative* Plastmann Industrial Corporation Email: info@wcb.com.ph / pmann@wcb.com.ph
22	**MR. CHRISTOPHER S. CHUA** *Chief Executive Officer/President* Plastic Container Packaging Corporation Email: sales@pcpc.com.ph
23	**MR. MARION P. ALLAM** *General Manager* Premier Creative Packaging Inc. Email: purchasing2@pcpi.com.ph
24	**MR. WILLY GO** *Chief Operating Officer* Prima Plastic Manufacturing Corporation Email: willygo331@yahoo.com
25	**MR. TEDISON LIAO** *President* Shrinkpack Philippines Corporation Email: shrinkpack@shrinkpack.com.ph
26	**MR. AARON LAO** *President* TAT Recyclables & Renewables Corporation Email: sales@tatrecyclabes.com
27	**MR. CARLOS LANSANGAN** *Plastics Sales Head* Tradeton Corporation Email address: clansangan@tradeton.com
27	**MR. JOSELITO UY SOON** *Vice President and Manufacturing Director* United Polyresins, Inc. Email address: up-plant@unitedpolyresins.com.ph
28	**MR. DINO L. ELEGADO** *Operations Manager* WEIDA Philippines, Inc. Email: dino.elegado@weida.com.ph

EXPORTER	
29	**MR. RICK WU** *Asia Pacific Product Director, Polyolefin Elastomers* Dow Chemical Pacific Ltd. (DCPL) **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com;
30	**MR. RICK WU** *Asia Pacific Product Director, Polyolefin Elastomers* Dow Chemical Pacific (Singapore) Pte. Ltd. (DCPS) **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com
31	**MS. SIRINAPA JINNAKULLASIT** *Division Manager, Trading Supply Chain Management* GC Marketing Solutions Company Limited Email: sirinapa.j@pttgcgroup.com **QUISUMBING TORRES** *Counsel* Email: ronald.bernas@quisumbingtorres.com
32	**MR. LIM ENG LEE** *Acting Director, Polymer Sales* LOTTE Chemical Titan Corporation Sdn. Bhd. Email: ellim@lotte.net
33	**MR. EDI RIVA'I** *Representative* PT Chandra Asri Petrochemical Tbk Email: krishna.sukarya@capcx.com
34	**MR. ZAHID BAFARAT** *Head of Marketing Planning and Coordination* Rabigh Refining and Petrochemical Co. Email: BAFARAZM@petrorabigh.com **QUISUMBING TORRES** *Counsel* Email:Kristine.Mercado-Tamayo@quisumbingtorres.com; MikaelaArmina.Aurelio@quisumbingtorres.com
35	**MR. TAKASI YONEMURA**[1] *General Manager, Marketing & Business Planning Department* Sumitomo Chemical Asia Pte. Ltd.

[1] Note, per email of Counsel of Sumitomo on 24 March 2022, the the General Manager for Marketing & Business Planning Department for the said company is now Mr. Takahiro Deguchi.

	Email: deguchi@sumitomo-chem.com.sg **QUISUMBING TORRES** *Counsel* Email:Kristine.Mercado-Tamayo@quisumbingtorres.com; MikaelaArmina.Aurelio@quisumbingtorres.com
36	**MR. SUPOT KATETOPRAGRAN** *Representative / Commercial Director* Siam Polyethylene Company Limited (SPE) Email: skatetopragran@dow.com **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com
37	**MR. SUPOT KATETOPRAGRAN** *Commercial Director* Siam Synthetic Latex Company Limited ("SSLC") skatetopragran@dow.com **SYCIP SALAZAR HERNANDEZ & GATMAITAN** *Counsel* Email: docket@syciplaw.com; crzlopez@syciplaw.com

ASSOCIATION	
38	**MR. DANNY NGO** *President* Philippine Plastics Industry Association, Inc. Email: secretariat.ppia@gmail.com **ABAD ALCANTARA AND ASSOCIATES** *Counsel* Email: AAALaw@tradelawyers.ph
39	**MR. VICTOR JOSEPH M. VARGAS** *Purchasing Manger* American Wire & Cable Co., Inc. Email: sales@amwire.com.ph; mail@amwire.com.ph; purchasingdepartment@amwire.com.ph
40	**MR. JOAQUIN SAVELLANO, JR** Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCM Inc.) Email: joaquin.Savellano@phelpsdodge.com.ph
41	**The Secretariat** European Free Trade Association (EFTA) Email: mail.gva@efta.int

EMBASSY	
42	**HIS EXCELLENCY PEIYUNG HSU** Ambassador Taipei Economic and Cultural Office in the Philippines **MR. WEN-CHUNG CHANG** Director Taipei Economic and Cultural Office in the Philippines Email: teco.economicdivision@gmail.com
43	**HIS EXCELLENCY JORGE MORAGAS** Ambassador Embassy of Spain in the Philippines Email: emb.manila@maec.es
44	**HIS EXCELLENCY AGUS WIDJOJO** Ambassador Designate Embassy of the Republic of Indonesia Email: unitkom.manila@kemlu.go.id
45	**HIS EXCELLENCY KAZUHIKO KOSHIKAWA** Ambassador Embassy of Japan Email: jicc-mnl@ma.mofa.go.jp; ryoji@ma.mofa.go.jp
46	**HIS EXCELLENCY GERARDO LOZANO ARREDONDO** Ambassador Embassy of the Mexico Email: embfilipinas@sre.gob.mx
47	**HIS EXCELLENCY ALI IBRAHIM A.I. AL-MALKI** Ambassador Embassy of the State of Qatar Email: manila@mofa.gov.qa
48	**MR. THAWAT SUMITMOR** Charge d'Affaires Royal Thai Embassy Email: infomnl@pldtdsl.net
49	**HER EXCELLENCY ARTEMIZ SUMER** Ambassador Embassy of the Republic of Türkiye Email: manila@ticaret.gov.tr; embassy.manila@mfa.gov.tr
50	**HIS EXCELLENCY HOANG HUY CHUNG** Ambassador Embassy of the Socialist Republic of Viet Nam Email: ph@moit.gov.vn
51	**HIS EXCELLENCY ANTONIO JOSE MARIA DE SOUZA E SILVA** Ambassador Embassy of Brazil Email: brasemb.manila@itamaraty.gov.br

52	**HIS EXCELLENCY HISHAM SULTAN ABDULLAH ALQAHTANI** Ambassador Royal Embassy of Saudi Arabia Email: ph_amboffice@yahoo.com
53	**MR. SHAIKH SAOUD ALI MOHAMMED ALI ALMUALLA** Charge D'Affaires Embassy of the United Arab Emirates Email: manilaemb@mofaic.gov.ae
54	**HIS EXCELLENCY KIM INCHUL** Ambassador Emabssy of the Republic of Korea Email: philippines@mofa.go.kr; esan21@mofa.go.kr; polph2@mofa.or.kr

OTHERS[2]	
55	**ALISSA DERRACO** Mitsui Chemicals (MLCC) Email: a.derraco@mitsui.com
56	**ARNOLD CHAN** Cynus Industries, Inc. Email: noli@cygnusindustries.com
57	**BENJAMIN CHUA** Polymaster Industrial Corporation Email: bsochua@yahoo.com
58	**BERNICE LI** Sigma Packaging Corporation Email: berli_ppg@yahoo.com
59	**CHAYANONT TAKSINAWONG** SCG Plastics Co., Ltd Email: chayanot@scg.com
60	**CRISPIAN LAO** Cynus Industries Inc Email: crispianlao@gmail.com
61	**HIDEO ITO** Prime Polymer Co., Ltd. Email: hideo.ito@primepolymer.co.jp
62	**JENNIFER CHEW** Petronas Group Email: chew.liean@petronas.com.my
63	**MARJORIE LEE** BYC Group of Companies Email: marjorie.lee@bycgroup.com

[2] Parties, composed of other private companies and/or private individuals, who are not parties-on-record but nevertheless attended during the Preliminary Conference were likewise notified through email regarding the conduct of the Public Hearing.

64	**MASON ANG** Licton Industrial Corporation Email: masonang@mac.com
65	**WALTER FANG** USI Group Email: ww@usig.com
66	**WILSON FUNG** Private Individual Email: wilsonafung@yahoo.com
67	**ADE WIDODO** Private Individual Email: adekwee@gmail.com
68	**ARMANDO AGREGADO** Private Individual Email: mandyagregado@gmail.com
69	**DENNIS DY** Private Individual Email: grandmajestic.ph@gmail.com
70	**DIANE TAN** Private Individual Email: dianetan92@gmail.com
71	**ED GARCIA** Private Individual Email: edforgarcia@gmail.com
72	**IVONNE RIVERA** Private Individual Email: ivonneanrivera@gmail.com
73	**PATTANAPONG PINSOO** Private Individual Email: p.pattanapong1@gmail.com
74	**RHEA RUTH BALABAG** Private Individual Email: reahbalabag0810@gmail.com
75	**WENDELL SANTOS** Private Individual Email: wsantos28@gmail.com
76	**WINSTON CO** Private Individual Email: wicodev@gmail.com

Annex H

PLANNING, MANAGEMENT AND INFORMATION SYSTEMS DIVISION

PMISD Memo no. M 2022-02-019

FOR : **Director ELVIRA C. IGNACIO**
Head, Task Force on HDPE

FROM : **Mr. CESAR G. VILLADORES, JR.**
OIC Chief, PMISD

SUBJECT : Register of Attendance for the conduct of Public Hearing via Videoconferencing (PHV) on the determination of the merits of the imposition of a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules

DATE : 24 February 2022

As part of the commitment of the Planning, Management and Information Systems Division (PMISD) to ensure smooth conduct of the Public Hearing and to collect the necessary information that was generated during the entire activity of the Public Hearing via Videoconferencing (PHV) on the determination of the merits of the imposition of a definitive safeguard duty against importations of High-Density Polyethylene (HDPE) Pellets and Granules (AHTN 2017 Subheading No. 3901.20.00) from various countries conducted on 21 February 2022, the PMISD is providing herewith the list of attendees for the said event, attached as Annex A.

In summary, a total of 60 participants joined the PHV. The breakdown of the participants based on party representation is shown in the table below:

Party representation	***Number of attendees***
Petitioner	5
Oppositor	40
Observer	10
Other admitted participants	5
TOTAL	**60**

For your information.

Thank you.

Attachment: Register of Attendance for the conduct of PHV on HDPE

Annex A

REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

Finance, Management and Administrative Service
PLANNING, MANAGEMENT AND INFORMATION SYSTEMS DIVISION

REGISTER OF ATTENDANCE
Conduct of Public Hearing via Videoconferencing on HDPE on 21 February 2022

Seq No	Name	*Sector Represented*	*Name of Organization*
Petitioners			
1.	Balilla, Rhoda	Private Sector	JG Summit Petrochemical corporation
2.	Maranan, Homer	Private Sector	Association of Petrochemical Manufacturers of the Philippines, Inc. (APMP)
3.	Marasigan, Maria Veron	Private Sector	JG Summit Petrochemical corporation
4.	Rivera, Jose Salvador	Private Sector Counsel	JG Summit Petrochemical corporation
5.	Savellano, Joaquin	Private Sector	Chamber of Philippine Electric Wire and Cable Manufacturers, Inc.
Oppositors			
6.	Abot, Leo Francis	Private Sector Counsel	Dow Chemical Pacific Ltd. (“DCPL”) Dow Chemical Pacific (Singapore) Private Limited (“DCPS”) Siam Polyethylene Company Limited (“SPE”) Siam Synthetic Latex Company Limited (“SSLC”)
7.	Adolf, Donny	Private Sector	PT Chandra Asri Petrochemical Tbk

8.	Alcantara, Kristine	Private Sector Counsel	Philippine Plastics Industry Association
9.	Ang, Mason	Private Sector	Licton Industrial Corporation
10.	Arbi, Melinda	Government Sector	Ministry of Trade Republic of Indonesia
11.	Arfani, Rafika	Government Sector	Ministry of Trade Republic of Indonesia
12.	Arvianto, Indra	Private Sector	PT Chandra Asri Petrochemical Tbk
13.	Aurelio, Mikaela	Private Sector Counsel	Sumitomo Chemical Asia Pte Ltd
14.	Balaquiao, Eleanor	Private Sector Counsel	Dow Chemical Pacific Ltd. ("DCPL") Dow Chemical Pacific (Singapore) Private Limited ("DCPS") Siam Polyethylene Company Limited ("SPE") Siam Synthetic Latex Company Limited ("SSLC")
15.	Bumrungsuk, Chutamas	Government Sector	Department of Foreign Trade, Ministry of Commerce of Thailand
16.	Cabrera, Anthony	Private Sector	INCA Philippines Inc.
17.	Chatchawan, Narumon	Private Sector	GC Marketing Solutions Co.,Ltd.

18.	Chua, Benjamin	Private Sector	Philippine Plastics Industry Association, Inc. (PPIA)
19.	Falconitin, Tomas Justine	Private Sector Counsel	Abad Alcantara and Associates
20.	Gerhana, Annizah	Private Sector	PT Chandra Asri Petrochemical Tbk
21.	Go, Willy	Private Sector	Philippine Plastics Industry Association, Inc. (PPIA)
22.	Hutabarat, Martin	Government Sector	Embassy of the Republic of Indonesia
23.	Laforteza, Carina	Private Sector Counsel	Dow Chemical Pacific Ltd. (“DCPL”) Dow Chemical Pacific (Singapore) Private Limited (“DCPS”) Siam Polyethylene Company Limited (“SPE”) Siam Synthetic Latex Company Limited (“SSLC”)
24.	Lao, Crispian	Private Sector	Philippine Plastics Industry Association/Philippine Alliance for Recycling and Materials Sustainability
25.	Li Yun, Koh	Private Sector Counsel	Sumitomo Chemical Asia Pte Ltd
26.	Lim, Amanda	Private Sector Counsel	Sumitomo Chemical Asia Pte Ltd
27.	Lim, Yoke Ping	Private Sector	LOTTE Chemical Corporation Sdn Bhd

28.	Lopez, Carlos Roberto	Private Sector Counsel	Dow Chemical Pacific Ltd. ("DCPL") Dow Chemical Pacific (Singapore) Private Limited ("DCPS") Siam Polyethylene Company Limited ("SPE") Siam Synthetic Latex Company Limited ("SSLC")
29.	Mercado, Kristine Anne	Private Sector Counsel	Sumitomo Chemical Asia Pte Ltd/Rabigh Refining and Petrochemical Co.
30.	Montano, Vilma	Private Sector	Artpack Philippines Inc
31.	Ngo, Danny	Private Sector	Philippine Plastics Industry Association, Inc. (PPIA)
32.	Pamfilo , Jose Florante	Private Sector Counsel	Dow Chemical Pacific Ltd. ("DCPL") Dow Chemical Pacific (Singapore) Private Limited ("DCPS") Siam Polyethylene Company Limited ("SPE") Siam Synthetic Latex Company Limited ("SSLC")
33.	Pang, Wilson	Private Sector	LOTTE Chemical Corporation Sdn Bhd
34.	Panggabean, Hamonangan	Private Sector	PT Chandra Asri Petrochemical Tbk
35.	Phan, Janet	Private Sector	Lotte Chemical Titan
36.	Riva'i, Edi	Private Sector	PT Chandra Asri Petrochemical Tbk
37.	Rosario, David	Private Sector Counsel	Abad Alcantara and Associates
38.	Savellano, Joaquin	Private Sector	Chamber of Philippine Electric Wire and Cable Manufacturers, Inc.

39.	Sin, Elaine	Private Sector	Sumitomo Chemical Asia Pte Ltd
40.	Soraya, Fatina	Government Sector	Ministry of Trade Republic of Indonesia
41.	Sukarya, Krishna	Private Sector	PT Chandra Asri Petrochemical
42.	Taksinawong, Chayanont	Private Sector	Thai Polyethylene Co., Ltd.
43.	Tea, Martin	Private Sector	Lotte Chemical Titan Corporation Sdn. Bhd.
44.	Thavonthanakul, Chatchai	Private Sector	Thai Polyethylene Co., Ltd.
45.	Yudistra, Ahmad	Government Sector	Ministry of Trade Republic of Indonesia
Observers			
46.	Boongaling ,Ranniel	Industry Association	PACT Closure Systems (Philippines) Inc.
47.	Desiderio ,Louella	Media	Philippine Star
48.	Engsoo, An	Foreign Embassy	Embassy of the Republic of Korea
49.	Fu, Yvonne	Foreign Embassy	Taipei Economic and Cultural Office in the Philippines
50.	Hernandez ,Jaydee	Industry Association	PACT Closure Systems (Philippines) Inc.
51.	Isip ,Irma	Media	Malaya Business Insight
52.	Jitthai, Nuntaporn	Private Individual	
53.	Ochave ,Revin	Media	BusinessWorld
54.	Patcharapisarnsakul, Veerawit	Private Individual	
55.	Piad ,Tyrone Jasper	Media	Business Mirror
Other Admitted Participants			

56.	Bernas, Ronald		
57.	Erni, Rifana		
58.	Inmuang, Chagkrit		
59.	Lim, El		
60.	Pradnyawati	Government Sector	Ministry of Trade Republic of Indonesia

Note: -The other admitted participants are those who were not able to register within the registration period and were allowed to enter the PHV following the approval of the Task Force

Final Position Paper of the Petitioner

Party	Position
On Increased Imports	• The Tariff Commission on its Staff Report dated 08 February 2022 concluded that HDPE pellets and granules were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The increase in volume of imports can be considered recent, sudden, sharp and significant. • Res Ipsa Loquitur
On Serious Injury or Threat of Serious Injury	<u>Imports Increased Share</u> • The share of HDPE imports relative to domestic production substantially increased during the period of surge, with share in 2018 at [redacted]%, in 2019 at [redacted]%, and in 2020 at [redacted]%. These figures excluded importations for applications not identified as directly served by Philippine HDPE industry products. <u>Increased demand but lower sales for Philippine Industry</u> • From its peak sales of [redacted] MT in 2017, HDPE sales of Philippine industry into the domestic market has been decreasing, with growth rate at [redacted]% in 2018, [redacted]% in 2019, and [redacted]% in 2020, despite positive growth rates domestic consumption of HDPE products until 2019, and with consumption practically maintained in 2020 compared to 2019 volumes despite pandemic. <u>Philippine HDPE industry market share declined</u> • From its peak market share of [redacted]% in 2017, HDPE market share of Philippine industry has been decreasing, with share reduced to [redacted]% in 2018, [redacted]% in 2019, and [redacted]% in 2020, despite positive growth rates for domestic consumption of HDPE products until 2019, and consumption in 2020 practically maintained compared to 2019 volumes despite the pandemic. <u>Decreasing production capacity utilization despite increased demand</u> • Philippine HDPE production records show that capacity utilization rate has decreased for Philippine industry despite the increase in domestic demand increased in volume of imports and increased import market share while an occurred during the period of investigation. • The combined capacity utilization for both HDPE and LLDPE declined during the period of investigation. <u>Decreased production</u> • From peak production volumes of [redacted]MT in 2017 and [redacted]MT in 2018, HDPE production volumes of Philippine industry has substantially decreased by xx% in 2019, and a further [redacted]% decrease in 2020, despite positive growth rates for domestic consumption of HDPE products until 2019, and consumption in 2020 practically maintained compared to 2019 volumes despite the pandemic.

Party	Position
	• Utilization of the rated capacity of Philippine Industry did not improve despite an increase in demand. From peak utilization of [redacted]% in 2017 and 2018, overall utilization of Philippine industry has substantially decreased to [redacted]% in 2019 and [redacted]% in 2020. Increased inventory • From lowest end-year inventory level in 2017 of [redacted] MT, HDPE inventory of Philippine industry has substantially increased to [redacted] MT in 2018 and [redacted] MT in 2019. To be sure however in 2020, given the onslaught of the pandemic, inventory levels were substantially reduced to [redacted] MT. Price undercutting • Crucially, Oppositors did not contest or present any evidence to disprove that imported HDPE is consistently being sold at a price below Philippine-produced HDPE. Price depression • The Philippine HDPE industry has been forced to decrease its selling price to compete and defend its market share. Price suppression • The relatively low selling prices at which imported HDPE products are sold have increasingly prevented Philippine industry from increasing its selling price to allow it to recover its cost of production and a reasonable return on investment to justify its substantial investments. Profitability • Financial records show that income from operations of the Philippine HDPE industry decreased as a result of decreased sales, capacity utilization, the price suppression and depression from imported HDPE. Return on sales • In order to compete and defend its market share, the Philippine producer adopts a policy of import parity pricing, and as such is forced to sell its products at a price below its cost to produce and sell plus a reasonable margin to recover investment. • This affects overall financial profitability of the local producer and due to negative earnings for the past three years specifically for HDPE products, the local producer is currently struggling to provide positive returns to shareholders coming from HDPE sales. Labor productivity decreasing • Despite difficulties in achieving profitability, hiring for skilled workers has been continuous to ensure that there is sufficient buffer for the current operational requirements, plus some pre-hiring of those to be trained and employed for the

Party	Position
	upcoming new PE plant, which is currently undergoing pre-commissioning and will start to be operational in Q1 2022. • Labor productivity have however decreased during the period of increase in imports. From peak productivity of [redacted] MT per employee in 2017, overall productivity of the Philippine industry has been decreasing on a yearly basis and is currently at [redacted] MT per employee for YTD 7M of 2021.
On Casual Link	• The decline in profitability, production, sales, market share, capacity utilization, labor productivity and increased inventories were experienced at the same time and general proportion as the increase in imports. • Philippine industry production and sales, capacity utilization, market share, EBIT, productivity of HDPE products declined as imports increased during the same period. • Before the import surge, the financial position of Philippine industry was much better.
On Unforeseen Development	<u>An unforeseen event that has had an impact on the Philippine HDPE industry was the surprisingly higher yield of ethane resulting from the discovery of shale gas and of hydraulic fracturing or "fracking".</u> • Hydraulic fracturing or "fracking" is a process that creates fractures in shale formations to release shale gas. In this process, fracturing fluid composed of water, quartz sand and chemicals are pumped at a high pressure into unconventional reservoirs to widen the fractures in the rock and create new ones, thereby releasing the trapped shale gas. • Shale gas refers to natural gas trapped within the tiny pore spaces in shale formations. It is a hydrocarbon mixture composed primarily of methane and natural gas liquids (NGLs). The NGLs present in the mixture are ethane, propane and butane. Methane is used in the production of ammonia and methanol which lead to other higher value chemicals downstream. Ethane is used in the manufacture of ethylene, which is the primary raw materials for the production of polyethylene such as HDPE, and other related petrochemicals. Propane and butane are also used as both petrochemicals feedstock and as fuel. • The US shale gas boom, which has led to an abundance of cost advantaged ethane feedstock, has also led to an oversupply of PE, thus, led to an oversupply of PE, which is primarily intended for export and is expected to flood Asian markets. Major petrochemicals players such as Dow and ExxonMobil are at the forefront of US expansions. <u>US-China trade war</u> • The US-China trade war which began in 2018 has also caused displacement of usual trade flows, giving rise to increased exports into the Philippines. • Massive volumes of US PE originally intended to supply China is now forced to enter other markets, and thus the normal trade patterns are disrupted.

Party	Position
	• Given the US-China trade war as well as the completion of expansions of their respective petrochemical industries, Asian countries have also started to heavily trade LLDPE products into the Philippines, at prices competing also against low-priced US and Middle East imports, all of which have been taking away from the local producer's market share. <u>Covid-19 pandemic</u> • The Covid-19 pandemic was another unforeseen event that severely impacted Philippine Industry. • The pandemic cause lockdown and shutdowns to customers plants. This shutdown caused a drop in demand and prices both in the Philippines and worldwide. • The COVID-19 Pandemic caused delays in the Industry's efforts to expand and increase its production, to make its operations more cost effective and take advantage of economies of scale. • The start-up of the new [redacted] kTA PE plant, originally targeted for commercial operations by July 2021, has been delayed due to impacts to construction progress of the pandemic. These impacts include the halting of all construction activities during periods of Enhanced Community Quarantine (ECQ), reduction of the allowed number of manpower on site in compliance with IATF protocols, and difficulty in getting into the country the foreign contractors that are needed for the construction, commissioning and start-up of the projects. • In addition, global trade flows and the timely deliveries of goods have been adversely affected by the pandemic, such as disruption in port operations, which in turn contributed to shortage of vessels and shipping containers due to these being held up at various ports, and thereby contributing also to the rise in shipping costs. <u>Russian-Ukraine war</u> • The Russian-Ukraine war is expected to affect supply chains and have started to increase energy and petrochemical raw material costs. • Our government was identified this Philippine Industry as one of our strategic industry vital to our country's growth. • Increased worldwide surplus due to expected decreased GNP's and slowing of economies and overcapacity is a threat of more increased imports to the country. • These contributions easily overshadow those of any oppositors importers.
On Public Interest	• A healthy petrochemical industry is vital to any country's efforts for nation-building. • Philippine Industry's contribution in terms of investments, taxes, employment and corporate social projects are substantial.

Party	Position
Other Issues	• Philippine industry is serious in its effort to adjust to global competition. It has committed and hopes to continue to commit substantial resources to its adjustment plan.

Final Position Paper of the Other Parties

Party	Position
Product Comparability	
Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCM)	A closer look at the JGSPC/JGSOC complete product brochure would reveal that they only produce resins mainly used for manufacturing packaging products like heavy duty sacks, agricultural films, flexible and industrial packaging, industrial liners, garment bags, trash bags, shopping bags, ice bags and stretch films. There is none for electric wires and cables. It is very clear in the application filed by JGSPC/JGSOC with the DTI that the electrical grade HDPE is not part of the competing products for which JGSPC/JGSOC is seeking safeguard measures and therefore should have been excluded right away from any further investigation or public hearing by the DTI or the Tariff Commission (TC). It is very clear in the DTI Report that the HDPE locally produced by JGSPC/JGSOC are not like products with the imported HDPE electrical grade, simply because they do not have the same end-use applications, they do not have the same applications and functions, and they do not have the same manufacturing process. Therefore, the electrical grade HDPE should have been excluded already from any further investigation or public hearing by the DTI or the TC. In conclusion, we wish to appeal with prayer to the honorable Chairperson and Commissioners of the Tariff Commission to consider with finality the position of the CPEWCMI that the electrical grade HDPE should be excluded from the petition of JGSPC/JGSOC for safeguard measures against the importation of HDPE.
General Authority on Foreign Trade – Kingdom of Saudi Arabia (GAFT)	<u>Petitioner's products and processes are outdated</u> Petitioner's Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200). Moreover, Petitioner still employs UNIPOL gas phase technology from Union Carbide, which is a Unimodal process technology. Meanwhile, the market is looking for producers that employ Bimodal process technology because this results to higher quality, higher performance, and specialty HDPE applications. During the POI, no other local Philippine company produces HDPE made using Bimodal process technology. This, in effect, led the domestic market participants to resort to imports that can provide them with higher quality, higher performance, and specialty HDPE that Petitioner could not provide. Additionally, as mentioned, Petitioner's manufacturing equipment is outdated and has shown to be unreliable resulting

Party	Position
	in frequent stoppage of production due to shutdown, maintenance, and repair of the plant. The October to November 2019 cracker shutdown likely resulted in the increase of 28% for HDPE imports in 2019. Reports on shutdowns and extended shutdowns by Petitioner show reasons completely unrelated to imports.
GC Marketing Solutions Company Limited (GCM)	Certain WTO Appellate Body Reports expounded on elements to consider in interpreting whether a product is indeed a like product. In WTO Appellate Body Report on Japan - Taxes on Alcoholic Beverages, the Appellate Body posits that determination of like products must be narrowly construed, looking not just in the products' physical characteristics, but also in its commonality of end-uses. Another WTO Appellate Body Report (US – Lamb) emphasized that, “the focus must, therefore, be on the identification of the products, and their 'like or directly competitive' relationship, and not on the processes by which those products are produced. GCM's imported HDPE products is evidently not like product to JGSPC's HDPE products. Not only are the characteristics of two HDPE products varies, their processes and intended end-use are also different. Firstly, the HDPE imported by GCM has different product characteristics as that of JGSPC's. The raw materials being used by JGSPC are different, resulting to JGSPC's HDPE melt index and density to likewise be different to those exported into the Philippines, such as blow film products and blow molding products. Furthermore, the product characteristics (i.e. melt index and density) between JGSPC and GCM's HDPEs are different, GCM's products can be used for far more applications than that of JGSPC's Secondly, the GCM employs a Bimodal process technology, which is a more advanced technology that results to higher quality, performance, and specialty in HDPE applications.9 As stated in the DTI Preliminary Report, JGSPC had not produced HDPE using the Bimodal process technology during the Period of Investigation (“**POI**“), as they still employ UNIPOL gas phase technology from Union Carbide, which is a Unimodal process technology.10 The difference in these processes are significant as it results to a variance of quality in the HDPE products. Lastly, since there is variance in quality between the imported and local HDPEs, they do not serve the same or similar end-uses. The difference in quality of HDPEs produced by these two processes determine the quality of products made by them, and it comes to no surprise that the domestic market participants have resorted to imports to that can meet their quality standards.

Party	Position
	The conclusion that the products were like products was due to its heavy reliance on the similar processing techniques used by JGSPC and GCM, which failed to appreciate the true variance between their respective products. Verily, this hasty conclusion runs counter to the guidance set forth in WTO Appellate Body Report in US - Lamb. In this Report, the Appellate Body expressed skepticism that the degree of integration processes within an industry should have any bearing on the determination of the "domestic industry" and identification of the products: *"Although we do not disagree with the Panel's analysis of the USITC Report, nor with the conclusions it drew from that analysis, we have reservations about the role of an examination of the degree of integration of production processes for the products at issue. As we have indicated, under the Agreement on Safeguards, the determination of the "domestic industry" is based on the 'producers … of the like or directly competitive products'. The focus must, therefore, be on the identification of the products, and their 'like or directly competitive' relationship, and not on the processes by which those products are produced."* As earlier discussed, the GCM's HDPE products are of different physical characteristics, quality, and performance to that of JGSPC's. A domestic market participant would not even consider JGSPC's HDPE products for the reason that it would not be able to meet the customer's specific quality standard. Since JGSPC's products may not be considered to be an alternative way to satisfy the domestic market participant's needs, they shall not be considered to be directly competitive with GCM's products. Thus, GCM submits that the present case does not satisfy the requisite under Section 12 of RA No. 8800 that there must be serious injury or threat thereof to a domestic industry producing ***like products*** or ***directly competitive products*****.**
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	<u>The HDPE products of Sumitomo and the locally-produced HDPE pellets and granules are not like products</u> Sumitomo respectfully submits that to make a comparison between the imported and locally produced HDPE products based solely on the criteria used by the Honorable Commission is insufficient to establish that the products are "like products" for the purpose of this Formal Investigation. <u>Process of Polymerization</u> Sumitomo respectfully submits that the Honorable Commission's conclusion that the three established industrial processes of polymerization are the same is erroneous. The three different industrial processes of polymerization, despite having similar PE manufacturing flowcharts, are precisely

Party	Position
	classified as such because of the difference in all reactor conditions which essentially results in the difference in the quality of the end product using each process. Further to this, the Petitioner produces its HDPE resin products using the UNIPOLTM PE Process licensed under Univation Technologies for its two existing reactor lines. This is classified as a gas phase process. On the other hand, the Respondent uses the Lyondell Basell (Hostalen) Process. This is classified as a slurry process. It is inaccurate to conclude that the use of either of the three processes of polymerization will equate to imported and locally produced HDPE to be "like products." <u>Product composition</u> Although it is correct that both locally produced and imported HDPE consist of ethylene, co-monomers, and additives, we respectfully submit that it is erroneous to conclude that they are like products merely because of the similarity in the product composition without taking into consideration the particular kind used which have varying properties. <u>Physical properties depending on their processing and application/end-use</u> Sumitomo notes that the raw materials being produced by Petitioner are outdated. Their Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200). Considering that the imported HDPE and the locally produced HDPE do not serve the same or similar end-uses due to the difference in quality and performance, they cannot be considered as alternative or substitute products and easily interchangeable. <u>Tariff Classification</u> The classification under AHTN 2017 subheading 3901.20.00 is insufficient to support "likeness" of the imported and locally produced HDPE. <u>Distribution Channels</u> Sumitomo notes that the factor of marketing or distribution channels which was one of the basis in the Staff Report for their conclusion is not used in the traditional approach or methodology of the WTO in the determination of like products.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	<u>The HDPE products of Petro Rabigh and the locally produced HDPE pellets and granules are not like products.</u>

Party	Position
	Petro Rabigh respectfully submits that to make a comparison between the imported and locally produced HDPE products based solely on the criteria used by the Honorable Commission is insufficient to establish that the products are "like products" for the purpose of this Formal Investigation. <u>Process of Polymerization</u> Petro Rabigh respectfully submits that the Honorable Commission's conclusion that the three established industrial processes of polymerization are the same is erroneous. The three different industrial processes of polymerization, despite having similar PE manufacturing flowcharts, are precisely classified as such because of the difference in all reactor conditions which essentially results in the difference in the quality of the end product using each process. Further to this, the Petitioner produces its HDPE resin products using the UNIPOLTM PE Process licensed under Univation Technologies for its two existing reactor lines.This is classified as a gas phase process. On the other hand, the Respondent uses the Lyondell Basell (Hostalen) Process. This is classified as a slurry process. It is inaccurate to conclude that the use of either of the three processes of polymerization will equate to imported and locally produced HDPE to be "like products." <u>Product composition</u> Although it is correct that both locally produced and imported HDPE consist of ethylene, co-monomers, and additives, we respectfully submit that it is erroneous to conclude that they are like products merely because of the similarity in the product composition without taking into consideration the particular kind used which have varying properties. <u>Physical properties depending on their processing and application/end-use</u> Petro Rabigh notes that the raw materials being produced by Petitioner are outdated. Their Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200). Considering that the imported HDPE and the locally produced HDPE do not serve the same or similar end-uses due to the difference in quality and performance, they cannot be considered as alternative or substitute products and easily interchangeable. <u>Tariff Classification</u>

Party	Position
	The classification under AHTN 2017 subheading 3901.20.00 is insufficient to support "likeness" of the imported and locally produced HDPE. <u>Distribution Channels</u> Petro Rabigh notes that the factor of marketing or distribution channels which was one of the basis in the Staff Report for their conclusion is not used in the traditional approach or methodology of the WTO in the determination of like products.
Philippine Plastics Industry Association, Inc. (PPIA)	There is a question of whether the HDPE Resin manufactured by JGSPC is a like or comparable product imported by importers. The current product offerings of JGSPC do not meet the high- performance grades demanded by the packaging industry and therefore, not a viable means of substitution. There is a need to differentiate between the quality of HDPE resin manufactured and the quality of HDPE resin imported. • JGSPC employs UNIPOL process. JGSPC's unimodal HDPE is limited in use and has a melt index and density that is lower than blow film and blow molding products • Products imported by PPIA are bimodal HDPE. JGSPC admits this and is even expanding their operations for the construction of a new bimodal and metallocene PE plant. • JGSPC's unimodal HDPEs are not accepted and cannot be made as substitutes for bimodal HDPEs that PPIA members are importing. At any rate and should the Tariff Commission proceed with the evaluation of the substantive arguments of JGSPC despite the technical issue of non-substitutability of products, there is still no merit or basis in recommending the imposition of an emergency safeguard measure.
Dow Chemical Pacific Ltd. (DCPL)	The Honorable Commission expressly confirm in the Staff Report that the following product brands are excluded from the scope of the investigation: • AXELERON™ CC 3485 NT CPD • AXELERON™ CC B-3487 NT • AXELERON™ CS 7540 NTAXELERON™ CS K-3364 NT CPD • AXELERON™ CS L-3364 NT • AXELERON™ FO 8864 NT CPD • AXELERON™ GP 6059 BK CPD • ENDURANCE™ HFDA-0693 BK • ENDURANCE™HFDA-0801 BK • ENDURANCE™HFDC-4202 EC • SI-LINK™ DFDA-6451 NT This confirmation will aid the relevant government agencies in properly enforcing the Honorable Commission's finding that W &C compounds are not covered by the investigation and will not be subject to any potential safeguard measure.

Party	Position
	DCPL respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to DCPL and to any such HDPE products it may import into the Philippines. Further, in this regard, DCPL respectfully prays that the Honorable Commission recommend to the appropriate government agencies that measures be taken to ensure that these W&C compounds are properly excluded from the enforcement of any safeguard 111easure that may be imposed in this case, including the recommendation of new tariff sub-headings for products excluded from the investigation in accordance with the Honorable Commission's authority to administer the Philippine tariff schedules and tariff nomenclatures and to provide support to Congress on tariff measures under Section 1603 of the Customs Modernization and Tariff Act.
Dow Chemical Pacific (Singapore) Private Limited (DCPS)	The Honorable Commission expressly confirm in the Staff Report that the following product brands are excluded from the scope of the investigation: • AXELERON™ CS K-3364 NT • AXELERON™ FO 8864 NT • AXELERON™ GP 6059 BK • AXELERON™ DGDK-3479 BK • SI-LINK™ DFDA-6451 NT This confirmation will aid the relevant government agencies in properly enforcing the Honorable Commission's finding that W &C compounds are not covered by the investigation and will not be subject to any potential safeguard measure. DCPS respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to DCPS and to any such HDPE products it may import into the Philippines. Further, in this regard, DCPS respectfully prays that the Honorable Commission recommend to the appropriate government agencies that measures be taken to ensure that these W&C compounds are properly excluded from the enforcement of any safeguard measure that may be imposed in this case, including the recommendation of new tariff sub-headings for products excluded from the investigation in accordance with the Honorable Commission's authority to administer the Philippine tariff schedules and tariff nomenclatures and to provide support to Congress on tariff measures under Section 1603 of the Customs Modernization and Tariff Act.
Siam Polyethylene Company Limited (SPE)	The Honorable Commission expressly confirm in the Staff Report that the following product brands are excluded from the scope of the investigation:

Party	Position
	• AXELERON™ CS K-3364 NT • AXELERON™ FO 8864 NT • AXELERON™ GP 6059 BK • AXELERON™ DGDK-3479 BK • SI-LINK™ DFDA-6451 NT This confirmation will aid the relevant government agencies in properly enforcing the Honorable Commission's finding that W &C compounds are not covered by the investigation and will not be subject to any potential safeguard measure. SPE respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to SPE and to any such HDPE products it may import into the Philippines. Further, in this regard, SPE respectfully prays that the Honorable Commission recommend to the appropriate government agencies that measures be taken to ensure that these W&C compounds are properly excluded from the enforcement of any safeguard measure that may be imposed in this case, including the recommendation of new tariff sub-headings for products excluded from the investigation in accordance with the Honorable Commission's authority to administer the Philippine tariff schedules and tariff nomenclatures and to provide support to Congress on tariff measures under Section 1603 of the Customs Modernization and Tariff Act.
Siam Synthetic Latex Company (SSLC)	The Honorable Commission expressly confirm in the Staff Report that the following product brands are excluded from the scope of the investigation: • AXELERON™ CC 3485 NT CPD • AXELERON™ CC B-3487 NT • AXELERON™ CS 7540 NTAXELERON™ CS K-3364 NT CPD • AXELERON™ CS L-3364 NT • AXELERON™ FO 8864 NT CPD • AXELERON™ GP 6059 BK CPD • ENDURANCE™ HFDA-0693 BK • ENDURANCE™HFDA-0801 BK • ENDURANCE™HFDC-4202 EC • SI-LINK™ DFDA-6451 NT This confirmation will aid the relevant government agencies in properly enforcing the Honorable Commission's finding that W &C compounds are not covered by the investigation and will not be subject to any potential safeguard measure. SSLC respectfully submits that the general exclusion of imported HDPE pellets intended for wires and cable compound extrusion process and its applications applies to SSLC and to any such HDPE products it may import into the Philippines.

Party	Position
	Further, in this regard, SSLC respectfully prays that the Honorable Commission recommend to the appropriate government agencies that measures be taken to ensure that these W&C compounds are properly excluded from the enforcement of any safeguard measure that may be imposed in this case, including the recommendation of new tariff sub-headings for products excluded from the investigation in accordance with the Honorable Commission's authority to administer the Philippine tariff schedules and tariff nomenclatures and to provide support to Congress on tariff measures under Section 1603 of the Customs Modernization and Tariff Act.
Lotte Chemical Titan Corporation (Lotte)	Lotte's products are not like or directly competitive to Petitioner's products. [a] Manufacturing methods and technology of Petitioner and Lotte are different. HDPE products which are produced under the bimodal process have broader molecular weight distribution and are thus superior and not comparable to those produced by Petitioner under the unimodal process. The difference between the unimodal and bimodal processes was recognized by the Honorable Commission itself in the Staff Report There was no local capability for the production of bimodal products. Hence, local consumers had no choice but to import HDPE grades produced under the bimodal process. As such, Lotte respectfully submits that imported bimodal products (such as Lotte's Titanzex HDPE Products HF7000 and HB6200) should be expressly excluded from the scope of the products under consideration in this case. [b] The physical properties of the HDPE products of Petitioner and Lotte are different. Lotte does not have a product that corresponds to the 13 HDPE grades produced by Petitioner. Moreover, most of Petitioner's HDPE product specifications (mainly referring to melt index and density) are not identical to, and thus, different from Lotte's TITANEX HDPE Products that were exported to the Philippines during the POI. Variations in co-monomers depending on the grade and catalyst types used also cause changes in the processing and performance of the products. Indeed, the differences in the physical properties between the imported and locally produced HDPEs are determinants in characterizing their quality and use, and therefore the quality of the products made of them. Material selection is not only about fabrication technique and processing considerations, but also the quality and performance expectation of the applications-which largely depend on the physical properties of the products.

Party	Position
	Lotte's products, with its carefully balanced MI and density, offer both better performance and processability. Based on the differences in physical properties, Lotte's HDPE Products are superior and not alike to Petitioner's HDPE products, which was confirmed by some local importers who provided comments in this case. [c] Lotte's HDPE Products and domestic HDPE products are not directly competitive. Given the differences in physical characteristics, manufacturing process and end-user applications, Petitioner's HDPE products cannot be considered directly competitive to Lotte's HDPE Products. This is readily apparent in the submissions of the various importers as noted in the Staff Report. Lotte respectfully submits that it is erroneous for the Honorable Commission to conclude that Petitioner's and Lotte's products are directly competitive considering that consumers do not tend to choose, or at least view, Petitioner's HDPE products as acceptable alternatives or substitutes to Lotte's HDPE Products.
On Increased Imports	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	DFT is of a view that the increase in imports has not been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'. Therefore, the requirement under Article XIX of the GATT 1994 and Article 2.1 of the SGA is not satisfied.
General Authority on Foreign Trade – Kingdom of Saudi Arabia (GAFT)	The Honorable Commission appears to have made a conclusion that the increase in imports is "sudden, sharp and significant" on the basis of the recent 2021 first semester figures as compared to the imports prior to the pandemic in 2019. It is worth noting that the in US - Line Pipe, the Panel found that the word "recent" implies a "retrospective analysis," but does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the POI. Additionally, an observation of first semester figures would, in fact, invalidate the Honorable Commission's conclusion that there was an increase in imports for the duration of the POI. It can be gleaned from the data that the Honorable Commission is accurate in its observation that "in terms of first semester imports, there was an erratic pattern" in volume.8 This can be drawn from the decrease in first semester import volume three times during the POI; by 34% in 2016, 15% in 2018, and 6% in 2020.

Party	Position
	Drawing a conclusion on the basis of the most recent 2021 first semester data versus the 2019 data is not in line with the traditional WTO approach or methodology in the determination of increase in imports. An analysis of the intervening periods show both a decline and a steady or gradual progression in imports (as opposed to a sharp and sudden increase) over the POI. Furthermore, the data also do not show that the alleged increase was “recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively." We note that a mere comparison between the volume of imports at the starting-point of the investigation period (i.e., 2015) and the volume of imports at the end of the period (i.e., first semester of 2021) ("end-point-to-end-point-comparison") has been found by the WTO to be inconsistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards. Thus, as applied to the present case, it is respectfully submitted that the available data is insufficient to support an "increase in imports" determination in the following respects: (1) the mere use of an end-point-to-end-point-comparison in the present case of importations of HDPE would be insufficient and inconsistent with Articles 2.1 and 4.2(a) of the GATT; (2) such end-point-to-end-point-comparison must be accompanied with an analysis of intervening trends throughout the POI; and (3) even if there was an increase in quantities being imported, we respectfully submit that the increase in numbers is not sufficient in itself. Petitioner has not provided any data to demonstrate that the alleged increase was “recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively. In relative terms we note that despite the finding that there was a dip in the import shares relative to production from [redacted]% in 2020 to [redacted]% in the first semester of 2021, the Staff Report continued to make a conclusion that on the basis of the figure in the first semester of 2021, which allegedly "represents the most recent past and may be deemed a best indicator of the likely situation in the very near future" that there was an increase in volume of imports relative to domestic production.
GC Marketing Solutions Company Limited (GCM)	The WTO Appellate Body clarified in Argentina – Safeguard Measures on Imports of Footwear, that there must be an examination of the rate and amount of the increase in imports during the period of investigation. Otherwise stated, the Commission must take into account the intervening trends of importation volume of the entire period of investigation. As such, should a mere comparison of the end points in import volume show a numerical increase, it cannot be concluded that there was an increased imports warranting the imposition of safeguard measures. There must also be an examination of the intervening period's trend on import volume.

Party	Position
	Applying the standards set forth in the Safeguard Measures Act and the two aforementioned WTO Appellate Body Reports, GCM respectfully submits that the Commission's conclusion is erroneous as it is based on an incomplete set of factors and misinterpreted data. Not only was the conclusion based on mere numerical and surface level interpretation of data, but the finding that there was a "recent, sudden, sharp and significant" increase was bare and unsubstantiated Import Surge in Absolute Terms While an examination of the data on import volume indeed show a numerical increase of import volume at the end of the POI in 2020, as compared to the import volume at the beginning of the POI in 2015, such is insufficient to conclude there was increased import in absolute terms. while looking at the figures in the year 2015 and 2020 would show an increase in import volume, the application of the standard set forth by the WTO Appellate Body would not support the conclusion that there was an increasing trend in import volume, or a sudden, sharp, and significant increase in import volume Import Surge in Absolute Terms (First Semester Data) A closer look on the first semester import volume data actually show no increasing pattern, with years 2016, 2018, and 2020 showing negative growth rate. The positive growth rates in the years 2017, 2019, and 2021, must also be considered relative to the negative growth in their respective previous years. The Commission itself confirmed that the data shows "an erratic pattern…", Respectfully, the Commission's conclusion in the Staff Report is then unexplained by the available data nor is it in keeping with the standards set forth in aforementioned WTO Appellate Body Reports. Import Surge in Relative Terms GCM submits that since the data provided was heavily redacted, there cannot be a positive determination that there was indeed a "sudden, sharp and significant" increase in imported volumes during the entire POI. In fact, the Commission itself stated that the import shares relative to domestic production was at xx% in 2020 and at [redacted]% in 2021, resulting to a significant 31% decrease in import shares. This decrease supports the conclusion that there was no increasing trend in import share during the period of investigation.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Import Surge in Absolute Terms The Honorable Commission appears to have made a conclusion that the increase in imports is "sudden, sharp and

Party	Position
	significant" on the basis of the recent 2021 first semester figures as compared to the imports prior to the pandemic in 2019. In US - Line Pipe, the Panel found that the word "recent" implies a "retrospective analysis," but does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the POI > "The word 'recent' – which was used by the Appellate Body in interpreting the phrase 'is being imported' – is defined as 'not long past; that happened, appeared, began to exist, or existed lately'. In other words, the word 'recent' implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the authority's decision. Nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. We consider that an analysis that compares the first semester of 1998 with the first semester of 1999 is not inconsistent with the requirement that the increase in imports be 'recent'." On this basis, the Honorable Commission's conclusion on the increase in imports in absolute terms was not drawn based on a comparison of the data during the POI but rather, a comparison of the most recent 2021 first semester data with the 2019 data. The use of the "most recent" year covered by the period of investigation as the basis is insufficient and inaccurate. We respectfully submit that the mere fact that there is an observable increase in the volume of imports during the POI does not necessarily mean that the element of “increased imports” exists that would warrant the imposition of safeguard measures. <u>Import Surge in Relative Terms</u> We note that despite the finding that there was a dip in the import shares relative to production from [redacted]% in 2020 to [redacted]% in the first semester of 2021, the Staff Report continued to make a conclusion that on the basis of the figure in the first semester of 2021, which allegedly "represents the most recent past and may be deemed a best indicator of the likely situation in the very near future" that there was an increase in volume of imports relative to domestic production. On this basis, the Honorable Commission’s conclusions on the increase in imports in relative terms was not drawn based on an analysis of the data during the POI but rather, a comparison of the most recent 2021 first semester data with the 2020 data. As

Party	Position
	discussed, the use of the "most recent" year covered by the period of investigation as the basis is insufficient and inaccurate.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	<u>Import Surge in Absolute Terms</u> The Honorable Commission appears to have made a conclusion that the increase in imports is "sudden, sharp and significant" on the basis of the recent 2021 first semester figures as compared to the imports prior to the pandemic in 2019. In US - Line Pipe, the Panel found that the word "recent" implies a "retrospective analysis," but does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the POI > "The word 'recent' – which was used by the Appellate Body in interpreting the phrase 'is being imported' – is defined as 'not long past; that happened, appeared, began to exist, or existed lately'. In other words, the word 'recent' implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the authority's decision. Nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. We consider that an analysis that compares the first semester of 1998 with the first semester of 1999 is not inconsistent with the requirement that the increase in imports be 'recent'." On this basis, the Honorable Commission's conclusion on the increase in imports in absolute terms was not drawn based on a comparison of the data during the POI but rather, a comparison of the most recent 2021 first semester data with the 2019 data. The use of the "most recent" year covered by the period of investigation as the basis is insufficient and inaccurate. We respectfully submit that the mere fact that there is an observable increase in the volume of imports during the POI does not necessarily mean that the element of “increased imports” exists that would warrant the imposition of safeguard measures. <u>Import Surge in Relative Terms</u> We note that despite the finding that there was a dip in the import shares relative to production from [redacted]% in 2020 to [redacted]% in the first semester of 2021, the Staff Report continued to make a conclusion that on the basis of the figure in the first semester of 2021, which allegedly "represents the most recent past and may be deemed a best indicator of the likely situation in the very

Party	Position
	near future" that there was an increase in volume of imports relative to domestic production. On this basis, the Honorable Commission's conclusions on the increase in imports in relative terms was not drawn based on an analysis of the data during the POI but rather, a comparison of the most recent 2021 first semester data with the 2020 data. As discussed, the use of the "most recent" year covered by the period of investigation as the basis is insufficient and inaccurate.
Philippine Plastics Industry Association, Inc. (PPIA)	The Tariff Commission's Staff Report dated 08 February 2022 shows import volumes fell by 13% from 2015 to 2016… again falling by 5% from 2019 to 2020. The period of investigation, when examined thoroughly, show both increases and decreases in the volume of imports which puts into question whether any overall increase in the volume of imports should be considered. Assuming, but not conceding that the negative and minimal growth in importation rates is found to constitute the increase envisioned in the *US-Steel* case, it should be noted that a mere increase in importations is not enough. Here, suddenness is not present as any net increase over the investigation period was gradual and not sudden.
Dow Chemical Pacific Ltd. (DCPL)	The HDPE products subject of the investigation were not imported into the country in increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Applying the standards set by the WTO Appellate Body on determining import surge as cited by the Honorable Commission on the Staff Report, DCPL respectfully submits that there is no increase imports that would warrant the imposition of safeguard measures. With due respect to the Honorable Commission, the data when analyzed based on statutory requirements and the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions. At best, it can only be concluded that there were alternating modest increased and dips during the period from 2015 to 2020. DCPL respectfully submits that any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact that the petitioner, the sole domestic producer of HDPE shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion which contributed in no small part to the domestic industry's inability to meet local demand.

Party	Position
Dow Chemical Pacific (Singapore) Private Limited (DCPS)	The HDPE products subject of the investigation were not imported into the country in increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Applying the standards set by the WTO Appellate Body on determining import surge as cited by the Honorable Commission on the Staff Report, DCPS respectfully submits that there is no increase imports that would warrant the imposition of safeguard measures. With due respect to the Honorable Commission, the data when analyzed based on statutory requirements and the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions. At best, it can only be concluded that there were alternating modest increased and dips during the period from 2015 to 2020. DCPS respectfully submits that any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact that the petitioner, the sole domestic producer of HDPE shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion which contributed in no small part to the domestic industry's inability to meet local demand.
Siam Polyethylene Company Limited (SPE)	The HDPE products subject of the investigation were not imported into the country in increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Applying the standards set by the WTO Appellate Body on determining import surge as cited by the Honorable Commission on the Staff Report, SPE respectfully submits that there is no increase imports that would warrant the imposition of safeguard measures. With due respect to the Honorable Commission, the data when analyzed based on statutory requirements and the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions. At best, it can only be concluded that there were alternating modest increased and dips during the period from 2015 to 2020. SPE respectfully submits that any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact that the petitioner, the sole domestic producer of HDPE shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion which contributed in no small part to the domestic industry's inability to meet local demand.

Party	Position
Siam Synthetic Latex Company (SSLC)	The HDPE products subject of the investigation were not imported into the country in increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Applying the standards set by the WTO Appellate Body on determining import surge as cited by the Honorable Commission on the Staff Report, SSLC respectfully submits that there is no increase imports that would warrant the imposition of safeguard measures. With due respect to the Honorable Commission, the data when analyzed based on statutory requirements and the standards set by the WTO Appellate Body, do not support the Honorable Commission's conclusions. At best, it can only be concluded that there were alternating modest increased and dips during the period from 2015 to 2020. SSLC respectfully submits that any perceived increase in the import shares relative to local production as well as in the import volume in absolute terms during the period of investigation can be sufficiently explained by the fact that the petitioner, the sole domestic producer of HDPE shut down its operations from October 2019 to March 2020 to give way to a complex-wide expansion which contributed in no small part to the domestic industry's inability to meet local demand.
Lotte Chemical Titan Corporation (Lotte)	Lotte respectfully submits that, consistent with the data disclosed by Petitioner and by the Honorable Commission as well as the standard WTO approach or methodology and precedents on the matter, there was no importation of the HDPE products into the Philippines in increased quantities during the POI to be a substantial cause of injury or threat to the domestic industry. Growth rates show declines in HDPE imports in 2015 to 2016 and again in 2019 to 2020, and a steady or gradual progression in imports at 29%, 6%, and 29% from 2016 to 2019 – as opposed to sharp and sudden increase. Certainly, there is no uninterrupted upward trend in import volumes – but rather, just alternating modest increases and dips from 2015 to 2020 As to changes of import volumes relative to domestic production, again, there was nothing in the data that shows any increasing trend in the import volumes that can be described as sudden, sharp, and significant In order for there to be a determination of an "increase in imports", the data must show that there was an increase in imports from an end-point-to-end-point comparison and through an analysis of the intervening trends during the POI. In the present case, as discussed above, an analysis of the intervening trends during the POI shows fluctuating levels of imports which showed significant import contractions in 2016 and 2020, and during the first semester of 2018.

Party	Position
	Although there was an increase in imports from 2015 to 2021 using an end-point-to-end-point comparison, an analysis of the increase or decrease for every year would show that there was no consistent upward trend or uninterrupted increase in imports during the entire POI. In fact, as found by the Honorable Commission in the Staff Report, there were year-on-year decreases in imports in the years 2016 and 2020 and during the first semester of 2018. Hence, there is no sharp, sudden, substantial and sustained "increase in imports" that would warrant the imposition of general safeguard measures on the importations of HDPE into the Philippines
On Serious Injury or Threat of Serious Injury	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	Safeguard proceedings require a higher injury standard (i.e. "serious injury"). However, the preliminary report showed that 6 mandatory factors namely; an increase in import, market share, domestic sale, production, capacity utilization, and employment failed to demonstrate a serious injury standard. Moreover, according to the Report, the majority shareholder of the HDPE market has been the domestic industry; in 2020, the share of domestic industry was [redacted]%
General Authority on Foreign Trade – Kingdom of Saudi Arabia (GAFT)	Despite the continuous increase in domestic demand from 2015 to 2019, there was no corresponding increase in production volume to cater to the increasing domestic demand. Based on the data provided in the Petitioner's Final Memorandum it is clear that there was an increase of only 1% in HDPE production from 2017 and 2018 and a decrease in HDPE production from [redacted] MT in 2018 to [redacted] MT in 2019, and further decreased to [redacted] MT in 2020. Moreover, there was also a severe and drastic decrease in LLDPE production from [redacted] MT in 2017 to [redacted] MT in 2018. As a result, the total PE production of both HDPE and LLDPE also decreased severely and drastically from [redacted] MT in 2017 to only [redacted] MT in 2018, and subsequently to only [redacted] MT in 2019. It is normal for the demand for plastics to grow on a year on year basis. Where there is no increase in domestic capacity, this will necessarily translate into an increase in volume of imported goods. The drastic and severe decrease in production of both HDPE and LLDPE had prompted major industry players to secure their raw material requirements from other more steady and dependable sources, such as imports. There was an increase of only [redacted]% in HDPE production from 2017 and 2018 while there was a severe and drastic decrease in LLDPE production from [redacted] MT in 2017 to [redacted] MT in

Party	Position
	2018 all while there was a continuous increase in domestic demand. Based on the consolidated data from the Petitioner's Final Memorandum, comparing domestic production and the Philippine domestic industry sales to domestic market, it is unmistakable that the lower sales for the Philippine domestic industry is directly correlated to the decrease in domestic production. It is obvious that the decrease in domestic production from 2017 to 2018, 2018 to 2019, and 2019 to 2020 naturally and logically resulted in the decrease in Philippine industry sales to the domestic market from 2017 to 2018, 2018 to 2019, and 2019 to 2020. It would, therefore, be incorrect to conclude that the lower sales for the Philippine domestic industry was due to the increasing imports when it is actually the opposite. To reiterate, it is the decision of the Petitioner to reduce its production despite the increasing demand which inevitably resulted to the lower sales for the Philippine industry. In Petitioner's Final Memoranda, it is alleged that "sales and production documents also show that Philippine HDPE industry market shares have declined as a result of the increase of imports. We cannot emphasize enough that these factors, including the decline in the Philippine HDPE industry market share, experienced by the Petitioner could not be attributed to anything other than its own decisions. It was the Petitioner's own decision to increase by only [redacted]% in HDPE production from 2017 and 2018. Moreover, it was the Petitioner's decision to severely and drastically decrease LLDPE production from [redacted]MT in 2017 to [redacted] MT in 2018 all while there was a continuous increase in domestic demand. It was the Petitioner's own decision to drastically decrease domestic HDPE production from 2018 to 2019 by [redacted]% and to further drastically decrease HDPE production from 2019 to 2020 by [redacted]%
GC Marketing Solutions Company Limited (GCM)	The Staff Report merely used numerical data in its conclusion that there was “sudden, sharp, and significant“ increase to determine that there was a serious injury or threat to the domestic industry. Lacking were the discussion on other relevant factors such as the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. Mere reliance on a single factor to positively determine existence substantial of injury or threat thereof can't

Party	Position
	support the conclusion as momentous and crucial as that of the Commission's decision for imposition of safeguard measures. Data from the Bureau of Customs has shown that there was an increase in consumption by the Philippine market during the POI. This was taken note of in the DTI Preliminary Findings Report: "The total Philippine apparent market grew during the POI. In 2016, the apparent Philippine market increased by [redacted]%, as imports increased by 26%, while the domestic sales volume increased by [redacted]%. It continued to increase by [redacted]% in 2017. In 2018, apparent consumption expanded by [redacted]% as imports increased by 10% while domestic sales slightly declined by [redacted]%. In 2019, there was a [redacted]% growth in the apparent demand due to the 28% increase in imports while the domestic sales dropped by [redacted]%. In 2020 (Jan to Sep), consumption demand declined by [redacted]%. The industry was severely impacted by the COVID health pandemic due to lockdowns causing shutdown of customers' plants, sudden dive in prices and drop in demand, not just locally but worldwide." While the importation of HDPE increased during the POI, the domestic sales volume increased as well. In fact, in 2019, the domestic sales volume by metric tons is [redacted]% of the Total Apparent Philippine Market. Since the increase in the importation was due to the growing demand in the Philippine market, which could not be addressed by the domestic producer, no serious injury or threat to the domestic market can be attributed to the increased importations. The DTI Report on Preliminary Findings also show that there was a decrease in the production of the domestic industry. Data further shows that the domestic industry failed to fully utilize its capacity due to shutdown of the plants, which is consistent with the claim of the other respondents that Petitioner was unable to meet the demands of the Philippine market. An interpretation of the data above shows that the numerical increase of HDPE imports was due to the own inability of the domestic industry to meet the demand of the growing domestic market. In fact, this was corroborated by fact that JGSPC indeed shut down its operations from October 2019 to March 2020. Hence, any numerical increase in the imports of HDPE during the Period of Investigation, the increase in imports did not cause or threaten to cause serious injury to the domestic industry. Contrary to this, it was the domestic producer's inability to meet the demands of the domestic market that caused the increase in the importation of HDPE. Hence, while a surface-level interpretation of the data set may lead to the conclusion that there was an increase in imports, an

Party	Position
	analysis of other relevant factors as called for by the Safeguard Measures Act, WTO Agreement, and WTO Appellate Body Reports readily show that there is no increased imports as to cause serious injury or threat thereof to domestic industry.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The alleged surge in the share of imports was from 2018 to 2019 from 38% to 64%, respectively, can be attributed to the failure of the domestic industry to meet the local demand during that period. As shown in the data presented in Petitioner's own Final Memoranda there was indeed an increase in domestic demand. Despite the continuous increase in domestic demand from 2015 to 2019, there was no corresponding increase in production volume to cater to the increasing domestic demand. In other words, the domestic production could not meet the domestic demand which in turn had to resort to imports. It is clear that there was an increase of only [redacted]% in HDPE production from 2017 and 2018 and a decrease in HDPE production from [redacted] MT in 2018 to [redacted] MT in 2019, and further decreased to [redacted] MT in 2020. Moreover, there was also a severe and drastic decrease in LLDPE production from [redacted] MT in 2017 to [redacted] MT in 2018. It is expected for the demand for plastics to grow on a year on year basis. Where there is no increase in domestic capacity, this will necessarily translate into an increase in volume of imported goods. The shortfall between local demand and local production will naturally be covered by imported goods. Respondent respectfully submits that the decline in the Philippine HDPE industry market share could not be attributed to the increase in imports. It is, in fact, the other way around; it is the decline in the local HDPE production that resulted in the increase in imports which resulted in the decline in the domestic industry's market share in the HDPE industry. <u>Capacity Utilization</u> Based on the data provided, it is evident that capacity utilization rate exhibited an increasing trend from 2015 to 2017 from [redacted]% to [redacted]% to [redacted]%, respectively. It began to decline in 2019 by [redacted]% and further by [redacted]% in 2020. Despite the shutdown of the PE plants in the 1st quarter of 2020 for turnaround maintenance, the capacity utilization only decreased by [redacted]%. However, the highest capacity was registered in 2017 at [redacted]% for HDPE and at [redacted]% for both HDPE and LLDPE, almost at full capacity. Furthermore, as represented by Petitioner, they are currently expanding capacity by constructing new plants. Respondent respectfully submits that the decrease in production capacity cannot be attributed to anything other than the Petitioner's own actions by way of its planned PE plant shutdown and its decision to reduce its production of both

Party	Position
	HDPE and LLDPE despite the increasing demand for the said products. <u>Labor Productivity</u> Employment throughout the POI increased yearly from 15% in 2016, 11% in 2017 and 2018, 19% in 2019, and 9% in 2020. Meanwhile, salaries and wages declined by 2% in 2016 and continuously increased from 2017 to 2019 by 24%, 6%, and 40%, respectively. It is apparent that despite the falling production volume from 2018 to 2020, the Petitioner continued to hire skilled workers to work on the PE plants thereby increasing the number of hires for PE operations by 17% in 2019 and 23% in 2020. Certainly, the increase in number of employees for PE operations despite the decreasing production will result in no less than a decrease in productivity, which is a situation of the Petitioner's own making and cannot be attributable to imports or importers. <u>Serious Injury</u> Based on the foregoing, it is respectfully submitted that the analysis of the injury factors having a bearing on the situation of the domestic industry reveals an industry that is clearly not on the brink of suffering significant overall impairment in its position.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The alleged surge in the share of imports was from 2018 to 2019 from 38% to 64%, respectively, can be attributed to the failure of the domestic industry to meet the local demand during that period. As shown in the data presented in Petitioner's own Final Memoranda there was indeed an increase in domestic demand. Despite the continuous increase in domestic demand from 2015 to 2019, there was no corresponding increase in production volume to cater to the increasing domestic demand. In other words, the domestic production could not meet the domestic demand which in turn had to resort to imports. It is clear that there was an increase of only 1% in HDPE production from 2017 and 2018 and a decrease in HDPE production from [redacted]MT in 2018 to [redacted]MT in 2019, and further decreased to [redacted]MT in 2020. Moreover, there was also a severe and drastic decrease in LLDPE production from [redacted]MT in 2017 to [redacted] MT in 2018. It is expected for the demand for plastics to grow on a year on year basis. Where there is no increase in domestic capacity, this will necessarily translate into an increase in volume of imported goods. The shortfall between local demand and local production will naturally be covered by imported goods.

Party	Position
	Respondent respectfully submits that the decline in the Philippine HDPE industry market share could not be attributed to the increase in imports. It is, in fact, the other way around; it is the decline in the local HDPE production that resulted in the increase in imports which resulted in the decline in the domestic industry's market share in the HDPE industry. <u>Capacity Utilization</u> Based on the data provided, it is evident that capacity utilization rate exhibited an increasing trend from 2015 to 2017 from [redacted]% to [redacted]% to [redacted]%, respectively. It began to decline in 2019 by [redacted]% and further by [redacted]% in 2020. Despite the shutdown of the PE plants in the 1st quarter of 2020 for turnaround maintenance, the capacity utilization only decreased by [redacted]%. However, the highest capacity was registered in 2017 at [redacted]% for HDPE and at [redacted]% for both HDPE and LLDPE, almost at full capacity. Furthermore, as represented by Petitioner, they are currently expanding capacity by constructing new plants. Respondent respectfully submits that the decrease in production capacity cannot be attributed to anything other than the Petitioner's own actions by way of its planned PE plant shutdown and its decision to reduce its production of both HDPE and LLDPE despite the increasing demand for the said products. <u>Labor Productivity</u> Employment throughout the POI increased yearly from 15% in 2016, 11% in 2017 and 2018, 19% in 2019, and 9% in 2020. Meanwhile, salaries and wages declined by 2% in 2016 and continuously increased from 2017 to 2019 by 24%, 6%, and 40%, respectively. It is apparent that despite the falling production volume from 2018 to 2020, the Petitioner continued to hire skilled workers to work on the PE plants thereby increasing the number of hires for PE operations by 17% in 2019 and 23% in 2020. Certainly, the increase in number of employees for PE operations despite the decreasing production will result in no less than a decrease in productivity, which is a situation of the Petitioner's own making and cannot be attributable to imports or importers. <u>Serious Injury</u> Based on the foregoing, it is respectfully submitted that the analysis of the injury factors having a bearing on the situation of the domestic industry reveals an industry that is clearly not on the brink of suffering significant overall impairment in its position.

Party	Position
Philippine Plastics Industry Association, Inc. (PPIA)	Public records and data available clearly show that the domestic industry is not suffering any serious injury. Petitioner's own Audited Financial Statements show that it earned a considerable income for the years that were part of the investigation period. Based on the audited financial statements of Petitioner during the investigation period and the expansion plan of Petitioner amounting to US$ [redacted] Billion, are highly inconsistent with an industry that is allegedly suffering serious injury.
Dow Chemical Pacific Ltd. (DCPL)	The domestic industry did not suffer serious injury as a result of any alleged increase in imports of HDPE. There is no proof to substantiate its claim that petitioner suffered serious injury because of the alleged increase in imports. While there was an increase in the share of imports in 2019 and 2020, these appear to be isolated events and not indicative of any increasing trend. That there was an increase in imports during these years is explained in significant part of the petitioner's shut down of its plan from the last quarter of 2019 to the first quarter of 2020 as well as by the effect of the COVID-19 pandemic. The data show at most that the petitioner's sale fluctuated during the period of investigation, but this cannot be reasonably concluded that the domestic industry's sales significantly decreased during the period of investigation and that there is a decreasing trend in the domestic industry's sale. The data also cannot lead to the conclusion that the Philippine industry's market share steadily declined. In fact, for three years during the period of investigation, the Philippine industry's market share increased. The decreased in 2019 to 2021 of the market share of the petitioner can be explained by the plant shutdown in 2019 and 2020, as well as by the COVID-19 pandemic. The data also shows that the Philippine industry's production volume consistently increased from 2015 to 2019 or for more than half of the period of investigation. As to the inventory, it cannot be concluded that the date for ending inventory show a significant injury suffered by the domestic industry. There is also no proof that imported HDPE was sold at a consistently low price as compared to locally manufactured HDPE. The petitioner's witnesses also admitted in their Joint Judicial Affidavit that the petitioner has consistently hired more

Party	Position
	employees on a year-to-year basis during the period of investigation. DCPL notes that the petitioner has opted to invoke confidentially as to data pertaining to its cost to produce and sell, consolidated income statement, income from operations, earnings before interest (EBIT) and taxed and return on sales even they asserted that these data show the extent of the injury it suffered. Furthermore, the consolidated Audited Financial Statements of JG Summit Holdings, Inc., the petitioner's parent company shows that the gross income and EBIT of its petrochemical business steadily increased from 2015 to 2017. Finally, the domestic industry's inability to improve its position is not the standard for imposing safeguard measures. As a protectionist tool, it will not be warranted unless the extent of the domestic industry's injury clearly justifies government intervention. This is certainly not the case for the petitioner.
Dow Chemical Pacific (Singapore) Private Limited (DCPS)	The domestic industry did not suffer serious injury as a result of any alleged increase in imports of HDPE. There is no proof to substantiate its claim that petitioner suffered serious injury because of the alleged increase in imports. While there was an increase in the share of imports in 2019 and 2020, these appear to be isolated events and not indicative of any increasing trend. That there was an increase in imports during these years is explained in significant part of the petitioner's shut down of its plan from the last quarter of 2019 to the first quarter of 2020 as well as by the effect of the COVID-19 pandemic. The data show at most that the petitioner's sale fluctuated during the period of investigation, but this cannot be reasonably concluded that the domestic industry's sales significantly decreased during the period of investigation and that there is a decreasing trend in the domestic industry's sale. The data also cannot lead to the conclusion that the Philippine industry's market share steadily declined. In fact, for three years during the period of investigation, the Philippine industry's market share increased. The decreased in 2019 to 2021 of the market share of the petitioner can be explained by the plant shutdown in 2019 and 2020, as well as by the COVID-19 pandemic. The data also shows that the Philippine industry's production volume consistently increased from 2015 to 2019 or for more than half of the period of investigation. As to the inventory, it cannot be concluded that the date for ending inventory show a significant injury suffered by the domestic industry.

Party	Position
	There is also no proof that imported HDPE was sold at a consistently low price as compared to locally manufactured HDPE. The petitioner's witnesses also admitted in their Joint Judicial Affidavit that the petitioner has consistently hired more employees on a year-to-year basis during the period of investigation. DCPS notes that the petitioner has opted to invoke confdentially as to data pertaining to its cost to produce and sell, consolidated income statement, income from operations, earnings before interest (EBIT) and taxed and return on sales even they asserted that these data show the extent of the injury it suffered. Furthermore, the consolidated Audited Financial Statements of JG Summit Holdings, Inc., the petitioner's parent company shows that the gross income and EBIT of its petrochemical business steadily increased from 2015 to 2017. Finally, the domestic industry's inability to improve its position is not the standard for imposing safeguard measures. As a protectionist tool, it will not be warranted unless the extent of the domestic industry's injury clearly justifies government intervention. This is certainly not the case for the petitioner.
Siam Polyethylene Company Limited (SPE)	The domestic industry did not suffer serious injury as a result of any alleged increase in imports of HDPE. There is no proof to substantiate its claim that petitioner suffered serious injury because of the alleged increase in imports. While there was an increase in the share of imports in 2019 and 2020, these appear to be isolated events and not indicative of any increasing trend. That there was an increase in imports during these years is explained in significant part of the petitioner's shut down of its plan from the last quarter of 2019 to the first quarter of 2020 as well as by the effect of the COVID-19 pandemic. The data show at most that the petitioner's sale fluctuated during the period of investigation, but this cannot be reasonably concluded that the domestic industry's sales significantly decreased during the period of investigation and that there is a decreasing trend in the domestic industry's sale. The data also cannot lead to the conclusion that the Philippine industry's market share steadily declined. In fact, for three years during the period of investigation, the Philippine industry's market share increased. The decreased in 2019 to 2021 of the market share of the petitioner can be explained by the plant shutdown in 2019 and 2020, as well as by the COVID-19 pandemic.

Party	Position
	The data also shows that the Philippine industry's production volume consistently increased from 2015 to 2019 or for more than half of the period of investigation. As to the inventory, it cannot be concluded that the date for ending inventory show a significant injury suffered by the domestic industry. There is also no proof that imported HDPE was sold at a consistently low price as compared to locally manufactured HDPE. The petitioner's witnesses also admitted in their Joint Judicial Affidavit that the petitioner has consistently hired more employees on a year-to-year basis during the period of investigation. SPE notes that the petitioner has opted to invoke confidentially as to data pertaining to its cost to produce and sell, consolidated income statement, income from operations, earnings before interest (EBIT) and taxed and return on sales even they asserted that these data show the extent of the injury it suffered. Furthermore, the consolidated Audited Financial Statements of JG Summit Holdings, Inc., the petitioner's parent company shows that the gross income and EBIT of its petrochemical business steadily increased from 2015 to 2017. Finally, the domestic industry's inability to improve its position is not the standard for imposing safeguard measures. As a protectionist tool, it will not be warranted unless the extent of the domestic industry's injury clearly justifies government intervention. This is certainly not the case for the petitioner.
Siam Synthetic Latex Company (SSLC)	The domestic industry did not suffer serious injury as a result of any alleged increase in imports of HDPE. There is no proof to substantiate its claim that petitioner suffered serious injury because of the alleged increase in imports. While there was an increase in the share of imports in 2019 and 2020, these appear to be isolated events and not indicative of any increasing trend. That there was an increase in imports during these years is explained in significant part of the petitioner's shut down of its plan from the last quarter of 2019 to the first quarter of 2020 as well as by the effect of the COVID-19 pandemic. The data show at most that the petitioner's sale fluctuated during the period of investigation, but this cannot be reasonably concluded that the domestic industry's sales significantly decreased during the period of investigation and that there is a decreasing trend in the domestic industry's sale.

Party	Position
	The data also cannot lead to the conclusion that the Philippine industry's market share steadily declined. In fact, for three years during the period of investigation, the Philippine industry's market share increased. The decreased in 2019 to 2021 of the market share of the petitioner can be explained by the plant shutdown in 2019 and 2020, as well as by the COVID-19 pandemic. The data also shows that the Philippine industry's production volume consistently increased from 2015 to 2019 or for more than half of the period of investigation. As to the inventory, it cannot be concluded that the date for ending inventory show a significant injury suffered by the domestic industry. There is also no proof that imported HDPE was sold at a consistently low price as compared to locally manufactured HDPE. The petitioner's witnesses also admitted in their Joint Judicial Affidavit that the petitioner has consistently hired more employees on a year-to-year basis during the period of investigation. SSLC notes that the petitioner has opted to invoke confdentially as to data pertaining to its cost to produce and sell, consolidated income statement, income from operations, earnings before interest (EBIT) and taxed and return on sales even they asserted that these data show the extent of the injury it suffered. Furthermore, the consolidated Audited Financial Statements of JG Summit Holdings, Inc., the petitioner's parent company shows that the gross income and EBIT of its petrochemical business steadily increased from 2015 to 2017. Finally, the domestic industry's inability to improve its position is not the standard for imposing safeguard measures. As a protectionist tool, it will not be warranted unless the extent of the domestic industry's injury clearly justifies government intervention. This is certainly not the case for the petitioner.
Lotte Chemical Titan Corporation (Lotte)	The import volume increases in 2019 and 2020 correspond to the domestic production decreases in the same period. The increases in import volume in 2019 (by 29,000MT) and 2020 (by 5,741MT) were even less than the decreases in domestic production in 2019 (by [redacted]MT) and 2020 (by [redacted]MT), which further decreased in 2021 (by [redacted]MT). Notably, the decreases coincided with Petitioner's complete shutdown of operations in 2019 and 2020, and as such, the shutdown resulted in naturally lower production for Petitioner. Second, an analysis of the data on the injury indicators reported by the DTI in its Preliminary Findings, shows that there is no serious injury in the domestic industry:

Party	Position
	• The total Philippine apparent market grew during the POI • Domestic sales increased both in volume and value from 2015 to 2017. There was a very slight decrease in sales volume in 2018 (by [redacted]%), and while both sales volume and value decreased in 2019, they are still higher than 2015 and 2016 figures. • Capacity utilization remained high during the period of investigation, increasing from 2015 to 2017. It decreased in 2019 and 2020 (compared to 2015 figures), but as admitted by Petitioner, it was during this period that they completely shut down their operations for almost six (6) months. • Movement of production cost is inconsistent – there had been decreases in 2017 and 2019 and increases in 2017 and 2018. Notably, the production cost has decreased significantly in 2020. • Employment increased consistently during the period of investigation, which controverts Petitioner's claims that it has suffered serious injury. Data for 2019 shows that increase in employment was at 18.85% and increase in salaries and wages was at 40.18%. • The price of HDPEs has not significantly decreased but has in fact increased during the POI. However, the 2020 price cannot be relied upon as proof of injury as it was based on incomplete data (only until September 2020) and was influenced by an outlier event, the COVID-19 pandemic. In sum, the data – which merely show fluctuating movements in some "injury factors" but not in at least four factors – do not support the Honorable Commission's finding of a serious injury. No significant impairment to the domestic industry during the POI can be clearly and unambiguously seen. Thus, Lotte respectfully submits that with such inconsistent data, the exacting standards for the determination of serious injury under the Safeguard Measures Act and IRR, as well as in the Agreement on Safeguards, were evidently not met. Lotte notes that it does not have information on the prices and costs of Petitioner's HDPE products and, hence, it has no basis for comparison to confirm Petitioner's allegations. Nonetheless, the prices of Lotte's HDPE Products have always been determined based on market supply and demand and other economic factors and not based on the prices and costs set by Petitioner for its HDPE products. Guided by market price publications, Lotte has a periodic offer window where offers are announced at similar timings with other exporters competing at the same market, while Petitioner randomly announces its offers based on its inventory level. Finally, free-on-board pricing

Party	Position
	of Lotte's HDPE Products are priced similarly, if not higher, than the prices for its exports to other Southeast Asian countries. Also, Petitioner's argument that it is heavily "cost disadvantaged" does not apply to Lotte. This is because just like Petitioner, Lotte also uses naphtha crackers as feedstock for its HDPE Products. Hence, the costs of their raw materials would be subject to similar economic considerations.
On Casual Link	
General Authority on Foreign Trade – Kingdom of Saudi Arabia (GAFT)	The analysis of the data, as presented in the Staff Report, provides no discussion on the effect based on the comparison of import levels from 2015 versus June 2021 despite the fluctuation of the import levels during the intervening years. Even if there were an increase in imports and serious injury to the domestic industry, as alleged by Petitioner but which is denied, we would point out that Petitioner is required to establish that the increase in imports is a "substantial cause" of the serious injury. Based on Petitioner's submissions thus far, we respectfully submit that Petitioner has not established a causal link between the alleged serious injury and the alleged increase in imports. The impairment in its position that Petitioner claims is certainly not caused by the purported increased imports. On the contrary, the increased imports can be said to have been caused by Petitioner's own actions. In both its provisional and final determinations, the Honorable Commission's causation finding relied almost exclusively on a correlation between increased imports in the 2013-2016 period, and declining prices and profitability of the EU industry in that period. However, it is highly questionable whether such correlation is sufficient, without more, to establish a "genuine and substantial" causal link between increased imports and the threat of serious injury. As claimed by the Petitioner, despite "the positive growth rates for domestic consumption of HDPE products until 2019, and with consumption practically maintained in 2020 compared to 2019 volumes despite the pandemic, the HDPE sales of the Philippine Industry to the domestic market have been decreasing." However, such decrease in sales can be attributed to the Petitioner's unsound business decisions wherein despite the positive growth rates for domestic consumption, it was not able to increase its production volumes and, in fact, even substantially decreased it by [redacted]% in 2019 and by a further [redacted]% in 2020.

Party	Position
	We note that the raw materials being produced by Petitioner are outdated. Their Bimodal HDPE products are very limited. For example, the melt index and density of the HDPE produced by JGSPC is not identical with those exported into the Philippines Moreover, Petitioner still employs UNIPOL gas phase technology from Union Carbide, which is a Unimodal process technology. Meanwhile, the market is looking for producers that employ Bimodal process technology because this results to higher quality, higher performance, and specialty HDPE applications. Additionally, as mentioned, Petitioner's manufacturing equipment is outdated and has shown to be unreliable resulting in frequent stoppage of production due to shutdown, maintenance, and repair of the plant. The October to November 2019 cracker shutdown likely resulted in the increase of 28% for HDPE imports in 2019. We would respectfully submit that it would be unfair for Petitioner to pass on to the exporters the burden and responsibility of making an unsound financial decision to unnecessarily increase local production capacity when Petitioner could ill afford to.
GC Marketing Solutions Company Limited (GCM)	GCM submits that the Commission's conclusion of increase in import volume in absolute and relative terms during the period of investigation may be attributed to the shutdown of JGSPC's operations from October 2019 to March 2020, thereby severing any perceived causal link between increased imports of HDPE and the alleged serious injury or threat thereof to the domestic industry. Being the sole domestic producer of HDPE and hence is considered the entire domestic market for HDPE, JGSPC's close of operations for almost half a year contributed to the domestic industry's decrease in production and consequent increase of import volume. This adequately explains the numerical increase in import volume in 2019. Since JGSPC's production decreased that year, any numerical increase in import volumes may not be considered to have been a sudden and unexpected increase caused by the import market. Based on the foregoing, rather that pointing fingers to the import market, the increase in imports are simply explainable by the fact that it is the natural consequence of JGSPC's failure to meet domestic demands. Verily, the domestic market's expected response would be to look into the import market to meet their demands since the domestic 28 DTI Preliminary Findings Report, p. 56. industry could not meet it. Based on the data provided, it is evident that capacity utilization rate exhibited an increasing trend from 2015 to 2017 from [redacted]% to [redacted]% to [redacted]%, respectively. It began to decline in 2019 by [redacted]% and further by [redacted]% in 2020. Despite the shutdown of the PE

Party	Position
	plants in the 1st quarter of 2020 for turnaround maintenance, the capacity utilization only decreased by [redacted]%. However, the highest capacity was registered in 2017 at [redacted]% for HDPE and at [redacted]% for both HDPE and LLDPE, almost at full capacity. Furthermore, as represented by Petitioner, they are currently expanding capacity by constructing new plants. We further note that the shutdown of the PE plants in the last quarter of 2019 for turnaround maintenance could have also greatly contributed to the decrease in production capacity from 2018 to 2019 by [redacted]%.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Even if there were an increase in imports and serious injury to the domestic industry, as alleged by Petitioner but which is denied, we would point out that Petitioner is required to establish that the increase in imports is a "*substantial cause*" of the serious injury. Based on Petitioner's submissions thus far, we respectfully submit that Petitioner has not established a causal link between the alleged serious injury and the alleged increase in imports. The impairment in its position that Petitioner claims is certainly not caused by the purported increased imports. On the contrary, the increased imports were caused by Petitioner's own actions. Petitioner is required to demonstrate a "genuine and substantial relationship of cause and effect" between the increased imports and serious injury," *i.e.*, there must be a "demonstration" of the existence of a causal link, and it requires that this demonstration be based on "objective data". We would submit that Petitioner has failed to do so in this case. In this case, the facts on record certainly do not show a causal link between the alleged serious injury to the domestic industry and the alleged increase in imports. On the contrary, the facts show that any such impairment in the position of the domestic industry is due to Petitioner's own doing.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Petitioner is required to establish that the increase in imports is a "substantial cause" of the serious injury. Based on Petitioner's submissions thus far, we respectfully submit that Petitioner has not established a causal link between the alleged serious injury and the alleged increase in imports. The impairment in its position that Petitioner claims is certainly not caused by the purported increased imports. On the contrary, the increased imports were caused by Petitioner's own actions. Petitioner reduced its production volumes of HDPE, even on the face of capacity shortfall. Needless to say, the reduction in production resulted in a decrease in Petitioner's domestic sales figures in 2018 and 2019. Petitioner's own unsound business decisions contributed to the impairment of its position in the market.

Party	Position
	Respondent respectfully submits that, as confirmed by the Petitioner's own witness, the alleged decrease in EBIT and income from operations could be attributed to numerous other factors, and not just on decreased sales, capacity utilization, price suppression and depression from imported HDPE. On the basis of the foregoing, it is obvious that any alleged impairment of the domestic's industry's position in the HDPE market was not caused by the alleged increase in imports. Such damage resulting directly from Petitioner's own actions is irrelevant to the determination of the matters that this present case seeks to establish, i.e., (a) an increase in imports of like or directly competitive products; (b) the existence of serious injury or threat to injury to the domestic industry; and (c) the causal link between the increased imports of the product under consideration.
Philippine Plastics Industry Association, Inc. (PPIA)	Based on public records and documents available, the decline in the volume of sales and market share by the domestic industry is not attributable to imports. JGSPC has admitted that it was significantly affected by the issuance of EO 113 when an additional 10% excise duty was imposed on naphtha, LPG, and other raw petrochemical products. If JGSPC was affected by the additional excise duties under EO 113, this would mean that JGSPC clearly believes there are other major factors other than importation that cause their alleged injury. Likewise, it was revealed during the course of the Hearing that Petitioner was, in fact, exporting the raw materials needed to make the HDPE products. As such, by diverting raw materials for exportation rather than using the same to create HDPE for end-users Petitioner itself was the proximate cause for why end-users were forced to import HDPE products during the investigation period.
Dow Chemical Pacific Ltd. (DCPL)	Even assuming that HDPE products were imported into the country in increased quantities and that there was substantial injury to the domestic industry (which is denied), still, there is no casual link between such alleged increase in HDPE imports and the purported serious injury suffered by the domestic industry. There is an absence of coincidence between an upward trend in imports and downward trends in the injury factors. DCPL submits that where there is no coincidence between the alleged increase in import volumes and the decline in the injury factors, it cannot be concluded that there is a causal link between the increase in imports and serious. The petitioner has presented no evidence to establish that the alleged low pricing for imported HDPE has been causing price depression and price suppression. In fact, the petitioner has been pursuing an expensive expansion project during the period of investigation.

Party	Position
	The Roadmap for the Petrochemical Industry submitted by the petitioner, while it acknowledges that competition from imports does present a challenge to the domestic industry, at no point does it state that the influx of imports has caused serious injury and that the remedy should be the imposition of safeguard measures. In sum, there simply is no evidence that would support the conclusion that there is a causal link between the alleged increase in imports and the purported serious injury to the domestic industry considering that (a) there is no coincident between increased imports and the injury factors identified; (b) the conditions of competition do not demonstrate a casual link between increased imports and serious injury; and (c) despite the existence of other factors affecting the domestic industry, there is no proper attribution of the injury caused by these factors as distinguished from those that may have been potentially caused by an alleged increase in imports.
Dow Chemical Pacific (Singapore) Private Limited (DCPS)	Even assuming that HDPE products were imported into the country in increased quantities and that there was substantial injury to the domestic industry (which is denied), still, there is no casual link between such alleged increase in HDPE imports and the purported serious injury suffered by the domestic industry. There is an absence of coincidence between an upward trend in imports and downward trends in the injury factors. DCPS submits that where there is no coincidence between the alleged increase in import volumes and the decline in the injury factors, it cannot be concluded that there is a causal link between the increase in imports and serious. The petitioner has presented no evidence to establish that the alleged low pricing for imported HDPE has been causing price depression and price suppression. In fact, the petitioner has been pursuing an expensive expansion project during the period of investigation. The Roadmap for the Petrochemical Industry submitted by the petitioner, while it acknowledges that competition from imports does present a challenge to the domestic industry, at no point does it state that the influx of imports has caused serious injury and that the remedy should be the imposition of safeguard measures. In sum, there simply is no evidence that would support the conclusion that there is a causal link between the alleged increase in imports and the purported serious injury to the domestic industry considering that (a) there is no coincident between increased imports and the injury factors identified; (b) the conditions of competition do not demonstrate a casual link between increased imports and serious injury; and (c) despite the existence of other factors affecting the domestic industry, there is no proper attribution of the injury caused by these

Party	Position
	factors as distinguished from those that may have been potentially caused by an alleged increase in imports.
Siam Polyethylene Company Limited (SPE)	Even assuming that HDPE products were imported into the country in increased quantities and that there was substantial injury to the domestic industry (which is denied), still, there is no casual link between such alleged increase in HDPE imports and the purported serious injury suffered by the domestic industry. There is an absence of coincidence between an upward trend in imports and downward trends in the injury factors. SPE submits that where there is no coincidence between the alleged increase in import volumes and the decline in the injury factors, it cannot be concluded that there is a causal link between the increase in imports and serious. The petitioner has presented no evidence to establish that the alleged low pricing for imported HDPE has been causing price depression and price suppression. In fact, the petitioner has been pursuing an expensive expansion project during the period of investigation. The Roadmap for the Petrochemical Industry submitted by the petitioner, while it acknowledges that competition from imports does present a challenge to the domestic industry, at no point does it state that the influx of imports has caused serious injury and that the remedy should be the imposition of safeguard measures. In sum, there simply is no evidence that would support the conclusion that there is a causal link between the alleged increase in imports and the purported serious injury to the domestic industry considering that (a) there is no coincident between increased imports and the injury factors identified; (b) the conditions of competition do not demonstrate a casual link between increased imports and serious injury; and (c) despite the existence of other factors affecting the domestic industry, there is no proper attribution of the injury caused by these factors as distinguished from those that may have been potentially caused by an alleged increase in imports.
Siam Synthetic Latex Company (SSLC)	Even assuming that HDPE products were imported into the country in increased quantities and that there was substantial injury to the domestic industry (which is denied), still, there is no casual link between such alleged increase in HDPE imports and the purported serious injury suffered by the domestic industry. There is an absence of coincidence between an upward trend in imports and downward trends in the injury factors. SSLC submits that where there is no coincidence between the alleged increase in import volumes and the decline in the injury factors, it cannot be concluded that there is a causal link between the increase in imports and serious.

Party	Position
	The petitioner has presented no evidence to establish that the alleged low pricing for imported HDPE has been causing price depression and price suppression. In fact, the petitioner has been pursuing an expensive expansion project during the period of investigation. The Roadmap for the Petrochemical Industry submitted by the petitioner, while it acknowledges that competition from imports does present a challenge to the domestic industry, at no point does it state that the influx of imports has caused serious injury and that the remedy should be the imposition of safeguard measures. In sum, there simply is no evidence that would support the conclusion that there is a causal link between the alleged increase in imports and the purported serious injury to the domestic industry considering that (a) there is no coincident between increased imports and the injury factors identified; (b) the conditions of competition do not demonstrate a casual link between increased imports and serious injury; and (c) despite the existence of other factors affecting the domestic industry, there is no proper attribution of the injury caused by these factors as distinguished from those that may have been potentially caused by an alleged increase in imports.
Lotte Chemical Titan Corporation (Lotte)	Petitioner, the sole manufacturer of HDPE in the Philippines, completely shut down its operations from October 2019 to March 2020 purportedly due to a complex-wide expansion. Any perceived increase in import volumes during this period was brought about by the fact that importers simply had no choice but to source from outside the Philippines to address local demand. Rather than cause injury, the increase in imports during this period actually benefited the consuming public by providing them access to HDPE products that Petitioner was unable to supply during its closure for almost 6 months. In this case, there are several other factors that have caused the perceived serious injury or threat thereof: • From October 2019 to March 2020, JGSPC shut down its operations to give way to a complex-wide expansion. • Production fell further as the impact of the planned shutdown was exacerbated by the consequences of the unexpected COVID-19 pandemic. • There were periods when its subsidiary, JG Summit Olefins Corporation exported ethylene (raw material needed by Petitioner) due to market factors, that is, when HDPE prices are low in the Philippines and it was more financially rewarding for olefins producers such as JGSOC to sell ethylene for export, than to sell to HDPE manufacturers such as Petitioner. This has further impaired Petitioner's ability to meet local demand.

Party	Position
	Petitioner's difficulties are not because of competition from imports per se, rather, it is because of its inability to compete due to factors including production inefficiencies, unreliability, and low product quality. To be sure, JGSOC's commercial decision to export ethylene may have also contributed to Petitioner's limited production. However, it appears that this issue was never considered in the Staff Report. Nonetheless, a causal link between the alleged increase in imports of HDPE products and the injury to the domestic industry has not been demonstrated and accounted for in this case.
On Unforeseen Development	
Government of Thailand through the Department of Foreign Trade of Thailand (DFT)	The unforeseen development requirement is a strict prerequisite for the application of a safeguard measure. What is an unforeseen development is to be determined objectively by considering what was not "reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated". However, no concessions have been made on behalf of the Philippines. It is unclear from the Report how cost-advantages of the US and Middle East petrochemical plants, the US-China trade war, rising exports of the US product to Asian markets, and a price increase of the product in Russia resulted in increased HDPE imports into the Philippines. Against this background, it is apparent that there is no logical connection between these alleged unforeseen developments and the allegedly increased imports of HDPE.
GC Marketing Solutions Company Limited (GCM)	The WTO Agreement also provides that for a contracting party be free to remedy or prevent a serious injury or threat thereof to the domestic industry, the serious injury or threat thereof must have been a result of unforeseen developments. Thus, even assuming there was an increase of imports, the cause must have been an unforeseen development. Verily, the planned shut-down of JGSPC to give way to its complex-wide expansion cannot be considered to be an unforeseen development under the WTO Agreement
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	<u>Covid-19 Pandemic</u> As found by the DTI, the petrochemical industry has been severely impacted by the COVID-19 pandemic due to the lockdowns causing shutdown of customers' plants, sudden dive in prices and drop in demand, not just locally but worldwide. The COVID-19 pandemic may have highly impacted the Philippine market because of, among others, the lockdown measures in the country. The consequent slowdown contributed to the injury alleged by Petitioner. The long period of lockdown prevented numerous industries from operating and numerous businesses to permanently close

Party	Position
	because of the difficulty of having workers report to the workplace. <u>The alleged increase in imports of HDPE could not have been caused by Unforeseen Developments</u> The increase in imports of HDPE could not have been an "unforeseen" nor "unexpected" development within the meaning of Article XIX:1(a) of GATT 1994. HDPE was being imported into the Philippines even prior to the POI. Petitioner has failed to discharge the burden of demonstrating the existence of “unforeseen developments”. The increase in imports in this case resulted from a decline in domestic production in 2018 and 2019 rooted in the decision of Petitioner. Such consequence is clearly foreseeable and even expected. Petitioner has not demonstrated that the decline in domestic production and resulting increase in imports was unforeseen and unforeseeable. The decline in production, resulting in decline in sales, and eventually an increase in imports was clearly a consequence of its own actions.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	<u>Covid-19 Pandemic</u> As found by the DTI, the petrochemical industry has been severely impacted by the COVID-19 pandemic due to the lockdowns causing shutdown of customers' plants, sudden dive in prices and drop in demand, not just locally but worldwide. The COVID-19 pandemic may have highly impacted the Philippine market because of, among others, the lockdown measures in the country. The consequent slowdown contributed to the injury alleged by Petitioner. The long period of lockdown prevented numerous industries from operating and numerous businesses to permanently close because of the difficulty of having workers report to the workplace. <u>The alleged increase in imports of HDPE could not have been caused by Unforeseen Developments</u> The increase in imports of HDPE could not have been an "unforeseen" nor "unexpected" development within the meaning of Article XIX:1(a) of GATT 1994. HDPE was being imported into the Philippines even prior to the POI. Petitioner has failed to discharge the burden of demonstrating the existence of “unforeseen developments”. The increase in imports in this case resulted from a decline in domestic production in 2018 and 2019 rooted in the decision of Petitioner. Such consequence is clearly foreseeable and even expected. Petitioner has not demonstrated that the decline in domestic

Party	Position
	production and resulting increase in imports was unforeseen and unforeseeable. The decline in production, resulting in decline in sales, and eventually an increase in imports was clearly a consequence of its own actions.
Lotte Chemical Titan Corporation (Lotte)	Petitioner cites the following as unforeseen developments: i) US shale gas boom and the discovery of hydraulic fracturing or "fracking"; ii) US-China trade war; iii) COVID-19 pandemic; iv) Russian-Ukraine war; and v) increased worldwide surplus. Article XIX:1(a) of the GATT 1994, in relation to the Agreement on Safeguards, sets out an additional condition in order for a WTO member to justify the imposition of a safeguard measure, that is, the importations of a product in such increased quantities as to cause or threaten to cause serious injury to the domestic industry must have occurred "as a result of unforeseen developments" Petitioner failed to demonstrate that the developments it cited have resulted in increased imports of HDPE products into the Philippines so as to cause or threaten to cause serious injury to the domestic industry. For instance, Petitioner cites 'unforeseen developments' in the United States and the Middle East. However, it must be emphasized that HDPE imports from these countries account for just the following percentages of imports into the Philippines: Saudi Arabia up to 11%, United States of America up to 3%, United Arab Emirates up to 1%, and Qatar up to 1%. During the POI, the bulk of Philippine imports of HDPEs were sourced from the ASEAN region, specifically Thailand (30%), Malaysia (24%), and Singapore (22%) – accounting for 76% of total imports. Notably, these ASEAN neighbors are facing the same 'unforeseen developments.' Moreover, Table 7.2 of the Staff Report shows that: (i) imports from the Middle East countries declined in 2020; and (ii) there is no uninterrupted upward trend in imports from the US and Middle East countries during the entire POI. Thus, Lotte respectfully submits that not only did Petitioner fail to prove that there was an increase in imports of HDPE products during the POI, but more importantly, Petitioner also failed to establish that any increase in HDPE imports so as to cause or threaten to cause serious injury in the domestic industry resulted from the alleged unforeseen developments cited by Petitioner, contrary to the condition prescribed under the GATT 1994. Absent such causal link, the developments cited by Petitioner certainly cannot serve as basis for the imposition of safeguard measures.
On Public Interest	
Government of Thailand through the Department	DFT is of the view that the imposition of the safeguard measure against importations of HDPE would directly create an adverse

Party	Position
of Foreign Trade of Thailand (DFT)	effect upon other industries as well as consumers, since HDPE is an essential input material of plastic products. It has also been established that some HDPE grades have not been produced by the domestic industry. As a consequence, the imposition of a safeguard measure will cause a deadweight loss to the users that need to import those HDPE grades as well as the society as a whole.
Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCM)	The imposition of safeguard measures on the electrical grade HDPE will adversely impact the local electric wire and cable manufacturing industry. Imported cables already enjoy zero duty from China and ASEAN countries due to the free trade agreements between and among these countries. On the other hand, the electrical grade HDPE cable compounds imported by the local electric wire and cable manufacturers attract 10% duty for HDPE-based compounds. The existing import tariffs on the electrical grade LLDPE cable compounds already pose a competitive disadvantage to the local electric wire and cable manufacturers who need to import the cable compounds to produce the cables whereas imported cables are sold in the Philippine market without any importation tariff. Any further imposition of tariff duties on the electrical grade HDPE resulting from safeguard measures will only serve to render the domestic electric wire and cable manufacturing industry even more uncompetitive and threaten the growth of the said industry. The negative impact of any safeguard measures on the importation of electrical grade HDPE would come at an inopportune time considering the vital role that the local electric wire and cable manufacturers play in helping the growth and development of the Philippine economy by supplying inexpensive, quality-tested, reliable and readily available cables needed in infrastructure projects such as government and private building construction, power, and telecommunication.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The Respondent urges the Honorable Commission to consider the real likelihood that imposing safeguard measures on the importation of HDPE will adversely affect the local industries as well as consumers which is contrary to public policy. HDPE is an essential material of plastic products and, in effect, the imposition of safeguard measures would create an adverse effect that is more harmful than beneficial on the industry and the consumers. The imposition of safeguard measures against HDPE will create a direct adverse effect on the downstream plastic manufacturing and converting industry, e.g., food and beverage, agriculture, pharmaceutical, medical and health, construction, communications and utilities, automotive, garments and footwear, and others. Unfortunately, it is the downstream industry's growth and development that will bear the damage and adversely affect public interest. This adverse effect and damage to the downstream industry will cause a greater price distortion between the raw materials, such

Party	Position
	as HDPE, and finished products. This will lead the market to import finished products instead of raw materials. All the more, the local industry will lead to company closures and numerous unemployed individuals.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The Respondent urges the Honorable Commission to consider the real likelihood that imposing safeguard measures on the importation of HDPE will adversely affect the local industries as well as consumers which is contrary to public policy. HDPE is an essential material of plastic products and, in effect, the imposition of safeguard measures would create an adverse effect that is more harmful than beneficial on the industry and the consumers. The imposition of safeguard measures against HDPE will create a direct adverse effect on the downstream plastic manufacturing and converting industry, e.g., food and beverage, agriculture, pharmaceutical, medical and health, construction, communications and utilities, automotive, garments and footwear, and others. Unfortunately, it is the downstream industry's growth and development that will bear the damage and adversely affect public interest. This adverse effect and damage to the downstream industry will cause a greater price distortion between the raw materials, such as HDPE, and finished products. This will lead the market to import finished products instead of raw materials. All the more, the local industry will lead to company closures and numerous unemployed individuals.
Dow Chemical Pacific Ltd. (DCPL)	The imposition of safeguard measures will not benefit but will even harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Increasing the cost of imported HDPE by the imposition of safeguard measures would naturally lead to higher costs for the domestic downstream industries thereby reducing their competitiveness. Second, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. JGSPC is the sole HDPE manufacturer in the Philippines. Having a single domestic supplier leaves the local supply of HDPE vulnerable, insecure, and unstable. Plant shutdowns by JGSPC, whether planned or unplanned, can severely restrict the local supply of HDPE. Finally, the imposition of safeguard measures under the circumstances would promote the creation of a monopoly, which is anathema to the state policy that "the State shall regulate or prohibit monopolies when the public interest so requires." It would also be contrary to the explicit mandate under the Safeguard Measure Act that " [a]ll [Safeguard

Party	Position
	Measure] actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise[.]" In sum, the imposition of safeguard measures on HDPE would be contrary to public interest as it would result in (a) the increased cost, reduced quality, and reduced competitiveness of the domestic downstream industries, (b) the impairment of the stability of the supply of HDPE in the Philippines, and (c) the promotion of a monopoly in HDPE resins.
Dow Chemical Pacific (Singapore) private Limited	The imposition of safeguard measures will not benefit but will even harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Increasing the cost of imported HDPE by the imposition of safeguard measures would naturally lead to higher costs for the domestic downstream industries thereby reducing their competitiveness. Second, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. JGSPC is the sole HDPE manufacturer in the Philippines. Having a single domestic supplier leaves the local supply of HDPE vulnerable, insecure, and unstable. Plant shutdowns by JGSPC, whether planned or unplanned, can severely restrict the local supply of HDPE. Finally, the imposition of safeguard measures under the circumstances would promote the creation of a monopoly, which is anathema to the state policy that "the State shall regulate or prohibit monopolies when the public interest so requires." It would also be contrary to the explicit mandate under the Safeguard Measure Act that " [a]ll [Safeguard Measure] actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise[.]" In sum, the imposition of safeguard measures on HDPE would be contrary to public interest as it would result in (a) the increased cost, reduced quality, and reduced competitiveness of the domestic downstream industries, (b) the impairment of the stability of the supply of HDPE in the Philippines, and (c) the promotion of a monopoly in HDPE resins.
Siam Polyethylene Company Limited (SPE)	The imposition of safeguard measures will not benefit but will even harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Increasing the cost of imported HDPE by the imposition of safeguard measures would naturally lead to higher costs for

Party	Position
	the domestic downstream industries thereby reducing their competitiveness. Second, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. JGSPC is the sole HDPE manufacturer in the Philippines. Having a single domestic supplier leaves the local supply of HDPE vulnerable, insecure, and unstable. Plant shutdowns by JGSPC, whether planned or unplanned, can severely restrict the local supply of HDPE. Finally, the imposition of safeguard measures under the circumstances would promote the creation of a monopoly, which is anathema to the state policy that "the State shall regulate or prohibit monopolies when the public interest so requires." It would also be contrary to the explicit mandate under the Safeguard Measure Act that " [a]ll [Safeguard Measure] actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise[.]" In sum, the imposition of safeguard measures on HDPE would be contrary to public interest as it would result in (a) the increased cost, reduced quality, and reduced competitiveness of the domestic downstream industries, (b) the impairment of the stability of the supply of HDPE in the Philippines, and (c) the promotion of a monopoly in HDPE resins.
Siam Synthetic Latex Company (SSLC)	The imposition of safeguard measures will not benefit but will even harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Increasing the cost of imported HDPE by the imposition of safeguard measures would naturally lead to higher costs for the domestic downstream industries thereby reducing their competitiveness. Second, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. JGSPC is the sole HDPE manufacturer in the Philippines. Having a single domestic supplier leaves the local supply of HDPE vulnerable, insecure, and unstable. Plant shutdowns by JGSPC, whether planned or unplanned, can severely restrict the local supply of HDPE. Finally, the imposition of safeguard measures under the circumstances would promote the creation of a monopoly, which is anathema to the state policy that "the State shall regulate or prohibit monopolies when the public interest so requires." It would also be contrary to the explicit mandate under the Safeguard Measure Act that " [a]ll [Safeguard Measure] actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business

Party	Position
	devise[.]" In sum, the imposition of safeguard measures on HDPE would be contrary to public interest as it would result in (a) the increased cost, reduced quality, and reduced competitiveness of the domestic downstream industries, (b) the impairment of the stability of the supply of HDPE in the Philippines, and (c) the promotion of a monopoly in HDPE resins.
Lotte Chemical Titan Corporation (Lotte)	The Petitioner, as the present sole manufacturer of HDPE, is part of the midstream sector. Apart from Petitioner, however, there are hundreds of other companies comprising the downstream sector that is an integral part of the industry. Hence, any alleged injury to Petitioner does not necessarily translate to injury or damage to the entire industry. On the contrary, companies in the downstream sector owe continuity and stability of their operations to importations of HDPE products. Contrary to Petitioner's claim, if not for the importations of HDPE products, the petrochemical industry could have seriously been damaged. In its application for safeguard measures, Petitioner itself noted the trend for vertical integration in the petrochemical industry. If safeguard measures will be imposed, costs and prices for the outputs of the downstream sector will be significantly higher. If that happens, consumers may shift to cheaper imported finished goods – ultimately leading to more damage to the entire Philippine petrochemical industry. The Staff Report noted that HDPE resins are used in a broad range of applications. HDPE applications encompass the food, beverage, consumer products, packaging, and infrastructure sectors. The Staff Report likewise noted the potential growth of demand for HDPE. As discussed by PPIA in its Position Paper, Petitioner had historically been unable to deliver orders creating problems for the downstream petrochemical industry of the Philippines. As noted by PPIA, the imposition of safeguard measures "will result in tariff distortion", which in turn, "will result in closures of the small and medium enterprises comprising the downstream industry and loss of jobs to thousands of Filipinos." If at all, only the Petitioner, the sole local producer of HDPE, will be unduly aided by the safeguard measures, contrary to the objective of the Safeguard Measures Act that all actions must prevent "any anticompetitive, monopolistic or manipulative business devise.
On De Minimis Volumes	

Party	Position
Government of Indonesia	Indonesia's share of imports of LLDPE during the POI were only under 3% and considering that Indonesia is a developing country, thus a de minimis import. Moreover, based pon the Staff Report, the share of the total import of the Philippines from the developing countries which has a threshold below 3% is only 5.70% (less than 9%). Therefore, Indonesia is qualified to be excluded from the investigation.
Other Issues	
General Authority on Foreign Trade – Kingdom of Saudi Arabia (GAFT)	The data collected from the Philippines's WTO tariff concessions and its applied tariff rates according to its customs authority demonstrates that the Philippines applies very low tariff duty while HDPE are not bounded with any WTO commitments under the Philippines's WTO tariffs concessions. Based on absence of a bound rate on HDPE, the Philippines has no legal groimpund to use the emergency action (safeguard measures) to temporarily depart from its WTO commitments because, in fact, the Philippines has no WTO commitments with regard to the HDPE tariff rate. As most of the Philippine imports of HDPE during the POI were sourced from countries that are members of ATIGA, which imports are not subject to the Philippines's WTO tariff obligations and that the main bulk of imports was sourced from ASEAN there is no ground to claim that the alleged increase of imports is due to the alleged unforeseen developments related to the Philippines's WTO obligations

List of Submitted Documents of Parties

Name of Party	Document Submitted	Date Received
American Wire and Cable Co., Inc.	Position Paper	20 October 2021
Chamber of Philippine Electric Wires and Cables Manufacturers, Inc.	Position Paper	18 October 2021
	Accomplished TC Form 5-C and Attachments	20 December 2021
	Submission of Additional Information and attachments	20 December 2021
	Final Position Paper	13 March 2021
Coex Inc.(endorsed by DTI – BIS to the Commission)	Position Paper	19 October 2021
Dow Chemical Pacific (Singapore) Private Limited	Entry of Appearance	13 October 2021
	Motion for Additional Time to File Position Paper	22 October 2021
	Compliance and Submission	29 October 2021
	Position Paper	29 October 2021
	Manifestation	26 January 2022
	Comments to the Staff Report	15 February 2022
	Motion for Additional Time to File Final Memoranda/Position Paper	14 March 2022
	Final Position Paper	21 March 2022
Dow Chemical Pacific Ltd.	Entry of Appearance	13 October 2021
	Motion for Additional Time to File Position Paper	22 October 2021
	Compliance and Submission	29 October 2021
	Position Paper	29 October 2021
	Compliance and Submission and Motion For Time (Confidential Version)	20 December 2021
	Compliance and Submission and Motion For Time (Non-Confidential Version)	20 December 2021
	Manifestation	26 January 2022
	Comments to the Staff Report	15 February 2022

Name of Party	Document Submitted	Date Received
	Motion for Additional Time to File Final Memoranda/Position Paper	14 March 2022
	Final Position Paper	21 March 2022
DTI – BIS	Letter to DTI Secretary re safeguard investigation on LLDPE and HDPE	19 October 2021
	Endorsement of H.E. Gerardo Lozano Arredondo relevant to the ongoing formal investigation on the safeguard measure application on imported HDPE and LLDPE endorsed by the DTI to the Commission	19 October 2021
	Letter of Brazil to disregard the interest of Brazil as an interested party endorsed by DTI to the Commission	26 October 2021
	Letter to TC re initiation of a preliminary investigation on the application for safeguard measures on the importation of HDPE and LLDPE pellets and granules	29 October 2021
	Letter Requesting for TSN	14 March 2022
Embassy of Mexico	Copy of Ambassador's Letter regarding the commencement of a Formal Investigation on the merits of imposing a definitive safeguard duty against the importation of HDPE and LLDPE pellets and granules and attachment	12 October 2021
GC Marketing Solutions Company Limited	Letter Request for Extension to Submit Position Paper	21 October 2021
	Entry of Appearance	27 October 2021
	Position Paper	28 October 2021
	Letter Request for Additional Time to Submit	14 February 2022

Name of Party	Document Submitted	Date Received
	Additional Issues/Affidavits	
	Submission of Additional Issues for the Public Hearing	17 February 2022
	Comments to the Staff Report	17 February 2022
	Final Position Paper	14 March 2022
Government of Indonesia	Position Paper	25 October 2021
	Submission of the Government of Indonesia on Public Hearing in the Framework of the Formal Investigation of the Safeguard Measure against Importation of HDPE Pellets and Granules	14 February 2022[1]
	(Final) Position paper of the Government of Indonesia	03 March 2022
Inca Philippines, Inc.	Position Paper	20 October 2021
	Accomplished TC Form 5-C and attachments	03 December 2021
JGSPC (now JGSOC)	Entry of Appearance	01 October 2021
	Position Paper and attachments as supporting documents	22 October 2021
	Comment to the Manifestation for Consolidation of PPIA	15 November 2021
	Updated Adjustment Plan	22 November 2021
	Judicial Affidavit of Maria Veron M. Marasigan	29 November 2021
	Judicial Affidavit Fatima S. Tiongson	29 November 2021
	Joint Judicial Affidavit of Reynaldo M. Ganal, Victoria C. Pulmones and Ma. Jessa S. Canonizado	29 November 2021
	Judicial Affidavit of Homer A. Maranan	29 November 2021
	Bimodal PE and Metallocene PE Description	01 December 2021
	Evalene HDPE Grades	01 December 2021

[1] Resubmitted on 16 February 2022.

Name of Party	Document Submitted	Date Received
	HDPE and LLDPE used for Rotomolding and Wire and Cable	01 December 2021
	Nomenclature for Product Naming	01 December 2021
	Allocation of HDPE and LLDPE Produced Volumes	01 December 2021
	Allocation of HDPE and LLDPE Sold Volumes	01 December 2021
	Allocation of HDPE and LLDPE Distribution Channels	01 December 2021
	Accomplished TC Form 5-A and attachments	02 December 2021
	Judicial Affidavit (confidential version) 1. Patrick Henry Go; 2. Fatima S. Tiongson 3. Maria Veron M. Marasigan 4. Joint Judicial Affidavit of Reynaldo M. Ganal, Victoria C. Pulmones and Ma. Jessa S. Canonizado 5. Homer A. Maranan	02 December 2021
	Response Letter of JGSPC to the Request of TC for Additional Information	02 December 2021
	Additional Information Submitted by JGSPC	11 December 2021
	Write up for the Relationship of Co-monomer Content with Melt Index and Density	17 December 2021
	Monthly Production Volume	14 January 2022
	Sales Volume	27 January 2022
	Notice of Merger	16 February 2022
	SEC-Approved Certificate of Filing and Articles of Merger	
	Judicial Affidavit (non-confidential version)	17 February 2022

Name of Party	Document Submitted	Date Received
	1. Patrick Henry Go; 2. Fatima S. Tiongson 3. Maria Veron M. Marasigan 4. Joint Judicial Affidavit of Reynaldo M. Ganal, Victoria C. Pulmones and Ma. Jessa S. Canonizado 5. Homer A. Maranan	
	Compliance to the Documents Required during the Public Hearing: 1. Petrochemical Industry Road Map; 2. UA&P Study on Anti-Illicit Trade; 3. Consolidated PE Capacity Utilization Data 4. JGSOC Cracker Downtime; 5. Annual Cost Savings from Adjustment Plan (confidential)	15 February 2022
	Motion for Extension of Time to File Final Memoranda	02 March 2022
	Compliance to the Letter-Reply of the Commission to the Motion for Extension of Time to File Final Memoranda (Medical Certificate of Atty. Rivera)	07 March 2022
	Final Position Paper (Confidential)	11 March 2022
	Final Position Paper (Non-Confidential)	
	Compliance to the Commission's Request of Documents during the 24 February 2022 Verification: 1. Capacity, Production, Sales	11 April 2022

Name of Party	Document Submitted	Date Received
	and Inventory of Domestic Product; 2. Profitability; 3. Cost to Produce and Sell (COPS) of Domestic Product 4. LLDPE Production vs. COPS vs. Importers' Store Price	
	Motion for Extension of Time (to Submit Data Requested pursuant to the Commission's Letter dated 01 June 2022)	07 June 2022
	Submission (of Data Required pursuant to the Letter dated 01 June and 07 June of the Commission)	17 June 2022
Lotte Chemical Titan Corporation Sdn. Bhd.	Entry of Appearance with Motion for Extension of Time to File Position Paper	14 March 2022
	Final Position Paper	24 March 2022
Ministry of Economy of the United Arab Emirates	Position Paper	21 October 2021
PACT Closure Systems (Philippines) Inc.	Copy of the accomplished importer's questionnaire and other supporting documents sent to DTI on 30 October 2020	07 October 2021
Phelps Dodge	Position Paper submitted to DTI on 03 November 2020 (unsigned)	07 October 2021
Philippine Plastics Industry Association, Inc.	Entry of Appearance	22 October 2021
	Position Paper	22 October 2021
	Manifestation of Compliance	24 November 2021
	Motion of Time to File Amended or Final Position Paper	14 March 2022
	Final Position Paper	21 March 2022
Philips Wire & Cable Co.	Information About Electrical Grade Resins	17 December 2021
PT Chandra Asri	Notice of Appearance	15 October 2021
	Accomplished TC Form 5-B and attachments	16 November 2021

ANNEX J

Name of Party	Document Submitted	Date Received
Rabigh Refining and Petrochemical Co.	Entry of Appearance	06 October 2021
	Consularized Power of Attorney	06 October 2021
	Letter Request for Extension to Submit Position Paper	14 October 2021
	Position Paper	29 October 2021
	Letter Request for Additional Time to Submit Additional Issues/Affidavits	14 February 2022
	Letter Request for Additional Time to Submit Comments to the Staff Report	15 February 2022
	Additional Letter Request for Additional Time to Submit Comments to the Staff Report	15 February 2022
	Submission of Additional Issued for the Public Hearing	17 February 2022
	Comments to the Staff Report	22 February 2022
	Letter Request for Extension to Submit Final Memoranda	08 March 2022
	Final Position Paper	21 March 2022
Royal Embassy of Saudi Arabia	Copy of the submission of the Government of the Kingdom of Saudi Arabia on the Two Reports of the Preliminary Determinations of DTI	01 October 2021
	Copy of Letter of H.E. Mohammed A. Al Abduljabbar to DTI-BIS re Preliminary determination of the safeguard investigation on HDPE and LLDPE	08 October 2021
	Copy of the submission of the Government of the Kingdom of Saudi Arabia on the Two Reports of the Preliminary Determinations of DTI	08 October 2021

Name of Party	Document Submitted	Date Received
	Note of the General Authority of Foreign Trade on HDPE (Final Position Paper)	21 March 2022
	Letter to the Commission RE: Transmittal of the Position of the Royal Embassy of Saudi Arabia	28 March 2022
Royal Thai Embassy	Position Paper	18 October 2021
	Letter of the Department of Foreign Trade, Ministry of Commerce of the Kingdom of Thailand on Comments to the Staff Report	15 February 2022
	Statement of the Department of Foreign Trade of Thailand to the Public Hearing	22 February 2022
	Submission of Export Statistics of HDPE (in compliance with the directive during the Public Hearing)	
Siam Polyethylene Company Limited	Entry of Appearance	13 October 2021
	Motion for Additional Time to File Position Paper	22 October 2021
	Position Paper	29 October 2021
	Compliance and Submission	29 October 2021
	Comments to the Staff Report	15 February 2022
	Motion for Additional Time to File Final Memoranda/Position Paper	14 March 2022
	Final Position Paper	21 March 2022
Siam Synthetic Latex Company	Entry of Appearance	13 October 2021
	Motion for Additional Time to File Position Paper	22 October 2021
	Position Paper	29 October 2021
	Compliance and Submission	29 October 2021
	Motion for Additional Time to File Final	14 March 2022

Name of Party	Document Submitted	Date Received
	Memoranda/Position Paper	
	Final Position Paper	21 March 2022
Sumitomo Chemical Asia Pte. Ltd.	Entry of Appearance	06 October 2021
	Authenticated Secretary's Certificate	06 October 2021
	Letter Request for Extension to Submit Position Paper	14 October 2021
	Position Paper	28 October 2021
	Letter to TC re extension to submit the TC's requested additional information	14 December 2021
	Submission of Additional Information and Annexes	20 December 2021
	Accomplished TC Form 5-B and attachments	03 January 2022
	Letter Request for Additional Time to Submit Additional Issues/Affidavits	14 February 2022
	Letter Request for Additional Time to Submit Comments to the Staff Report	15 February 2022
	Additional Letter Request for Additional Time to Submit Comments to the Staff Report	15 February 2022
	Submission of Additional Issued for the Public Hearing	17 February 2022
	Comments to the Staff Report	22 February 2022
	Letter Request for Extension to Submit Final Memoranda	08 March 2022
	Final Position Paper	21 March 2022
Trade Remedies Authority of Viet Nam	Letter to TC re the Formal Investigation on the merits of imposing a definitive safeguard duty against importations of HDPE and LLDPE pellets and granules from various countries	11 October 2021

ANNEX K

Initial Position Papers of Other Interested Parties

Party	Position
Product Comparability	
American Wire and Cable Co., Inc. (AWCCI)	The AWCCI requests that HDPE for special wires and cable grades be excluded from the investigation as these are not manufactured by the Petitioner. In order to differentiate special wires and cable grades from the other grades of HDPE products, AWCCI proposes that separate tariff lines be created for electric wire and cable grades of polyethylene compounds in pellet form.
Chamber of Philippine Electric Wires and Cables Manufacturers, Inc. (CPEWCMI)	The CPEWCMI reiterates that it utilizes HDPE products of electrical grade, which none of the local HDPE manufacturers, including JGSPC, produce. The CPEWMCI reiterates that local manufacturers, including JGSPC, does not manufacture the HDPE products used to produce electrical wires and cables of electrical grade. The CPEWCMI requests that HDPE special grades being used by the electric wires and cables manufacturers be excluded from the formal investigation by the Commission as these are neither like nor directly competitive with the domestically produced product. CPEWCMI further suggests to the Commission to provide a precise and clear description of the HDPE special wires and cables grades under consideration in order to avoid vagueness and mis-classification of the HDPE product. It strongly suggests that a separate tariff heading be created from the HDPE electrical grade for wires and cables in order to have a clear distinction of this grade from the other HDPE products.
Coex, Inc.	Coex is bound to follow the designated HDPE grades approved by their client, Bayer Germany, which must meet standards on Environmental Stress – Cracking Resistance (ESCR).
Dow Chemical Pacific Ltd. (DCPL)	DCPL's Wire and Cable compounds (W&C compounds) should be excluded from the Formal Investigation as they are not like or directly competitive products in relation to the locally manufactured HDPE. DCPL's W&C Compounds are made using various base resins, which are not just HDPE but also Low-Density Polyethylene, Ethyl Acrylic Acid, or Ethyl Vinyl Acetate. None of the HDPE products locally manufactured by JGSPC are required to meet the [international cable] standards as they are intended for completely different end use applications. The end use of DCPL's W&C Compounds is specific to the power and telecommunications industries for which regular HDPE and LLDPE are unsuitable.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	DCPS' Wire and Cable compounds (W&C compounds) should be excluded from the Formal Investigation as they are not like or directly competitive products in relation to the locally manufactured HDPE. DCPS' W&C Compounds are made using various base resins, which are not just HDPE but also Low-Density Polyethylene, Ethyl Acrylic Acid, or Ethyl Vinyl Acetate.

Party	Position
	None of the HDPE products locally manufactured by JGSPC are required to meet the [international cable] standards as they are intended for completely different end use applications. The end use of DCPL's W&C Compounds is specific to the power and telecommunications industries for which regular HDPE and LLDPE are unsuitable.
GC Marketing Solutions Company Limited (GCM)	The quality of Petitioner's products are not comparable to higher quality imports. Thus, there is no increase in imports of like or directly competitive products. The product supplied by GCM (*InnoPlus HDPE*) has a higher melt index than that supplied by JGSPC. Likewise, GCM's products have been evaluated and certified by its end customers to suit their specific needs. GCM submits that its products cannot be considered *like* or *directly competitive* to that produced by the domestic industry.
INCA Philippines, Inc.	JGSPC has clearly admitted per the DTI report on the preliminary affirmative findings on the application of safeguard measurers for HDPE, that it does not have the company's products in its current product state and these are relatively small market size. This openly imply that JGSPC is not at all affected by the company's importation or rotational molding grade resins both in pellet or powder form and will not produce these in near future.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Petro Rabigh notes that products made by the Petitioner are not comparable to imported products. Their Bimodal HDPE is limited in use. The melt index and density of the HDPE produced by JGSPC is not identical to those imported such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200) JGSPC still employs UNIPOL gas phase technology, which is a Unimodal process technology. The market is looking for producers that employ Bimodal process technology as this results in products with higher quality, higher performance, and specialty HDPE applications. During the POI no local company produces HDPE made using Bimodal process technology which led downstream industries to resort to imports that can provide them with higher quality, higher performance, and specialty HDPE that petitioner could not provide
Siam Polyethylene Company, Ltd (SPE)	SPE alleges that its imported Higher Alpha Olefin Linear Low-Density Polyethylene (HAO LLDPE) should be excluded as it is not like or directly competitive with the HDPE products under investigation and cannot be considered as the substantial cause of any serious injury.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Products made by the Petitioner are not comparable to imported products. The melt index and density of the HDPE produced by JGSPC is not identical to those imported such as blow film products (TITANZEX HF7000) and blow molding products (TITANZEX HB6200) No local company produces HDPE made using Bimodal process technology which led downstream industries to resort to imports that can provide them with higher quality, higher performance, and specialty HDPE that petitioner could not provide.
Siam Synthetic Latex Company Limited (SSLC)	SSLC respectfully submits that its Polyolefin Elastomer products should be excluded from the subject investigation because they are not like or

Party	Position
	directly competitive products in relation to the locally-manufactures HDPE. SSLC also highlights that JGSPC does not even mention Polyolefin Elastomer in its Application.
On Increased Imports	
Dow Chemicals Pacific Limited (DCPL)	Based on the import data as presented in the DTI Preliminary Report, there is no consistent, sudden, and significant increase in imports. In fact, there was a decrease in imports in 2017 and another decrease in the first three quarters of 2020. Based on the average volume of imports during the first three quarters of 2020 the volume of imports in 2020 would have been 92,480 MT which is still a decrease from the 2019 figure. Relative to domestic production, HDPE imports has not consistently increased. It decreased in 2017 and decreased yet again in 2020. Thus, it cannot be concluded that there was a significant, sudden, and sharp increase in imports during the period of investigation.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	Based on the import data as presented in the DTI Preliminary Report, there is no consistent, sudden, and significant increase in imports. In fact, there was a decrease in imports in 2017 and another decrease in the first three quarters of 2020. Based on the average volume of imports during the first three quarters of 2020 the volume of imports in 2020 would have been 92,480 MT which is still a decrease from the 2019 figure. Relative to domestic production, HDPE imports has not consistently increased. It decreased in 2017 and decreased yet again in 2020. Thus, it cannot be concluded that there was a significant, sudden, and sharp increase in imports during the period of investigation
GC Marketing Solutions Company Limited (GCM)	Based on the import data as presented in the DTI Preliminary Report, GCM noted that while there was an increase in the volume of imports of HDPE from 2015 to 2016 of 26%, there was a 2% decrease of imports of the subject article in 2016 to 2017. The increase in imports by 10% and 28% in 2018 and 2019, respectively was caused by the Petitioner's failure to meet local demand requirements in 2018 which prompted major industry players to secure their raw material requirements from imports. Major downstream players had no choice but to divert and commit volumes that used to be allocated to domestic resin producers to foreign suppliers to stead supply.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Although an endpoint-to-endpoint analysis shows increased import volumes from 2015 to 2019, the data does not show continuous growth in imports through an analysis of the intervening trends during the period of investigation which will show that the growth in imports is steady and gradual. Accordingly, the mere endpoint-to-endpoint comparison has been found by the WTO to be inconsistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards:

Party	Position
	• The Panel in DS121: *Argentina – Footwear (EC)* explained that an increase in imports must be evident in *both* an endpoint-to-endpoint comparison *and* in an analysis of intervening trends over the period. • Likewise in DS252: *US – Steel Safeguards* the Appellate Body reiterated the indispensability of analysis of trends over the entire POI and highlighted the importance of demonstrating an *uninterrupted upward trend in import volumes:* "A determination of whether there is an increase in imports cannot, therefore be made merely by comparing the endpoints of the period of investigation. Indeed, in cases where an examination does not demonstrate, for instance, a clear and uninterrupted upward trend in import volumes, a simple endpoint-to-endpoint analysis could easily be manipulated to lead to different results, depending on the choice of endpoints. A comparison could support either finding an increase or a decrease in import volumes simply by choosing different starting and ending points." XXX "Thus, a demonstration of 'any increase' in imports between any two points in time is not sufficient to demonstrate 'increased imports' for purposes of Articles XIX and 2.1. Rather, as we have said, competent authorities are required to examine the trends in imports over the entire period of investigation." The analysis of the data as presented in the DTI Preliminary Report provides no discussion on the effect based on the comparison of import levels from 2015 versus 2019 despite the fluctuation of import levels during the intervening years. Although there was an increase between 2015 and 2019, a closer look shows that such increase in imports is not consistent over the entire POI. Based on the same data surge in imports is only evident in 2015-2016 and 2018-2019. HDPE imports declined in 2016-2017. Thus, there is no uninterrupted upward trend in import volumes. The data does not show that the alleged increase is *recent enough, sudden enough, sharp enough, and significant enough* both qualitatively and quantitatively to merit the imposition of safeguard measures.
Siam Polyethylene Company, Ltd. (SPC)	Based on the import data as presented in the DTI Preliminary Report, there is no consistent, sudden, and significant increase in imports. In fact, there was a decrease in imports in 2017 and another decrease in the first three quarters of 2020. Based on the average volume of imports during the first three quarters of 2020 the volume of imports in 2020 would have been 92,480 MT which is still a decrease from the 2019 figure. Relative to domestic production, HDPE imports has not consistently increased. It decreased in 2017 and decreased yet again in 2020. Thus, it cannot be concluded that there was a significant, sudden, and sharp increase in imports during the period of investigation

Party	Position
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	There is no such increase in imports that is relevant to this formal investigation and that warrants the imposition of safeguard measures. Although an endpoint-to-endpoint analysis shows increased import volumes from 2015 to 2019, the data does not show continuous growth in imports through an analysis of the intervening trends during the period of investigation which will show that the growth is not consistent over the entire period of investigation. Although there was an increase between 2015 and 2019, a closer look shows that such increase in imports is not consistent over the entire POI. Surge in imports is only evident in 2015-2016 and 2018-2019. HDPE imports declined in 2016-2017. Thus, there is no uninterrupted upward trend in import volumes. The data does not show that the alleged increase is *recent enough, sudden enough, sharp enough, and significant enough* both qualitatively and quantitatively to merit the imposition of safeguard measures
The Department of Foreign Trade of Thailand (DFT)	The DFT notes that the preliminary report has not shown import developments from September 2020 onwards to prove that the surge in imports is recent enough, sudden enough, and significant enough, and assessed both quantitatively and qualitatively.
Siam Synthetic Latex Company Limited	SSLC respectfully submits that the DTI's own data do not support the conclusion that there is any increase in imports that would warrant the imposition of safeguard measures. The DTI import data on HDPE imports show that there was no consistent, sudden, and significant increase in imports. In fact, in 2017 there was a decrease in imports in 2017 and a decrease yet again in the first three quarters of 2020. The DTI data also show that the importation of HDPE in relative terms has not consistently increased; on the contrary, it decreased in 2017 and decreased yet again in 2020. Under these circumstance, it cannot be concluded that there was a consistent, significant, sudden, and sharp increase in imports during the period of investigation.
On Serious Injury or Threat of Serious Injury	
The Department of Foreign Trade of Thailand	The preliminary report has not met the injury standards to warrant safeguards. The DFT notes that the preliminary report showed that employment, domestic sales, and production increased from 2015 to 2018 and that capacity utilization has increased from 2015 to 2017.
Dow Chemicals Pacific Limited (DCPL)	The evidence on record does not show any serious injury being suffered by the domestic industry. Based on the data presented in the DTI Preliminary Report, there is no clear showing that domestic sales [of HDPE] are declining. In fact, domestic sales increased in volume and value from 2015 to 2017and it appears that there was a decrease from 2018 to 2020. Capacity utilization remained high during the period of investigation. Except for 2019, capacity utilization has not decreased below 2015

Party	Position
	levels. In fact, capacity utilization even increased from 2015 to 2017. JGSPC's capacity decreased based on data for the first three quarters of 2020 which casts doubt on its ability to meet domestic demand. Movement of cost to produce is inconsistent. DCPL notes that the data for the cost to produce show signs of significant decrease in 2020. As seen above, the cost to produce HDPE and LLDPE decreased in 2016 and 2019 while it increased in 2017 and 2018. Notably, the cost to produce has decreased significantly in 2020. Given this inconsistent movement, it cannot be concluded that JGSPC suffered any serious injury during the period of investigation. Employment in JGSPC increased consistently during the period of investigation. Data on direct labor personnel for the entire operation of HDPE undermines JGSPC claims that it has suffered serious injury as evidenced by its ability to steadily increase the number of its employees and, necessarily, the salaries and wages it pays. The price of HDPE has not significantly decreased but has increased during the POI. The 2020 price cannot be relied upon as proof of injury as it is based on incomplete data and influenced by the economic effects of an outlier event, the COVID-19 pandemic. In sum, the data does not show any significant impairment to the domestic industry during the period of investigation as there is no significant and consistent decline in domestic sales, capacity utilization, cost to produce, employment, and price. If there is any decline in JGSPC's performance based on these indicators it cannot be concluded that such decline is consistent and significant throughout the duration of the POI. At most, what can be concluded is that there are fluctuating movements in a majority of the factors used to determine the existence of serious injury to the domestic industry. These equivocal movements, in any case, cannot be considered as substantial evidence of serious injury.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	The evidence on record does not show any serious injury being suffered by the domestic industry. Based on the data presented in the DTI Preliminary Report, there is no clear showing that domestic sales [of HDPE] are declining. In fact, domestic sales increased in volume and value from 2015 to 2017and it appears that there was a decrease from 2018 to 2020. Capacity utilization remained high during the period of investigation. Except for 2019, capacity utilization has not decreased below 2015 levels. In fact, capacity utilization even increased from 2015 to 2017. JGSPC's capacity decreased based on data for the first three quarters of 2020 which casts doubt on its ability to meet domestic demand.

Party	Position
	Movement of cost to produce is inconsistent. DCPL notes that the data for the cost to produce show signs of significant decrease in 2020. As seen above, the cost to produce HDPE and LLDPE decreased in 2016 and 2019 while it increased in 2017 and 2018. Notably, the cost to produce has decreased significantly in 2020. Given this inconsistent movement, it cannot be concluded that JGSPC suffered any serious injury during the period of investigation. Employment in JGSPC increased consistently during the period of investigation. Data on direct labor personnel for the entire operation of HDPE undermines JGSPC claims that it has suffered serious injury as evidenced by its ability to steadily increase the number of its employees and, necessarily, the salaries and wages it pays. The price of HDPE has not significantly decreased but has increased during the POI. The 2020 price cannot be relied upon as proof of injury as it is based on incomplete data and influenced by the economic effects of an outlier event, the COVID-19 pandemic. In sum, the data does not show any significant impairment to the domestic industry during the period of investigation as there is no significant and consistent decline in domestic sales, capacity utilization, cost to produce, employment, and price. If there is any decline in JGSPC's performance based on these indicators it cannot be concluded that such decline is consistent and significant throughout the duration of the POI. At most, what can be concluded is that there are fluctuating movements in a majority of the factors used to determine the existence of serious injury to the domestic industry. These equivocal movements, in any case, cannot be considered as substantial evidence of serious injury.
General Authority on Foreign Trade (GAFT) of Saudi Arabia	Examining the key indicators provided for the years 2015 to 2019 the following results are gained: • Production substantially increased from 2015 to 2018 and only declined in 2019 • Volume of domestic sales have increased throughout 2015 to 2019 • Value of domestic sales increased from 2015 to 2019 • Employment showed an increase between 2015 to 2019 • Ex-work price for domestic industry increased from 2015 to 2019. These positive trends in key factors of the domestic industry's performance demonstrate the absence of a significant overall impairment in the position of the domestic industry as required by Article 4.1 of the Agreement of Safeguards.
GC Marketing Solutions Company Limited (GCM)	The increase in imports was prompted by the Petitioner's inability to provide sufficient supply to the domestic market due to production shutdowns. If the domestic demand for a particular product cannot be addressed by the domestic producer, there could be no serious injury to the domestic industry caused by increased imports. There was an increase in the consumption by the Philippine market during the period of investigation. Total Philippine market grew during

Party	Position
	the POI while domestic industry production declined. As the increase in importation is due to growing demand in the Philippine market which cannot be supplied by the domestic industry, no serious injury or threat of serious injury to the domestic producers can be attributed to increased imports. Serious injury to the domestic market cannot be directly attributed to the increased imports of HDPE as there could be a host of other factors involved in determining the trends in domestic sales that would explain the possible losses suffered by the petrochemical industry. As stated in the DTI report on preliminary findings, the other respondents commented that JGSPC had frequent unscheduled shutdowns and were unable to deliver orders to some of its customers. An increase in the importations due to reliability issues of the sole domestic producer of HDPE did not cause serious injury to the domestic industry.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Contrary to the claim of serious injury, the domestic industry was quite healthy during the POI. Nevertheless, declines in certain indicators during the latter portion of the POI in 2019 and 2020 could be attributed to the effects of the COVID-19 pandemic, which severely impacted the petrochemical industry due to lockdowns which resulted in shutdown of customers' plants and resulted in a sudden dive in prices and demand both locally and globally. Imposition of safeguard measures is not warranted since such measures are available only to the extent necessary to prevent or remedy *serious injury* to the domestic industry which is not present in this case.
Siam Polyethylene Company, Ltd. (SPC)	The evidence on record does not show any serious injury being suffered by the domestic industry. Based on the data presented in the DTI Preliminary Report, there is no clear showing that domestic sales [of HDPE] are declining. In fact, domestic sales increased in volume and value from 2015 to 2017and it appears that there was a decrease from 2018 to 2020. Capacity utilization remained high during the period of investigation. Except for 2019, capacity utilization has not decreased below 2015 levels. In fact, capacity utilization even increased from 2015 to 2017. JGSPC's capacity decreased based on data for the first three quarters of 2020 which casts doubt on its ability to meet domestic demand. Movement of cost to produce is inconsistent. DCPL notes that the data for the cost to produce show signs of significant decrease in 2020. As seen above, the cost to produce HDPE and LLDPE decreased in 2016 and 2019 while it increased in 2017 and 2018. Notably, the cost to produce has decreased significantly in 2020. Given this inconsistent movement, it cannot be concluded that JGSPC suffered any serious injury during the period of investigation.

Party	Position
	Employment in JGSPC increased consistently during the period of investigation. Data on direct labor personnel for the entire operation of HDPE undermines JGSPC claims that it has suffered serious injury as evidenced by its ability to steadily increase the number of its employees and, necessarily, the salaries and wages it pays. The price of HDPE has not significantly decreased but has increased during the POI. The 2020 price cannot be relied upon as proof of injury as it is based on incomplete data and influenced by the economic effects of an outlier event, the COVID-19 pandemic. In sum, the data does not show any significant impairment to the domestic industry during the period of investigation as there is no significant and consistent decline in domestic sales, capacity utilization, cost to produce, employment, and price. If there is any decline in JGSPC's performance based on these indicators it cannot be concluded that such decline is consistent and significant throughout the duration of the POI. At most, what can be concluded is that there are fluctuating movements in a majority of the factors used to determine the existence of serious injury to the domestic industry. These equivocal movements, in any case, cannot be considered as substantial evidence of serious injury.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Contrary to the claim of serious injury the domestic industry was quite healthy during the POI. Nevertheless, declines in certain indicators during the latter portion of the POI in 2019 and 2020 could be attributed to the effects of the COVID-19 pandemic, which severely impacted the petrochemical industry due to lockdowns which resulted in shutdown of customers' plants and resulted in a sudden dive in prices and demand both locally and globally. Imposition of safeguard measures is not warranted since such measures are available only to the extent necessary to prevent or remedy *serious injury* to the domestic industry which is not present in this case.
Siam Synthetic Latex Company Limited	There is no adequate evidence proving the existence of serious injury to the domestic industry as a result of the alleged increased imports of HDPE. The relevant data from DTI show that there is no relevant showing that domestic sales are declining. In fact, domestic sales even actually increased in both volume and value from 2015 to 2017. Capacity utilization remained high during the period of investigation of the DTI. Capacity utilization even increased from 2015 to 2017. With the exception of 2019, capacity utilization has not decreased below 2015 levels The movement in the cost to produce is inconsistent. Data from the DTI show that the cost to produce of HDPE decreased in 2016 and 2019 while it increased in 2017 and 2018. Notably, the cost to produce has decreased significantly in 2020. Given this inconsistent movement, it

Party	Position
	cannot be concluded that JGSPC suffered any serious injury during the period of investigation. Employment in JGSPC for HDPE actually increased consistently during the period of investigation. A corporation which is able to increase the number of its employees and necessarily, the salaries and wages it pays, can hardly be characterized as suffering from serious injury requiring intervention of the government. The price of HDPE has not significantly decreased but has in facts increased during the period of investigation of the DTI. For the 2020 price, it cannot be relied upon as proof of injury, as it is: a) based on incomplete date and ; b) influenced by the economic effects of an outlier event, the COVID-19 pandemic.
On Causal Link	
The Department of Foreign Trade of Thailand (DFT)	The DFT does not consider that the non-attribution requirement under Article 4.2 (b) of the Agreement on Safeguards has been established. The DFT submits that a causal link analysis and non-attribution analysis be provided in full.
Dow Chemicals Pacific Limited (DCPL)	The petitioner in a safeguard measures investigation has the burden of proof to show that the increase in imports is the substantial cause of serious injury. In the absence of such evidence, there is no basis to impose the safeguard measure. The lack of basis to impose the measure is underscored when the submissions on record show that the purported injury arose primarily from other causes. Increase in imports is sufficiently explained in the submission by the Philippine Plastics Industry Association (PPIA), to wit: > JGSPC's failure to meet local demand requirements in 2018 prompted major industry players to secure their raw material requirements from dependable sources, such as imports. Major downstream players had no choice but to diver and commit volumes that used to be allocated to domestic resin producers to foreign suppliers to steady supply. PPIA's assertions are supported by the submissions of other importers. These entities stated in their submissions that JGSPC, the sole HDPE manufacturer in the country, simply cannot met the demand for HDPE in the Philippines. The inadequacy of supply compelled consumers to source the gap from imports. There are strong indications that the increase in imports was a result of JGSPC's inability to meet the demand which forced consumers to turn to importers for their needs. As such the government will put the domestic industry at risk if safeguard measures will be imposed on imported products where the influx of such products is a necessity because the domestic industry has no capacity ot meet the local demand. The ultimate effect of the imposition of safeguard measures in this case will be to burden the consumers and the public merely to protect a monopolistic

Party	Position
	corporation which is unable to improve its performance to meet the demand of the local market. JGSPC's submissions as well as the express statements of other parties to the investigation which have transacted with JGSPC in the past show that the cause of any injury allegedly suffered by JGSPC is its own inability to meet consumer demand. JGSPC has not shown that any increase in imports is a cause which is important but not less than any other cause. JGSPC itself admits that its petrochemical plant undergoes periodic shutdowns. These instances when JGSPC encountered shutdowns likely contributed to its inability to meet local demand, forcing buyers to source HDPE from abroad. JGSPC further admitted in its application that it is in the process of constructing a new polyethylene plant which is asserted was pursued in an effort to match projected local market demand in the short to medium term. This only confirms that JGSPC is currently unable to meet such demand and would have to increase its manufacturing capacity to be able to do so. Other parties to the investigation have also categorically asserted that JGSPC has been unable to meet their demands because of delays in delivery, inability to meet the quality required, and even outright failure to deliver the products. It is worth noting that other parties identify 2018 and 2019 as the years when JGSPC failed to deliver on time and suffered several plant shutdowns. It is also worth noting that 2018 and 2019 are the same years which saw an increase in imports and a decrease in some of the company's economic indicators. Considering JGSPC is the sole manufacturer of HDPE in the Philippines, it is unlikely that JGSPC would be able to meet the ever-increasing demand for HDPE. The Philippine market for HDPE steadily grew during the period of investigation. JGSPC's failure to meet local demand is a product of its own contriving. JGSPC itself admitted that there were period when JG Summit Olefins Corporation (JGSOC), a subsidiary of JG Summit Holdings, Inc. would export ethylene due to market factors, when PE prices dived sharply and it made better economics for better returns than to sell to PE manufacturers. JGSPC has failed to establish with substantial evidence that a causal link exists between the increased imports of HDPE and the alleged serious injury suffered by the domestic industry.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	The petitioner in a safeguard measures investigation has the burden of proof to show that the increase in imports is the substantial cause of serious injury. In the absence of such evidence, there is no basis to impose the safeguard measure. The lack of basis to impose the

Party	Position
	measure is underscored when the submissions on record show that the purported injury arose primarily from other causes. Increase in imports is sufficiently explained in the submission by the Philippine Plastics Industry Association (PPIA), to wit: > JGSPC's failure to meet local demand requirements in 2018 prompted major industry players to secure their raw material requirements from dependable sources, such as imports. Major downstream players had no choice but to diver and commit volumes that used to be allocated to domestic resin producers to foreign suppliers to steady supply. PPIA's assertions are supported by the submissions of other importers. These entities stated in their submissions that JGSPC, the sole HDPE manufacturer in the country, simply cannot met the demand for HDPE in the Philippines. The inadequacy of supply compelled consumers to source the gap from imports. There are strong indications that the increase in imports was a result of JGSPC's inability to meet the demand which forced consumers to turn to importers for their needs. As such the government will put the domestic industry at risk if safeguard measures will be imposed on imported products where the influx of such products is a necessity because the domestic industry has no capacity ot meet the local demand. The ultimate effect of the imposition of safeguard measures in this case will be to burden the consumers and the public merely to protect a monopolistic corporation which is unable to improve its performance to meet the demand of the local market. JGSPC's submissions as well as the express statements of other parties to the investigation which have transacted with JGSPC in the past show that the cause of any injury allegedly suffered by JGSPC is its own inability to meet consumer demand. JGSPC has not shown that any increase in imports is a cause which is important but not less than any other cause. JGSPC itself admits that its petrochemical plant undergoes periodic shutdowns. These instances when JGSPC encountered shutdowns likely contributed to its inability to meet local demand, forcing buyers to source HDPE from abroad. JGSPC further admitted in its application that it is in the process of constructing a new polyethylene plant which is asserted was pursued in an effort to match projected local market demand in the short to medium term. This only confirms that JGSPC is currently unable to meet such demand and would have to increase its manufacturing capacity to be able to do so. Other parties to the investigation have also categorically asserted that JGSPC has been unable to meet their demands because of delays in delivery, inability to meet the quality required, and even outright failure to deliver the products.

Party	Position
	It is worth noting that other parties identify 2018 and 2019 as the years when JGSPC failed to deliver on time and suffered several plant shutdowns. It is also worth noting that 2018 and 2019 are the same years which saw an increase in imports and a decrease in some of the company's economic indicators. Considering JGSPC is the sole manufacturer of HDPE in the Philippines, it is unlikely that JGSPC would be able to meet the ever-increasing demand for HDPE. The Philippine market for HDPE steadily grew during the period of investigation. JGSPC's failure to meet local demand is a product of its own contriving. JGSPC itself admitted that there were period when JG Summit Olefins Corporation (JGSOC), a subsidiary of JG Summit Holdings, Inc. would export ethylene due to market factors, when PE prices dived sharply and it made better economics for better returns than to sell to PE manufacturers. JGSPC has failed to establish with substantial evidence that a causal link exists between the increased imports of HDPE and the alleged serious injury suffered by the domestic industry.
General Authority on Foreign Trade (GAFT) of Saudi Arabia	It has not been demonstrated that the cause of increased imports results from the Philippines' obligations under the WTO. Most quantities of imports of HDPE during the period of investigation (POI) come from countries that are in a Free Trade Agreement (FTA) with the Philippines. Their imports are subject to preferential tariff rates with the majority of imported HDPE enjoying 0% tariffs under ATIGA. Although there was a significant increase in import volumes between 2015 and 2016 most of the economic factors were improving simultaneously including: domestic sales, production, capacity utilization, inventory, and gross profit. These economic factors were in decline between 2018 and 2019 when imports increased by 27%. Thus, there is no evidence of correlation between the economic indicators and alleged increase in imports. Another indicator which confirms that the domestic industry was not affected by imports but rather other factors is the its export performance from 2015 to 2019, which shows a downward trend which points to lack of competitiveness.
GC Marketing Solutions Company Limited (GCM)	Increase in imports was due to the petitioner's inability to supply the domestic market. Thus, there is no causal link between the increased imports of HDPE and the alleged serious injury or threat thereof to the domestic industry.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	The Petitioner has not established a causal link between the alleged serious injury and alleged increase in imports. The increased imports can be said to have been caused by Petitioner's own actions: • Petitioner lacks capacity to meet market demand:

Party	Position
	○ As demand for plastics grows on a year-on-year basis where there is no increase in domestic capacity, this will necessarily translate into an increase in volume of imported goods. ○ The current capacity of Petitioner at the combined production capacity for PE of [redacted] MT is not sufficient to fulfill the demand of the local downstream industry. Imports are needed to make up for the shortfall and meet local demand. ○ Petitioner has failed to show that it has the capacity to accept and produced higher quantities of HDPE as the demand for plastics increase. • Petitioner reduced its production volumes of HDPE even on the face of capacity shortfall. Reduction in production resulted in a decrease in Petitioner's domestic sales figures of HDPE in 2018 and 2019. The downstream industry had to turn to more dependable sources for their raw material requirements by importing HDPE in order to continue production. • Petitioner's manufacturing equipment is outdated and has shown to be unreliable. There is frequent stoppage of production due to shutdown, maintenance, and repair of the plant. Reports on shutdowns and extended shutdowns by Petitioner shows reasons for injury completely unrelated to imports.
Siam Polyethylene Company, Ltd. (SPC)	The petitioner in a safeguard measures investigation has the burden of proof to show that the increase in imports is the substantial cause of serious injury. In the absence of such evidence, there is no basis to impose the safeguard measure. The lack of basis to impose the measure is underscored when the submissions on record show that the purported injury arose primarily from other causes. Increase in imports is sufficiently explained in the submission by the Philippine Plastics Industry Association (PPIA), to wit: > JGSPC's failure to meet local demand requirements in 2018 prompted major industry players to secure their raw material requirements from dependable sources, such as imports. Major downstream players had no choice but to diver and commit volumes that used to be allocated to domestic resin producers to foreign suppliers to steady supply. PPIA's assertions are supported by the submissions of other importers. These entities stated in their submissions that JGSPC, the sole HDPE manufacturer in the country, simply cannot met the demand for HDPE in the Philippines. The inadequacy of supply compelled consumers to source the gap from imports. There are strong indications that the increase in imports was a result of JGSPC's inability to meet the demand which forced consumers to turn to importers for their needs. As such the government will put the domestic industry at risk if safeguard measures will be imposed on imported products where the influx of such products is a necessity because the domestic industry has no capacity ot meet the local demand. The ultimate effect of the imposition of safeguard measures in this case will be to burden the consumers and the public merely to protect a monopolistic

Party	Position
	corporation which is unable to improve its performance to meet the demand of the local market. JGSPC's submissions as well as the express statements of other parties to the investigation which have transacted with JGSPC in the past show that the cause of any injury allegedly suffered by JGSPC is its own inability to meet consumer demand. JGSPC has not shown that any increase in imports is a cause which is important but not less than any other cause. JGSPC itself admits that its petrochemical plant undergoes periodic shutdowns. These instances when JGSPC encountered shutdowns likely contributed to its inability to meet local demand, forcing buyers to source HDPE from abroad. JGSPC further admitted in its application that it is in the process of constructing a new polyethylene plant which is asserted was pursued in an effort to match projected local market demand in the short to medium term. This only confirms that JGSPC is currently unable to meet such demand and would have to increase its manufacturing capacity to be able to do so. Other parties to the investigation have also categorically asserted that JGSPC has been unable to meet their demands because of delays in delivery, inability to meet the quality required, and even outright failure to deliver the products. It is worth noting that other parties identify 2018 and 2019 as the years when JGSPC failed to deliver on time and suffered several plant shutdowns. It is also worth noting that 2018 and 2019 are the same years which saw an increase in imports and a decrease in some of the company's economic indicators. Considering JGSPC is the sole manufacturer of HDPE in the Philippines, it is unlikely that JGSPC would be able to meet the ever-increasing demand for HDPE. The Philippine market for HDPE steadily grew during the period of investigation. JGSPC's failure to meet local demand is a product of its own contriving. JGSPC itself admitted that there were period when JG Summit Olefins Corporation (JGSOC), a subsidiary of JG Summit Holdings, Inc. would export ethylene due to market factors, when PE prices dived sharply and it made better economics for better returns than to sell to PE manufacturers. JGSPC has failed to establish with substantial evidence that a causal link exists between the increased imports of HDPE and the alleged serious injury suffered by the domestic industry.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Petitioner has not established a causal link between the alleged serious injury and alleged increase in imports. The increased imports can be said to have been caused by Petitioner's own actions:

Party	Position

	• Petitioner lacks capacity to meet market demand:
	  ○ As demand for plastics grows on a year-on-year basis where there is no increase in domestic capacity, this will necessarily translate into an increase in volume of imported goods.
	  ○ The current capacity of Petitioner at the combined production capacity for PE of [redacted] MT is not sufficient to fulfill the demand of the local downstream industry. Imports are needed to make up for the shortfall and meet local demand.
	  ○ Petitioner has failed to show that it has the capacity to accept and produced higher quantities of HDPE as the demand for plastics increase.
	• Petitioner reduced its production volumes of HDPE even on the face of capacity shortfall. Reduction in production resulted in a decrease in Petitioner's domestic sales figures of HDPE in 2018 and 2019. The downstream industry had to turn to more dependable sources for their raw material requirements by importing HDPE in order to continue production.
	Petitioner's manufacturing equipment is outdated and has shown to be unreliable. There is frequent stoppage of production due to shutdown, maintenance, and repair of the plant. Reports on shutdowns and extended shutdowns by Petitioner shows reasons for injury completely unrelated to imports.

Siam Synthetic Latex Company Limited	Even assuming that there is serious injury to the domestic industry (there is none), still, there is no casual link between the alleged increase in imports and any alleged injury. The date presented by the DTI as well as the submissions of the parties show no casual link between the increased imports of HDPE and the serious injury allegedly suffered by the domestic industry. JGSPC's submissions as well as the express statements of other parties to the investigation which have transacted with JGSPC in the past show that the cause of any injury allegedly suffered by JGSPC is not any increase in imports but JGSPC's own inability to meet consumer demand. In addition, to reiterate, PPIA asserts that in 2018, JGSPC's failure to meet local demand requirements led major industry players to secure their raw materials from imports. SSLC submits that it is likely that a decline in JGSPC's performance in meeting consumer demand explains the increase in imports and a decrease in its domestic sales and capacity utilization. The insufficient supply caused by JGSPC's inefficiencies left local consumers with no choice but to purchase from importers. Considering that JGSPC is the sole manufacturer of HDPE in the Philippines, it is unlikely that JGSPC would be able to meet the ever-increasing demand for HDPE.

Party	Position
	The alleged serious injury to the domestic industry should be attributed to JGSPC's own supply and output problems, which prompted local consumers to turn to imported HDPE.
On Unforeseen Development	
The Department of Foreign Trade of Thailand (DFT)	The DFT does not consider the cited reasons under the report: • Cost advantage of the US and Middle East Petrochemical Plants; • Rising export of US products to Asian markets; and • Decreasing price of HDPE in Russia To be meet the requirements of unforeseen development under the Agreement on Safeguards.
Dow Chemicals Pacific Limited (DCPL)	It is not sufficiently explained how the purported events mentioned in constitute *unforeseen developments* as contemplated under GATT Article XIX or how these events caused the increase in imports. The increase in imports of the subject products was caused by JGSPC's production inefficiencies and inability to meet local demand. The unforeseen developments cited in DTI's investigation are not supported by substantial evidence.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	It is not sufficiently explained how the purported events mentioned in constitute *unforeseen developments* as contemplated under GATT Article XIX or how these events caused the increase in imports. The increase in imports of the subject products was caused by JGSPC's production inefficiencies and inability to meet local demand. The unforeseen developments cited in DTI's investigation are not supported by substantial evidence.
General Authority on Foreign Trade (GAFT) of Saudi Arabia	It is not sufficiently explained how the purported events mentioned in constitute *unforeseen developments* as contemplated under GATT Article XIX or how these events caused the increase in imports.
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Petitioner has not demonstrated that the alleged import surge is due to unforeseen development as required under GATT Article XIX.1.a
Siam Polyethylene Company, Ltd.	It is not sufficiently explained how the purported events mentioned in constitute *unforeseen developments* as contemplated under GATT Article XIX or how these events caused the increase in imports. The increase in imports of the subject products was caused by JGSPC's production inefficiencies and inability to meet local demand. The unforeseen developments cited in DTI's investigation are not supported by substantial evidence.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	The alleged increase in imports of HDPE could not have been caused by unforeseen developments. Petitioner has not demonstrated that the alleged import surge is due to unforeseen development as required under GATT Article XIX.1.
Siam Synthetic Latex Company Limited	It is not sufficiently explained how the purported events mentioned in constitute *unforeseen developments* as contemplated under GATT Article XIX or how these events caused the increase in imports. The increase in imports of the subject products was caused by JGSPC's production inefficiencies and inability to meet local demand. The

Party	Position
	unforeseen developments cited in DTI's investigation are not supported by substantial evidence.
On Public Interest	
Dow Chemicals Pacific Limited (DCPL)	Imposition of safeguard measures will only benefit JGSPC and will harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Second, the imposition of safeguard measures on W&C Compounds will adversely impact the local wire and cable manufacturers. Cable imports to the Philippines attract zero duty while cable compounds such as the ones supplied by DCPL and imported by local cable makers attract 10% duty for HDPE-based compounds. The existing import tariffs on cable compounds already pose a competitive disadvantage to local cable producers who need to import the cable compounds to produce the cables whereas international cable producers can sell the final cable without any importation tariff. Any further imposition of a duty resulting from safeguard measures will thus only serve to render the domestic industry even more uncompetitive and threaten the growth of the domestic cable industry. This negative impact would come an inopportune time considering that local cable manufacturers' business growth and competencies are becoming increasingly vital to meet the rising cable demand in the power and telecommunications industry driven by economic growth and urbanization.
Dow Chemical Pacific (Singapore) Ltd. (DCPS)	Imposition of safeguard measures will only benefit JGSPC and will harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Second, the imposition of safeguard measures on W&C Compounds will adversely impact the local wire and cable manufacturers. Cable imports to the Philippines attract zero duty while cable compounds such as the ones supplied by DCPL and imported by local cable makers attract 10% duty for HDPE-based compounds. The existing import tariffs on cable compounds already pose a competitive disadvantage to local cable producers who need to import the cable compounds to produce the cables whereas international cable producers can sell the final cable without any importation tariff. Any further imposition of a duty resulting from safeguard measures will thus only serve to render the domestic industry even more uncompetitive and threaten the growth of the domestic cable industry. This negative impact would come an inopportune time considering that local cable manufacturers' business growth and competencies are becoming increasingly vital to meet the rising cable demand in the

Party	Position
	power and telecommunications industry driven by economic growth and urbanization.
Department of Foreign Trade of Thailand (DFT)	The DFT is of the view that the imposition of safeguard measures against importations of HDPE would directly create an adverse effect on other industries and consumers as HDPE is an essential material of plastic products. The imposition of safeguard measures would not be in the public interest and may harm the Philippine economy
Rabigh Refining and Petrochemical Co. (Petro Rabigh)	Imposition of safeguard measures on the importation of HDPE may create an adverse effect on the local industry as well as consumers. HDPE is an essential material of plastic products as the inability of locally produced HDPE to meet the demand of the downstream industry make HDPE imports necessary to satisfy demand. The imposition of safeguard measures will create an adverse effect on the downstream plastic industry. It is the downstream industries which will bear the damage and adversely affect public interest, causing price distortions on locally produced finished products. This may lead the market to rely on imported finished goods.
Siam Polyethylene Company, Ltd. (SPC)	Imposition of safeguard measures will only benefit JGSPC and will harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Second, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. The importation of HDPE enables the domestic downstream industries to cope with shortfalls in domestic supply, and that ability would be significantly impaired by the imposition of safeguard measures. Finally, the imposition of safeguard measures under the circumstances would promote the creation of a monopoly, which is anathema to the state policy that "the State shall regulate or prohibit monopolies when the public interest so requires."It would also be contrary to the explicit mandate under the Safeguard Measure Act that "[a]ll [Safeguard Measure] actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise." To improve the domestic industry, the government, instead of imposing protectionist measures, should encourage competition as this would provide an impetus for the sole local manufacturer to improve its performance and to innovate. Aiding a monopoly to strengthen its position will only harm the industry, the consumers, and the public.
Sumitomo Chemical Asia Pte. Ltd. (Sumitomo)	Imposition of safeguard measures on the importation of HDPE may create an adverse effect on the local industry as well as consumers. HDPE is an essential material of plastic products as the inability of locally produced HDPE to meet the demand of the downstream industry make HDPE imports necessary to satisfy demand. The imposition of safeguard measures will create an adverse effect on the downstream plastic industry. It is the downstream industries which

Party	Position
	will bear the damage and adversely affect public interest, causing price distortions on locally produced finished products. This may lead the market to rely on imported finished goods.
Siam Synthetic Latex Company Limited	Imposition of safeguard measures will only benefit JGSPC and will harm public interest. First, the imposition of safeguard measures would drive up the costs of the domestic downstream industries. JGSPC's inability to fully meet domestic demand necessitates the importation of HDPE. Second, with respect specifically to Polyolefin Elastomer, this additional cost will eventually be passed on to and injure the consumers as there is no locally available alternative for Polyolefin Elastomers. Third, the imposition of safeguard measures would further impair the stability in the supply of HDPE in the Philippines. Fourth, will create an adverse effect on the downstream plastic industry. It is the downstream industries which will bear the damage and adversely affect public interest, causing price distortions on locally produced finished products. This may lead the market to rely on imported finished goods.
On the Period of Investigation	
General Authority on Foreign Trade (GAFT) of Saudi Arabia	The GAFT submits that the updated period of investigation (POI) does not allow for an objective determination of injury as different periods are compared. The DTI has updated the POI to include the first 9 months of 2020. The DTI compared only 9 months of the end period (2020) compared to all 12 months for the previous years (2015 to 2019). The Panel Report on DS518: *India – Iron and Steel Products* rejected the use of an annualized year by adding the estimated data of three months of the last year to complete a 12-month period. GAFT does not consider the 9 months of data of 2020 as a comparable period to the 12 month period used for 2015 to 2019. GAFT will only submit comments on the trends and indicators that represent data within comparable periods in the POI.
On *De Minimis Volumes*	
Embassy of Brazil	Imports from Brazil of HDPE both qualify as a *de minimis* import volume and should not be deemed as a cause of injury to the domestic industry.
Government of Indonesia (GOI)	Citing Article 9.1 of the WTO Agreement on Safeguards the GOI argues for the exclusion of imports from Indonesia from Safeguard Measures. The total import share of HDPE from Indonesia during the Period of Investigation was under 3% *de minimis.* As the Philippines' imports of HDPE from developing countries with less than 3% share of imports accounts for less than 9% there is no legal basis for the Philippines to include Indonesia in its investigation. The GOI is of the view that Indonesia does not cause any injury or threat thereof suffered by the Philippines' domestic industry due to any increase in import of the product under consideration.

Party	Position
Secretary of Economy of Mexico	According to data from the UN COMTRADE Database, exports of Mexican HDPE products to the Philippines from 01 January 2015 to 30 June 2020 account for less than 3% of the total imports of the Philippines. Total imports by all developing countries collectively account for less than 9% of total imports of HDPE during the same period. As Mexico is a developing country member of the WTO and by virtue of Article 9.1 of the Agreement on Safeguards, it is requested that the Philippine Government consider the exclusion of imports of Mexican products from the application of any safeguard measures.
Trade Remedies Authority of Viet Nam (TRAV)	Article 9.1 provides that safeguard measures shall not be applied against products originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed 3% provided that developing country members with less than 3% import share collectively account for not more than 9% of total imports of the product concerned. Imports from other countries, including Viet Nam account for only 4% of imports. Viet Nam accounts for only 0.02% of total trade in HDPE in 2019. Its impact is insignificant to cause or threaten to cause serious injury to the domestic industry of the Philippines. TRAV respectfully requests for the exclusion of Vietnamese producers/exporters from any safeguard measures.
United Arab Emirates (UAE) Ministry of Economy	The UAE Ministry of Economy submits that in accordance with Article 9.1 of the WTO Safeguards Agreement, Safeguard Measures are not to be applied against imports from developing country members in case their share of imports does not exceed 3%, provided that developing country members with less than 3% share collectively account for not more than 9% total imports of the product concerned. The UAE is not a major source of imports of HDPE and accounts for only 1% of imports of HDPE, well below the 3% threshold under Article 9.1 of the Agreement on Safeguards. Likewise, all other sources collectively account for only 4% of total imports. The UAE is recognized as a developing country at the WTO. The Philippines has also recognized the UAE as a developing country for the purposes of safeguard measures in its imposition of definitive safeguard measures on the importation of cement.
Other Issues	
The Department of Foreign Trade of Thailand (DFT)	The DFT argues that as there are no tariff bindings on the products under consideration then the imposition of safeguard measures against the importation of HDPE is inconsistent under Article XIX: 1 of GATT 1994 and as confirmed by the Appellate Body in its decision in *Indonesia – Safeguard on Certain Iron and Steel Products (DS 496)*, which states that in the absence of a suspension, withdrawal, or modification of a GATT obligation or concession, a measure cannot be characterized as a safeguard measure.
Dow Chemical Pacific Limited (DCPL)	During the 07 October 2021 preliminary conference for the HDPE investigation JGSPC, through its counsel, stated that it did not intend to include in its application those products already excluded by DTI in its

Party	Position
	HDPE report. As confirmed by JGSPC, for the products excluded by the DTI the issue is moot. JGSPC's statement during the preliminary conference, being in oral admission made by a party in the course of the proceedings in the same case, should be considered a judicial admission that is binding on JGSPC. In *Alfelor v. Halasan*, the Supreme Court explained that "a party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy." As JGSPC categorically confirmed that the products excluded by the DTI were also excluded from its applications for HDPE, this necessarily means that the local industry is not seeking any safeguard measures protection as against these excluded products. Therefore, the Honorable Commission has no jurisdiction to conduct formal investigations into products for which the local industry does not seek protection and did not even include in its applications. JGSPC's confirmation on this point should not constitute conclusive proof that these excluded products do not cause any serious injury to the local industry. Thus, including them in the formal investigations would be unwarranted. Moreover, JGSPCS's statements in its comments on the issues raised by the parties where it categorically stated that it does not have special wires and cables in its current product slate because this is considered a niche market characterized by special requirements, and the preliminary conferences confirming that it does not intend to seek imposition of safeguard measures on products already excluded by the DTI should determine the Honorable Commission's jurisdiction in these investigations. In adversarial proceeding the jurisdiction of the arbiter should be based on the facts alleged in the complaint (or applications, in this case) because it comprises a concise statement of the ultimate facts constituting the applicant's cause of action. It would be extremely prejudicial to adverse parties if the Honorable can go beyond what is stated in the complaint or applications as this would leave the adverse parties blind as to the limits and parameters of the proceedings. W&C Compounds and all other imported products which are not like and directly competitive products in relation to the locally-produced HDPE and LLDPE be excluded from this investigation.
Dow Chemical Pacific (Singapore) Ltd.	During the 07 October 2021 preliminary conference for the HDPE investigation JGSPC, through its counsel, stated that it did not intend to include in its application those products already excluded by DTI in its HDPE report. As confirmed by JGSPC, for the products excluded by the DTI the issue is moot. JGSPC's statement during the preliminary conference, being in oral admission made by a party in the course of the proceedings in the same case, should be considered a judicial admission that is binding on

Party	Position
	JGSPC. In *Alfelor v. Halasan*, the Supreme Court explained that "a party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy." As JGSPC categorically confirmed that the products excluded by the DTI were also excluded from its applications for HDPE, this necessarily means that the local industry is not seeking any safeguard measures protection as against these excluded products. Therefore, the Honorable Commission has no jurisdiction to conduct formal investigations into products for which the local industry does not seek protection and did not even include in its applications. JGSPC's confirmation on this point should not constitute conclusive proof that these excluded products do not cause any serious injury to the local industry. Thus, including them in the formal investigations would be unwarranted. Moreover, JGSPCS's statements in its comments on the issues raised by the parties where it categorically stated that it does not have special wires and cables in its current product slate because this is considered a niche market characterized by special requirements, and the preliminary conferences confirming that it does not intend to seek imposition of safeguard measures on products already excluded by the DTI should determine the Honorable Commission's jurisdiction in these investigations. In adversarial proceeding the jurisdiction of the arbiter should be based on the facts alleged in the complaint (or applications, in this case) because it comprises a concise statement of the ultimate facts constituting the applicant's cause of action. It would be extremely prejudicial to adverse parties if the Honorable can go beyond what is stated in the complaint or applications as this would leave the adverse parties blind as to the limits and parameters of the proceedings. W&C Compounds and all other imported products which are not like and directly competitive products in relation to the locally-produced HDPE and LLDPE be excluded from this investigation.
General Authority on Foreign Trade (GAFT) of Saudi Arabia	The Philippines currently applies very low tariff duties on HDPE despite these products not being bound under existing tariff concessions. The Philippines has no legal ground to use emergency action to temporarily depart from its WTO commitments when it did not use its rights to apply tariff duties up to the level allowed under its WTO commitments. Under these circumstances the Philippines cannot claim the existence of any unforeseen developments because its WTO obligations do not have any role in the increase of imports of HDPE. The GAFT submits that the Philippines cannot claim that its obligations under the WTO to be the cause of the increase in HDPE imports.
GC Marketing Solutions Company Limited (GCM)	Safeguard measures can be adopted only to the extent necessary to prevent or remedy serious injury and to facilitate adjustments. Thus, it is meant to afford the domestic industry time to make adjustments

Party	Position
	necessary to *increase competitiveness* against imports of like products.Since the domestic producer cannot even provide enough supply to the domestic market, product competitiveness is not the issue and safeguard measures are not warranted.
Siam Polyethylene Company, Ltd. (SPC)	During the 07 October 2021 preliminary conference for the HDPE investigation JGSPC, through its counsel, stated that it did not intend to include in its application those products already excluded by DTI in its HDPE report. As confirmed by JGSPC, for the products excluded by the DTI the issue is moot. JGSPC's statement during the preliminary conference, being in oral admission made by a party in the course of the proceedings in the same case, should be considered a judicial admission that is binding on JGSPC. In *Alfelor v. Halasan*, the Supreme Court explained that "a party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy." As JGSPC categorically confirmed that the products excluded by the DTI were also excluded from its applications for HDPE, this necessarily means that the local industry is not seeking any safeguard measures protection as against these excluded products. Therefore, the Honorable Commission has no jurisdiction to conduct formal investigations into products for which the local industry does not seek protection and did not even include in its applications. JGSPC's confirmation on this point should not constitute conclusive proof that these excluded products do not cause any serious injury to the local industry. Thus, including them in the formal investigations would be unwarranted. Moreover, JGSPCS's statements in its comments on the issues raised by the parties where it categorically stated that it does not have special wires and cables in its current product slate because this is considered a niche market characterized by special requirements, and the preliminary conferences confirming that it does not intend to seek imposition of safeguard measures on products already excluded by the DTI should determine the Honorable Commission's jurisdiction in these investigations. In adversarial proceeding the jurisdiction of the arbiter should be based on the facts alleged in the complaint (or applications, in this case) because it comprises a concise statement of the ultimate facts constituting the applicant's cause of action. It would be extremely prejudicial to adverse parties if the Honorable can go beyond what is stated in the complaint or applications as this would leave the adverse parties blind as to the limits and parameters of the proceedings. HAO Compounds and all other imported products which are not like and directly competitive products in relation to the locally-produced HDPE synthebe excluded from this investigation.

Note:

- Outliers were selected based on their z-scores. The z-score is defined as follows: (Landed Cost-Mean Landed Cost)/(Standard Deviation of the Landed Cost).
- The data set was also divided qualitatively to ensure accurate estimation. Thus, the mean and standard deviations are not calculated for the entire data set all at once but are rather segmented according to: (1) the country of origin to take into consideration the comparative advantages possessed by different exporting countries and (2) importer/consignee to take into consideration the different needs of various domestic firms as some firms require higher quality products for their domestic production which are higher-priced than regular products.
- To reduce the bias of the estimator, obvious outliers were removed – these are defined as those import entries which were computed to be greater than PhP 1,000.00/kg. Finally, in order to minimize deletion, a z-score of 3.5 was used as the cutoff. This ensures that 99.7% of all normally distributed values are captured in the dataset.
- Imports of JGSPC were excluded.
- Source of basic data- BOC-EIEDs.

2015			
AHTN 2017 Code	**Volume of Imports (MT)**		
	Subtotal	**Outliers**	**Total**
39011012	104.00	0.00	104.00
39011019	78.80	0.00	78.80
39011092	288.86	0.00	288.86
39011099	4,945.23	0.00	4945.23
39012000	60,845.40	1.3928	60846.79
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	826.55	0.00	826.55
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	8,798.89	0.00	8798.89
Grand Total	**75,887.72**	**1.3928**	**75889.12**

2016			
AHTN 2017 Code	Volume of Imports (MT)		
	Subtotal	Outliers	Total
39011012	0.00	0.00	0.00
39011019	0.00	0.00	0.00
39011092	49.50	0.00	49.50
39011099	2,904.49	0.00	2,904.49
39012000	62,994.39	0.0005	62,994.39
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	200.39	0.00	200.39
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**66,148.78**	**0.00050**	**66,148.78**

2017			
AHTN 2017 Code	Volume of Imports (MT)		
	Subtotal	Outliers	Total
39011012	1,302.48	0.00	1,302.48
39011019	470.83	0.00	470.83
39011092	17.50	0.00	17.50
39011099	2,426.91	0.00	2,426.91
39012000	81,257.95	3.4581	81,261.41
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	74.61	0.00	74.61
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**85,550.28**	**3.4581**	**85,553.74**

2018			
AHTN 2017 Code	Volume of Imports (MT)		
	Subtotal	Outliers	Total
39011012	978.20	0.00	978.20
39011019	559.60	0.00	559.60
39011092	167.71	0.00	167.71
39011099	1,945.95	0.00	1,945.95
39012000	85,152.46	4.6831	85,157.14
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	1,797.97	0.00	1,797.97
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**90,601.87**	**4.68**	**90,606.56**

2019			
AHTN 2017 Code	Volume of Imports (MT)		
	Subtotal	Outliers	Total
39011012	0.03	0.00	0.03
39011019	771.00	0.00	771.00
39011092	273.00	0.00	273.00
39011099	569.59	0.00	569.59
39012000	110,750.98	0.2202	110,751.20
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	3,787.02	0.00	3,787.02
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**116,151.62**	**0.22**	**116,151.84**

2020			
AHTN 2017 Code	**Volume of Imports (MT)**		
	Subtotal	**Outliers**	**Total**
39011012	0.00	0.00	0.00
39011019	350.63	0.00	350.63
39011092	12.00	0.00	12.00
39011099	935.06	0.00	935.06
39012000	106,307.04	24.7238	106,331.76
39014000	987.03	0.00	987.03
39019040	0.00	0.00	0.00
39019090	1,612.77	0.00	1,612.77
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**110,204.52**	**24.72**	**110,229.25**

January to June 2021			
AHTN 2017 Code	**Volume of Imports (MT)**		
	Subtotal	**Outliers**	**Total**
39011012	0.03	0.00	0.03
39011019	93.50	0.00	93.50
39011092	0.00	0.00	0.00
39011099	223.54	0.00	223.54
39012000	60,995.21	0.1106	60,995.32
39014000	0.00	0.00	0.00
39019040	0.00	0.00	0.00
39019090	98.07	0.00	98.07
Other Codes (39011030, 39011090, 39019010, 39019020, 39012029, 39012090)	0.00	0.00	0.00
Grand Total	**61,410.34**	**0.11**	**61,410.45**

ANNEX M

Developing Countries With *De Minimis* Exports of HDPE to the Philippines During The Period of Investigation (2015-JUNE 2021)

Country Name	Total Imports by the Philippines (In MT)	Share
Indonesia	13,668.74	2.24
United Arab Emirates	8,259.50	1.35
People's Republic of China	5,180.55	0.85
Qatar	4,746.50	0.78
Hong Kong, SAR	1,114.44	0.18
Viet Nam	712.62	0.12
Kuwait	645.62	0.11
Brazil	152.66	0.02
Egypt	144.00	0.02
Iran	99.13	0.02
Türkiye	85.69	0.01
Myanmar	25.00	nil
Oman	24.75	nil
India	5.66	nil
Total Imports	**34,864.86**	**5.70**
Top 5 Country Sources: Thailand, Malaysia, Singapore, Saudi Arabia, Taiwan	551,777.33	90.26
Other Country Sources - Developed Countries: USA, Japan, Republic of Korea, Russia, Finland, The Netherlands, Belgium, Germany, UK, Australia, Austria, France, and Canada	24,653.79	4.03
Total Imports	**611,295.97**	**100.00**

Sources:

1. *List of developing countries – United Nations Development Programme*
2. *Basic trade data – Bureau of Customs*