

1. INTRODUCTION

1.1 The Initial Application of Definitive Safeguard Measure

On 11 September 2003, the Department of Trade and Industry (DTI) Secretary (hereinafter referred to as the “Secretary”) officially endorsed to the Tariff Commission the application of AGC Flat Glass Philippines, Inc. (AGPH) (formerly Asahi Glass Philippines, Inc.) for the Commission’s formal investigation to determine the merits of imposing a definitive safeguard duty on imports of figured glass.

Following the positive findings of the Tariff Commission (hereinafter referred to as the “Commission”), the DTI Secretary issued, on 14 April 2004, the Department Orders imposing definitive safeguard duties for three (3) years or until 13 October 2006 on imports of figured glass.

Table 1. Amount of Definitive Safeguard Duty (₱/MT)

1 st Year*	2 nd Year	3 rd Year
2,655	2,520	2,394

** The first year implementation took effect on 13 October 2003, the date of the issuance of Customs Memorandum (CMO) 24-2003 imposing provisional safeguard duty.*

1.2 Extension of Definitive Safeguard Measure

On 12 May 2006, AGPH filed a petition with DTI for the extension of the imposition of the definitive safeguard measure. On 05 October 2006, the Commission submitted its Formal Investigation Report (SG No. 01-06) and recommendation to the Secretary.

On 06 November 2006, the Secretary issued the Department Orders extending the definitive safeguard measure for another three (3) years (the timeframe needed by the company to fully implement its adjustment plan and be competitive against imports). The amount of definitive safeguard measure for the fourth year of imposition was ₱ 2,274.30/MT.

On 28 November 2007, AGPH informed DTI that they have temporarily suspended the production of regular commodity figured glass for the domestic market and they decided to shift production to Ultra Clear Figured Glass (for solar glass panels) for the export market to take advantage of the increasing demand for solar cells in the international market.

As a result, the Secretary ordered the suspension of the imposition of the definitive safeguard measure on figured glass (DTI Order dated 10 December 2007). The suspension is effective for the duration of the extension period of the safeguard measure, that is, until 08 December 2009, unless AGPH can show that it has resumed normal operations.

1.3 The Petition for Maximum Extension of the Measure

On 02 September 2009, the Commission received an official endorsement from the Secretary on the request of AGPH for the maximum extension of the safeguard measure against the importation of figured glass.

The petitioner alleged that the extension of the safeguard measures on figured glass is necessary to prevent or remedy the serious injury inflicted by imported figured glass on the domestic industry. The extension of the safeguard measure is also necessary in order that the positive adjustments to import competition undertaken by the domestic industry may continue and be completed.

1.4 The Monitoring of the Adjustment Plan

Pursuant to Section 16 of RA 8800, the Commission monitored the developments in the domestic industry, particularly on the progress and specific efforts made for positive adjustment to import competition.

Table 2. Monitoring of the Adjustment Plan

Date of Public Hearing	Monitoring Report	Date of Submission to DTI
09 August 2005	Safeguard Measure Case Nos. 01-2003, 02-2003 and 03-2003	08 December 2005
26 November 2008	Safeguard Measure Case Nos. 01-2006, 02-2006 and 03-2006	30 January 2009

In its reports submitted to DTI, the Commission found that the domestic industry has complied substantially with its commitments as stated in its adjustment plan.

1.5 Period under Review

The period under review covers the last three (3) years from 2006 to 2008 and up to the time of the latest available data.

2. THE SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION

2.1 RA 8800 (The Safeguard Measures Act of 2000)

RA 8800 (*An Act Protecting Local Industries by Providing Safeguard measures to be Undertaken in Response to Increased Imports and Providing Penalties for Violation Thereof*) was signed into law on 19 July 2000 and took effect on 09 August 2000. The Act provides for:

- general safeguard measures to afford relief to domestic industries suffering from serious injury or threat thereof as a result of increased imports; and
- special safeguard measures (i.e. additional duty not exceeding 1/3 of the existing rate of duty) on agricultural products marked ‘SSG’ in Schedule LXXV-Philippines, when the import volume exceeds its trigger level or when the actual CIF import price falls below a trigger price level

Joint Administrative Order No. 03 which is the Implementing Rules and Regulations (IRRs) to RA 8800 took effect on 11 October 2000.

Extension and Re-application of Safeguard Measures

Section 19 of R.A. 8800 provides that:

- “(1) *Subject to the review under Rule 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.*
- (2) *The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry’s adjustment performance and future plan. The Secretary will immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from its receipt of the request. Within seven (7) days from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.”*

Effective Period of any Safeguard Measure

Section 15 (Limitations on Actions) of R.A. 8800 provides that the duration of the period of an action taken under the General Safeguard Provisions 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.

The Formal Investigation

The conduct of formal investigation is governed by Rule 9 of the IRR to RA 8800.

The Commission shall, after due notification, conduct marathon public hearings to give all parties directly affected and such other interested parties as consumers that in the judgment of the Commission are entitled to attend, an opportunity to be heard and to present evidence including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application would be in the public interest.

The Commission shall conclude its formal investigation and submit a report of its findings and conclusions, whether favorable or not, to the Secretary within one hundred twenty (120) calendar days from the 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.¹

Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive general safeguard measure. Thereafter, the Commission shall undertake 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 the request for extension and re-application of safeguard measures;
- conduct of investigation on request 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.

¹ For petitions for extension and re-application of safeguard measure, the Commission is given sixty (60) days from its receipt of the request to submit a report to the Secretary.

Decision

Within seven (7) calendar days from receipt of the final report of the Commission, the 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 (2) 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.²

2.2 The World Trade Organization (WTO) Agreement on Safeguards

Article 2 of the WTO Agreement on Safeguards 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 other such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”*

The Agreement provides further that a safeguard measure 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 and 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 agreement is not reached on such compensation, said exporting countries are given an opportunity to suspend “substantially equivalent” concessions or obligations under GATT 1994 after the measures have been in place three (3) years, or immediately if 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.

² In case of a negative final determination, the definitive safeguard measure on figured glass will expire on 08 December 2009.

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

As mentioned in the original investigation, the circumstances provided in Article XIX of GATT 1994 need not be demonstrated for the reason that figured glass are not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by RA 8800 and the terms and conditions of the Agreement on Safeguards.

2.3 Articles 6 and 8 of the ASEAN Agreement on the Common Effective Preferential Tariff (CEPT) Scheme

Article 6 of the Agreement on the CEPT Scheme for the ASEAN Free Trade Area (AFTA) provides Emergency Measures in cases of increased importation which injures or threatens to injure an industry in the importing Member States. Said provision reads as follows:

“1. If, as a result of the implementation of this Agreement, import of a particular product eligible under the CEPT Scheme is increasing in such a manner as to cause or threaten to cause serious injury to sectors producing like or directly competitive products in the importing Member States, the importing Member States, may, to the extent and for such time as may be necessary to prevent or to remedy such injury, suspend preferences provisionally and without discrimination, subject to Article 6(3) of this Agreement. Such suspension of preferences shall be consistent with GATT.”

Article 8, on the other hand, provides for the consultation requirement.

“1. Member States shall accord adequate opportunity for consultations regarding any representations made by other Member States with respect to any matter affecting the implementation of this Agreement. The Council referred to in Article 7 of this Agreement, may seek guidance from the AEM in respect of any matter for which it has not been possible to find a satisfactory solution during previous consultations.

2. Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullification or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the manner, make representations or proposals to the other Member States concerned,

which shall give due consideration to the representations or proposals made to it.”

2.4 Legal Issues Raised by Oppositors

2.4.1 Nitoo Enterprises

AGPH’s petition is premature, it should be limited to extension of safeguard measure ONLY for float glass. To date, the said Department Orders have not yet been revoked and the suspension of the safeguard duties has not been lifted, hence, it is plain to see that insofar as the imposition of these particular safeguard duty for figured and glass mirror, it cannot be extended considering that it is not being implemented in the first place.

2.4.2 San Francisco Mirror

- i. AGPH has not resumed normal operations in the production of figured glass, as such, it cannot extend the imposition of the safeguard measure that is still suspended and has not been lifted or restored; and
- ii. AGPH has not resumed operations in the production of figured glass, not even a start up, hence, it cannot prove serious injury or damage.

The Commission’s Resolution

Under Section 19, of R.A. No. 8800, it was provided thereat that:

“SECTION 19. Extension and Re-application of Safeguard Measure. — (1) Subject to the review under Section 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.

(2) The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry's adjustment performance and future plan. The Secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from its receipt of the request. Within seven (7) days from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.”

Pursuant to the above provision, the Commission acquired jurisdiction on the Petitions for Maximum Extension of Safeguard Measure (float glass and figured glass only, glass mirror was not included in the petition for maximum extension of definitive safeguard measure) upon their referral by the Secretary of Trade and Industry. Once referred, the petitions are presumed to be sufficient in form and substance, and the provisions of Section 9 of RA 8800 will start to operate.

Anent the issue of the alleged prematurity of the petitions for maximum extension of safeguard measure, the Commission believes and so holds that there is no need for AGPH to resume normal operations before it can file the petitions for maximum extension of the definitive safeguard measure. The DTI Order dated 10 December 2007 is clear on this. Said Order merely suspended, and did not terminate, the definitive safeguard measure imposed on figured glass. Therefore, the definitive safeguard measure is still in place and in effect, although its imposition is suspended.

The issue on serious injury, or the threat thereof, shall be discussed and resolved in the pertinent sections of the Formal Investigation Report.

3. THE COMMISSION'S FORMAL INVESTIGATION

Section 19(2) of RA 8800 provides that:

“The petitioner may appeal to the Secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof and a description of the industry’s adjustment performance and future plan. The Secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from receipt of the request. Within seven (7) days from receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.”

Section 9 of RA 8800 further states that:

“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. Evidences 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.”

3.1 Notifications

In compliance with the public notice requirements of the IRRs of RA 8800, the Commission made the following notifications during the course of its inquiry.

3.1.1 Commencement of Formal Investigation

The formal investigation commenced on 02 September 2009 upon receipt of the DTI Secretary’s endorsement of the petition. The Notice of Formal Investigation was published on 10 September 2009 both in the *Manila Standard Today* and *The Manila Times (Annexes A-1 and A-2)*. The notice indicated the date of the Preliminary Conference and the matters for discussion in the said conference.

Individual notices were sent to all identified interested parties, embassies in the Philippines of figured glass exporting countries, concerned Philippine government agencies and private entities/consumer groups. It was likewise posted in the Commission’s website: www.tariffcommission.gov.ph.

3.1.2 Schedule of Public Hearing/Consultation

The Notice of Public Hearing/Consultation was published both in *The Manila Times and Manila Standard Today* on 10 October 2009 (*Annexes B-1 and B-2*). The notice directed all concerned parties to submit to the Commission within five (5) calendar days before the scheduled consultation a list of issues they want to explore other than the issues of product comparability and volume of imports. Likewise, parties were required to submit to the Commission the affidavits of their witnesses three (3) days prior to the public hearing. All principal parties, counsels, affiants, deponents and other interested parties were required to appear before the Commission on the first day of the public consultation.

Individual notices were sent to all identified interested parties, embassies in the Philippines of figured glass exporting countries, concerned Philippine government agencies and private entities/consumer groups. It was likewise posted in the Commission's website: www.tariffcommission.gov.ph.

3.2 Preliminary Conference

The preliminary conference was held on 16 September 2009. In attendance were representatives from the following: the petitioner (AGP), Comglasco Aguila Glass Corporation (Comglasco AG), San Francisco Mirror, Chain Glass, Roosevelt Aluminum, Nitoo Enterprises, Inc. (Nitoo), Korea Trade Center (KOTRA)/Korean Embassy, Thailand Embassy and Bureau of Import Services (BIS). (*Annex C for list of Attendees*)

On 17 September 2009, the Commission issued an Order containing the following matters taken up and agreed upon by the parties present during the conference:

- i. timetable and/or schedule of activities;
- ii. entry of appearance of all interested parties;
- iii. sufficient notices to all concerned parties;
- iv. accessibility of documents from the public file;
- v. treatment of confidential documents/information;
- vi. submission of position papers and additional data;
- vii. submission of adjustment plans by the domestic industry;
- viii. conduct of ocular inspection and data verification;
- ix. schedule of public hearing/consultation;
- x. submission by Parties on comments to the Staff Report;
- xi. submission by Parties on the list of issues to be explored/clarified at the Public hearing;
- xii. confidentiality of documents; and
- xiii. service of pleading/affidavits

3.3 Staff Report

The Commission issued the Staff Report on 13 October 2009. Copies of the Staff Report were furnished to the parties of interest. Parties were given five (5) working days upon receipt of the Staff report to submit their comments thereon. The factual findings of the Commission on aspects of product comparability are binding to the party who did not submit its comment.

3.4 Public Hearing/Consultation

The marathon hearings were scheduled on 19-23 October 2009. (*Annex D* for the List of Attendees). The public hearing allowed interested parties the opportunity to be heard and to present evidence and witnesses, elaborate on their submissions, and respond and seek clarifications on the presentations and submissions of the other parties.

The public hearing was terminated on 20 October 2009 after AGPH's presentation and cross examination of their witnesses. On the other hand, the oppositors waived their right to present their evidence and witnesses.

During the public hearing, the Commission requested the opposing parties to submit data and allow verification of their records by the Commission's technical staff. However, oppositors were unable to give a categorical answer to the Commission's request.

3.5 Plant Visit/ Data Verification

An ocular inspection of AGPH's plant facilities (located in Brgy. Pinagbuhatan, Pasig City) and the verification of its accounting records were conducted on 3 September 2009 and 23 October 2009, respectively.

It should be noted that in the absence of verifiable data/information, the Commission makes use of the best information available.

4. THE PARTICIPANTS' POSITIONS

4.1 Submissions to the Commission

The Notice of Formal Investigation, published on 10 September 2009, was sent to all known interested parties. Interested parties were given until 28 October 2009 to submit their respective position papers/memoranda/documentary evidences on the petition (*Annex E* for the List of Submissions).

The non-confidential submissions from parties were made publicly available at the Commission for viewing or reproduction.

4.2 The Domestic Industry's Case

Petitioner AGPH, through its counsel, submitted its position paper and its amended position paper to the Commission on 01 and 27 October 2009, respectively. It alleged that the request for the maximum extension of the safeguard measure is necessary based on the following reasons:

- i. prevent and/or remedy the threat of serious injury from imported figured glass to the Philippines;
- ii. be able to complete its adjustment plan;
- iii. terminating the safeguard measure at this time would be premature and would result in AGPH's incurring financial losses and fatally hinder its adjustment efforts to adjust to global competition and make it more difficult to source the necessary capital to invest in its adjustment plan and decrease shareholders' confidence;
- iv. the current landed cost of imported figured glass without the safeguard measure is below AGPH's cost to produce and sell forcing it to adopt import parity pricing to optimize its operational capacity and defend its market; and
- v. the safeguard measure have been effective in giving AGPH the time it requires to make positive adjustments to import competition. Volume of imports drastically went down after the safeguard measure was introduced in 2003. However, as the amount of safeguard measure decreased, volume of imports went up indicating a trend that once the safeguard measure is terminated, imports would surge and cheaper imported figured glass will flood the Philippines at a time when AGPH has not yet completed its adjustment plan.

Adjustment Plan

Rule 4.1(a) of the IRRs of RA 8800 defines adjustment plan as *“an action 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.”*

Rule 11.4 of the same IRRs provides that *“The adjustment plan shall provide a clear quantification of its 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. The goals shall be presented using objectively verifiable indicators that will cover the period for which safeguard measures are sought. Measures covering more than one year shall include specific efforts to be undertaken by the domestic industry for each year of progressive liberalization of the measure. It shall likewise include a time frame to enable the Commission to monitor their attainment over the specified period.”*

AGPH’s Adjustment Plan

Pursuant to the Commission Order dated 16 September 2009, AGPH submitted its updated/modified adjustment plan (*Annex F*) on 16 October 2009 which listed the following priority measures that it will adopt to facilitate positive adjustment to import competition for the next four (4) years:

1. Profitability Improvement /Cost Reduction
 - ✓ continue with group-wide purchase and/or pool-buying scheme of imported raw materials
 - ✓ use of more recycled cullet
 - ✓ simplification of glass stock sizes
 - ✓ implement improvements in technology on furnace cold repair
2. Exploring the development of a local silica sand supplier, as an alternative source of imported silica sand, to minimize the impact of increasing costs. This is listed as part of the Board of Investments (BOI) Investment Priorities Plan (IPP) for 2009, under the specific guidelines of mandatory list on the “Philippine Mining Act of 1995.
3. Study other alternative power efficiency measures other than obtaining a clean line from Meralco.
4. Continue benchmarking with other AGC Affiliates in terms of manpower efficiency, improvement of systems and processes, quality checking, etc.
5. Active support in anti-smuggling activities, not only in Metro Manila, but in the provinces, as well.

6. Continue the streamlining of the organization to enhance operational efficiencies.
7. Instituted improvements in the inspection system of solar glass through the addition of inspectors and inspection equipments. As the market for solar glass becomes volatile and restrictive, AGPH has to keep up with the high quality products required by customers. In addition, an anti/reflective new generation coating facility will be acquired for P33 million to improve the quality of solar glass.

4.3 The Opposing Case

4.3.1 Guardian Industries Corporation, Thailand

Guardian Thailand is a subsidiary of Guardian Industries Corp., a major worldwide manufacturer of float glass and related products based in Auburn Hills, Michigan. In its letters to the Commission dated 28 September and 26 October 2009, the company asserted that there is no basis for the industry's request for continued safeguard protection on figured glass since it has ceased to produce figured glass and is instead producing solar glass.

4.3.2 Comglasco Aguila Glass Corporation

Through its counsel, Comglasco restated its continuing opposition to the extension of the safeguard measure on the following grounds:

- i. it is AGPH's burden to show necessity for the maximum extension of the safeguard measures. The law is clear that it is the beneficiary of the safeguard measure which has the burden of showing that: (a) it has made positive adjustment and (b) will incur serious injury once the safeguard measure is terminated or not extended;
- ii. AGPH should provide and or present concrete evidence before the Commission of its specific efforts undertaken to comply with its positive adjustment plan to be globally competitive; and
- iii. no proof of material injury has been presented by AGPH to concretely justify its assertion of "serious injury." For each year that AGPH enjoys safeguard protection, it is the small local industry that suffers the most. Extending the imposition of the safeguard measure will put importers out of business and further strengthen the monopoly of AGPH in the local market. The consumer will be forced to purchase the more expensive glass.

4.3.3 Nitoo Enterprises, Inc.

The company interposes its vigorous opposition to the petition on the extension of the safeguard measure and argued that:

- i. no serious injury is posed to AGPH by the importation of figured glass;
- ii. AGPH is not entirely a Filipino corporation and is therefore of the same nature and footing as other domestic importers;
- iii. AGPH being appointed as the operator and developer of the Asahi Special Economic Zone, it has enjoyed continuous preferential tariff protection from the government to the detriment of their industry counterparts that do not enjoy the tax incentives afforded to business located inside the special economic zones (SEZs);
- v. imported glass products augment the supply of locally-manufactured glass products which contrary to AGPH's claim, cannot meet all the local demands;
- vi. a viable alternative is for government to implement a system to limit the volume of foreign imported glass products so as not to reach the *de minimis* thresholds and negate the perceived negative impact of the import surge on our domestic glass industry; and
- vii. AGPH was already afforded ample time and opportunity to undertake adjustments against competition.

4.3.4 San Francisco Mirror Corporation

Oppositor San Francisco Mirror, through its counsel, opposes the petition for extension of the imposition of safeguard measures on figured glass on the following grounds:

- i. AGPH has not resumed normal operations in the production of figured glass, as such, it cannot extend the imposition of the safeguard measure that is still suspended and has not been lifted or restored;
- ii. the petition should have been for lifting of the suspension order or restoration of the imposition of safeguard measures against importation of figured glass and present evidence to the DTI that it has resumed normal operations in compliance with the suspension order;
- iii. AGPH has not resumed operations in the production of figured glass, not even a start up, hence, it cannot prove serious injury or damage. There is basically no threat to domestic industry; and
- iv. the increase in importation cannot be used as a basis to prove serious injury or threat. A mere intention to resume operations in the first quarter of 2010 is not sufficient to state that there is a substantial cause of serious injury or threat to the domestic industry.

4.3.5 The Government of Thailand

- i. Through its Philippine Embassy, DFT argued that there is no proper justification for the renewed safeguard protection on figured glass. The suspension of the definitive safeguard measure on figured glass since 10 December 2007 clearly showed that the

- domestic industry has not been inflicted any serious injury from imports thus, it should be excluded from the investigation; and
- ii. Any serious injury to the domestic industry has not been caused by imports and there is no legal justification for the continued safeguard protection for the next four (4) years. DFT strongly agrees with other exporters' comments that the domestic industry was already afforded ample time and opportunity to undertake the adjustment plan, especially when it has access to advance technology, procurement of raw materials and production knowledge from its parent company.

4.4 Other Submissions

4.4.1 Korea Trade Center, Manila

In its letter to the Commission dated 02 October 2009, it manifested interest as an observer.

4.4.2 Philippine Trade and Investment Center – Ha Noi, Viet Nam

In its letter to the Commission dated 07 October 2009, the agency acknowledged the briefing paper as well as the Notice of Formal Investigation received by them.

4.4.3 Ministry of Trade of the Republic of Indonesia

In its letter to the Commission dated 30 October 2009, Indonesia's Ministry of Trade requested an extension within which to submit their comments to the Staff Report. In reply to their letter, the Commission gave them until 06 November 2009. To date, the Commission has not received any comments from them.

5. THE DOMESTIC INDUSTRY AND MARKET

5.1 The Domestic Product

The figured glass manufactured by AGPH is a translucent glass having a repetitive pattern on one surface to permit light to pass through but diffuses it so that the objects are not clearly visible. It is designed for use as light diffuser in interior lighting. Thickness ranges from 3.0 mm to 6.0 mm and with a maximum size of 72 inches by 48 inches.

In the original investigation, it was established that locally produced figured glass are “like product” to imported figured glass.

5.2 Market Participants

At present, the supply of figured glass in the Philippine domestic market is 100% imported.

5.2.1 Domestic Producer

AGPH is the sole manufacturer of figured glass in the Philippines.

To complete its product slate, AGPH imports those figured glass that are not economical to produce locally. A total of about 9,500 MT were imported from 2006 to 2008.

5.2.1.1 Ownership Structure

Republic Glass Corporation (RGC) was established in 1958 and started its clear sheet glass operations in 1960. In 1988, the company entered into a joint venture agreement with Asahi Glass Company Limited (AGC) of Japan. Commercial business operations under the new Republic-Asahi Glass Corporation (RAGC) started in 1990.

The Notes to Financial Statements of RAGC (dated 31 December 2002) indicated that on 15 August 2001, Asahi and Republic Glass Holdings Corporation (RGHC), majority stockholders of RAGC, executed a Deed of Absolute Sale of Shares whereby RGHC sold, and AGC purchased, an aggregate of 641,886 shares of RGHC which constituted 49.8% of the total issued and outstanding capital stock of RAGC. The purchase of said RGHC shares gave AGC 81% ownership interest in RAGC.

On 06 November 2001, the stockholders of RGC approved the amendment of the Articles of Incorporation of RGC that changed its corporate name from Republic-Asahi Glass Corporation to Asahi Glass Philippines, Inc (AGP). On 11 December 2001, the Securities

and Exchange Commission (SEC) approved the application for the change of corporate name.

The Statement of Stockholders' Citizenship and Equity Profile of Asahi as of 20 September 2002 as well as their general information sheet dated 16 May 2003 to SEC showed the following:

- ✓ 81% of AGP common shares totaling 1,258,599,992 are owned by AGC, out of which 98% is paid up.
- ✓ Nominal shares of subscribed and paid-up common shares of stocks of Asahi are individually held by the following: Hironari Kotoda, Yutaka Ohta, Kunio Nakano, Keita Shikii, Yoshitaka Tanaka and Hiromasa Sawai.
- ✓ Filipino ownership of AGP constitutes 19%, representing 300,000,000 subscribed common shares of stocks, of which 30,000,000 is paid up.

AGPH's Notes to Financial Statement of AGP (dated 31 December 2007) indicated that on 17 January 2007, the Board of Directors of AGP approved the change of its name to AGC Flat Glass Philippines Inc (AGPH).

On 28 May 2007, AGPH became a PEZA-registered Ecozone Export Enterprise with Registration Certificate No. 07-33 as amended on June 29, 2007, for the manufacture of architectural flat glass products such as float glass, figured glass and mirrors, and industrial flat glass such as solar glass.

5.2.1.2 Production Capacity

AGPH annual rated production capacity for figured glass is 54,500 MT.

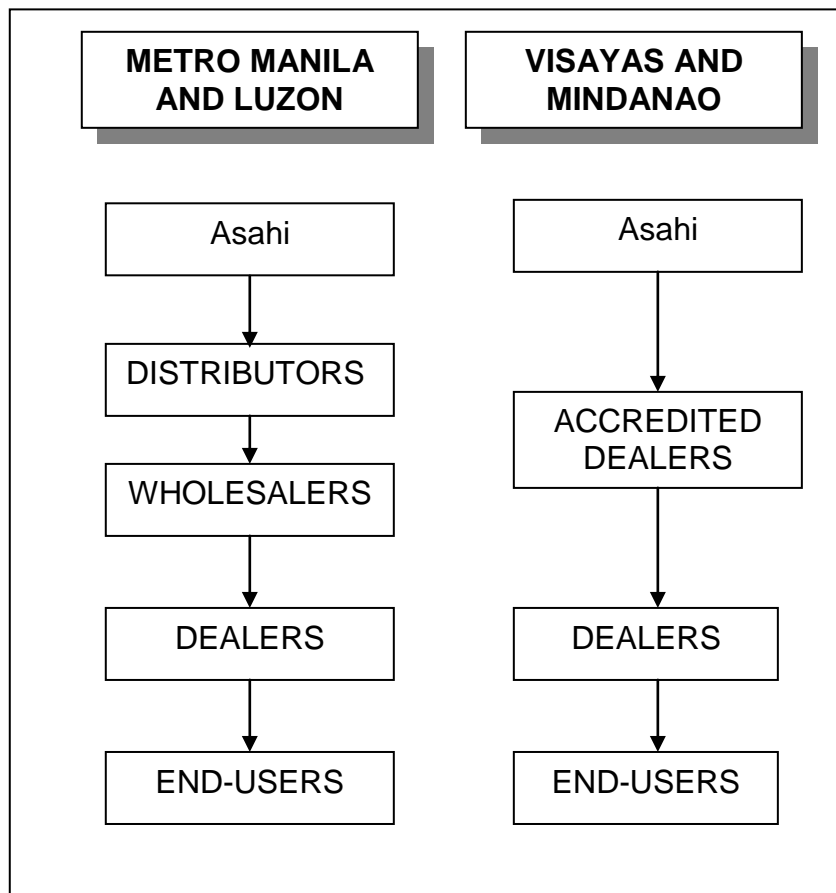
5.2.1.3 Distribution Channels

At present, AGPH has two (2) distribution channels for figured glass. The distribution route for Metro Manila and Luzon goes from the company warehouse to a distributor, then to a wholesaler, dealer, retailer and subsequently to end-users e.g. housing owners, developers, contractors, mirrorers or glaziers (Figure 1).

In the case of Visayas and Mindanao, the distribution chain has been shortened. The distribution and delivery of goods from the company warehouse or branch is direct to a network of franchised/accredited dealers who then transfers the glass to sub-dealers, retailers and end users.

The glass supplied by AGPH is further cut, processed, assembled and installed at the distribution stage and sold according to the specific demand.

Figure 1. Distribution Flow of Figured Glass



Source: AGPH

5.2.2 Importers

Based on Import Entries on file with the Commission, the top importers (on a volume basis) identified in 2006 to 2008 are the following:

Table 3. Top Importers of Figured Glass

Year	Importer	Country (Port of Origin)
2006		
1	Philtech Glass Industries Inc	China, Thailand, Malaysia
2	East Asia Aluminum Supply	China
3	Comglasco Aguila Glass Corp	Thailand
4	Asia Glass Palace	China
5	Chain glass Enterprises Inc	China
6	Joelebhee Int'l Sales	China
7	The UPVC Aluminum	China
8	Glasstemp	South Africa
8	Phil Exporters Confederation Inc	USA
9	Cronylamp Inc	USA

Year	Importer	Country (Port of Origin)
2007		
1	Overseas Enterprises	China
2	Chain Glass Ent. Inc	China
3	Oakridge Kitchen Depot Inc	China, Hong Kong
4	Cebu MMF Glass & Aluminum Supply	China
5	East Asia Aluminum Supply	China
6	Asia Glass Palace Inc.	Malaysia
7	Comglasco Aguila Glass Corp	China, Thailand
8	San Francisco Mirror Corp	China
2008		
1	Chain Glass Inc	China, Japan, Thailand
2	Comglasco Agiula Glass Corp	China, Thailand
3	Nitoo Entrps Inc	China
4	Asia Glass Palace	China, Indonesia, Thailand
5	Century Glass Center Inc	China, Thailand
6	Philtech Glass Ind Corp	South Africa, Thailand, Vietnam
7	Alucoat Metal Industries	China
8	Cebu Glass	China
9	Overseas Enterprises	Indonesia
10	MYT Import Express	Singapore
2009		
1	Chain Glass Ent. Inc.	China, Thailand, South Africa, Vietnam
2	Nitoo Ent. Inc.	Vietnam
3	Phil. Glass Processing Specialist	Indonesia, Malaysia
4	Joint Global Resources Int'l	China
5	Asia Glass Palace Inc.	China, Vietnam
6	San Francisco Mirror Corp.	China
7	Century Glass Center	Vietnam
8	Cebu MMF Glass & Aluminum Supply	China
9	Comglasco Aguila Glass Corp	China
10	Philtech Glass Ind. Corp.	Thailand

Source: Import entries

Note: excludes imports of AGPH

5.2.3 Users

Figured glass is used primarily by residential and commercial construction industries, and the furniture making industry as well as direct purchasers at retail level.

6. PRODUCT SUBJECT OF DEFINITIVE SAFEGUARD DUTY

Section 4(h) of RA 8800 states that “like product” shall mean 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.³

Subject to Definitive Safeguard Duty

Table 4. Tariff Schedule of Figured Glass

2002 HS Code	2004 AHTN Code*	2007 AHTN Code	2009 Tariff Duty (% ad val.)				
			MFN	AFTA**	ACFTA**	AKFTA**	JPEPA**
7003.12.90	7003.12.20]	7003.12.20]	15	5	HSL	SL	12
	7003.12.90]	7003.12.90]	15	5	HSL	SL	12
7003.19.90	7003.19.20]	7003.19.90	15	5	HSL	SL	12
	7003.19.90]						

**Transposition from the Harmonized System (HS) Code to the AHTN Codes following the official adoption in 2004 by the Philippines of the AHTN.*

MFN – Most Favored Nation; AFTA – ASEAN Free Trade Area; ACFTA – ASEAN-China Free Trade Agreement; AKFTA – ASEAN-Korea Free Trade Agreement; JPEPA -Japan Philippines Economic Partnership Agreement

*** Requires a Certificate of Origin (CO) Form to be eligible for preferential tariff.*

SL – Sensitive List. Under AKFTA, applied MFN tariff rates shall be reduced to 20% not later than 01 January 2012., then subsequently reduced to 0-5% not later than 01 January 2016.

HSL – Highly Sensitive List. Under ACFTA, applied MFN tariff rates shall be reduced to not more than 50% not later than 01 January 2015.

The application of definitive safeguard duty covers imported figured glass classified under 2007 ASEAN Harmonized Tariff Nomenclature (AHTN) subheading Nos. 7003.12.20, 7003.12.90, 7003.19.20 and 7003.19.90.

For the years 2006 to 2009, the applied MFN rates of duty on figured glass were maintained at 15% ad valorem.

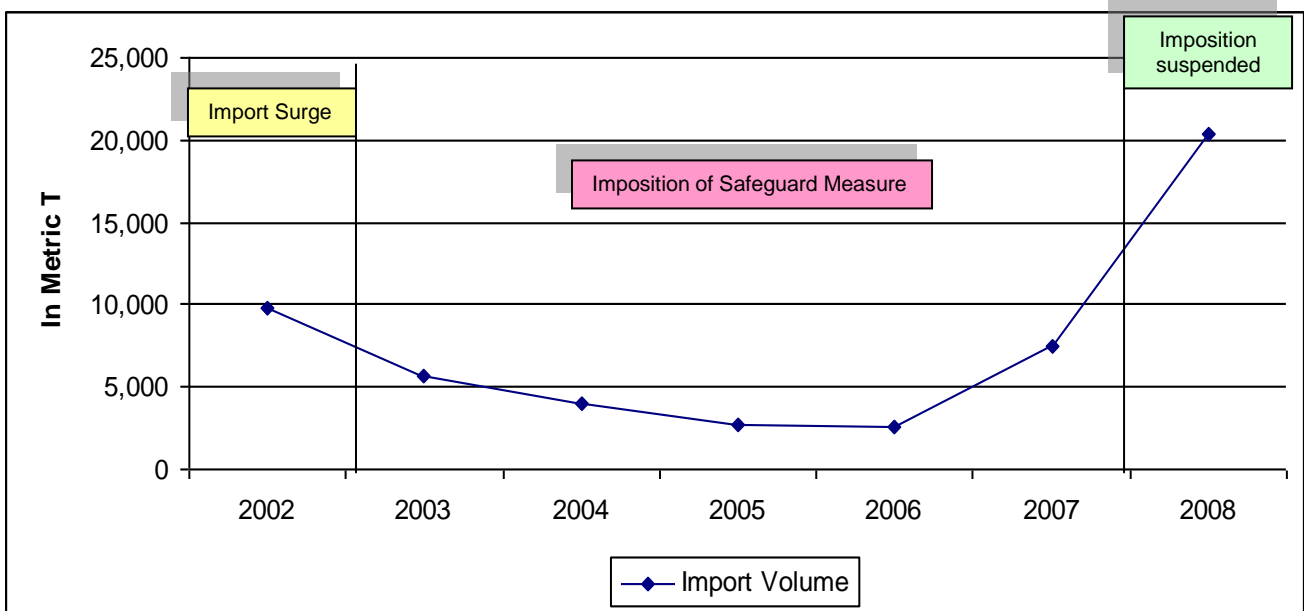
From 2003-2007, imported figured glass were levied with definitive safeguard duties. However, on 10 December 2007, the Secretary ordered the suspension of the safeguard measure as a consequence of AGPH’s letter informing that the company would temporarily suspend domestic production. The suspension is effective for the duration of the extension period of the safeguard measure, or until 08 December 2009, unless AGPH can show that it has resumed normal operations.

³ No comments to the Staff Report on the aspect of product comparability was received by the Commission hence the findings on product comparability as contained in the Staff Report is binding for all Parties.

7. IMPACT OF SAFEGUARD ACTION ON IMPORTS

7.1 Volume of Imports in Absolute Terms

Figure 2. Import Volume



In the original investigation, the Commission concluded that imported figured glass surged in 2002 and were being imported in increased quantities, both in absolute terms and relative to domestic production (Figure 2).⁴

With the imposition of the definitive safeguard measure, imports of figured glass steadily decreased by an average of 27% annually from 2003-2006. In 2007 and 2008, import volumes increased by 192% and 171%, respectively, as a result of the temporary suspension of domestic production on figured glass since July 2006.⁵

7.2 Volume of Imports Relative to Domestic Production

In 2005, the share of imported figured glass to total domestic production was 14.30%. In 2006, this share more than doubled from the 2005 level. In 2007 and 2008, imports of figured glass captured the domestic market since AGPH temporarily ceased domestic production.

⁴ Tariff Commission's Formal Investigation Report "Figured Glass: Safeguard Action Against Imports" (Inv. No. 01-02)

⁵ Tariff Commission's Monitoring Report of the Adjustment Plan of the Domestic Flat Glass Industry (SG Measure Case Nos. 01-2006, 02-2006 and 03-2006)

7.3 Country Suppliers

China was the top supplier of figured glass with an average annual share of 63% of total imports from 2006-2008. Thailand followed in 2007-2008 with shares of 22% and 39%, respectively.

Table 5. Country Suppliers

China	2005 (MT)	% to Total	2006 (MT)	% to Total	2007 (MT)	% to Total	2008 (MT)	% to Total
China	1,340	50	1,629	64	5,021	67	11,785	58
Australia	-	-	-	-	-	-	-	-
Korea*	-	-	-	-	-	-	-	-
S. Africa	20	1	120	5	20	nil	60	nil
Thailand	570	21	-	-	1,664	22	7,855	39
Belgium	-	-	-	-	-	-	-	-
Chinese Taipei	235	9	-	-	-	-	87	nil
Indonesia	430	16	342	13	-	-	58	nil
Malaysia*	-	-	468	18	751	10	-	-
Singapore*	-	-	-	-	25	nil	120	1
USA	65	2	2	nil	-	-	-	-
Other							334	2
Total	2,660	100	2,561	100	7,481	100	20,299	100

Source: Import Entries

* countries excluded from the imposition of safeguard duty

7.4 De Minimis Import Volume

Only those imports from the following developing countries were found to be *de minimis* throughout the review period:

Table 6. Developing Countries with *De Minimis* Import Volume

Developing Country of Export	Share to Total Imports (%)		
	2006	2007	2008
S. Africa		0.27	0.30
Singapore	--	0.33	1.00

The composition of developing countries in the *de minimis* list may change depending on the most recent annual data available.

7.5 Findings

The imposition of the safeguard measure until 2006 proved to be effective in reducing the entry of imported figured glass. With the absence of domestic figured glass production and with the suspension of the imposition of definitive safeguard measure in 2007, the increase in the volume of imports was sudden, sharp and significant in 2007 and 2008.

8. DETERMINATION OF THE EFFECTIVENESS OF SAFEGUARD ACTION ON THE DOMESTIC INDUSTRY

Rule 19.1 of the IRR provides for the requirements in the application for extension, to wit:

“Subject to the review under Rule 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that the domestic industry is making positive adjustment to import competition.”

Likewise, Rule 9.4.c requires the determination of the *“presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product.”*⁶

8.1 Domestic Industry

In the original investigation, AGPH, as the sole manufacturer of figured glass, represented the domestic industry.

8.2 Impact of the Safeguard Duty

8.2.1 Market Share

Figure 3. Market Share

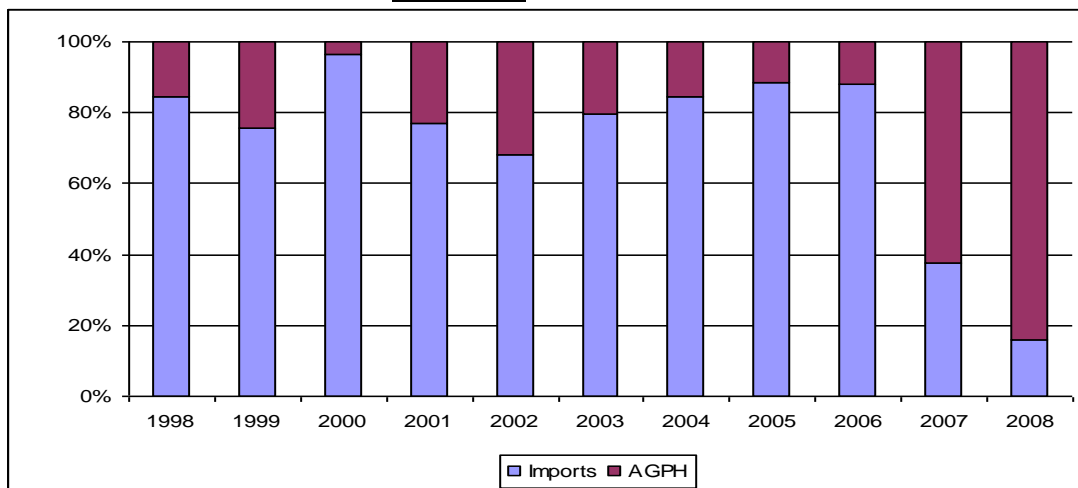


Figure 3 shows that AGPH figured glass domestic market share from 1998 to 2001 ranged from 73% to 84%. When imports surged in 2002, AGPH’s share dropped to 68%.

With the imposition of the safeguard measure in 2003, AGPH regained its market share of 80% that continuously grew in 2004 and 2005.

⁶ In the original investigation, the Commission found that the domestic industry suffered a significant overall impairment in the position of the industry.

In 2006, AGPH captured 88% share of the market demand (Fig. 3). In 2007 and 2008, imports dominated the market since AGPH temporarily ceased domestic production.

It can be noted that AGPH imports figured glass that are not economical to produce locally to cater its customers' specific requirements.

8.2.2 Production, Sales and Inventory

Table 7. Production, Sales and Inventory

Year	Production % Change	Domestic Sales % Change	Export Sales % Change	Total Sales % Change	Inventory % Change
2005-2006*	(50.74)	(20.61)	(100)	(20.77)	(78.48)
2006-2007	-	(99.84)	-	(99.84)	(1.44)
2007-2008	-	89.28	-	89.28	(96.52)

Source of basic data: AGPH

* AGPH temporarily stopped production in July 2006

Production

The Commission treats production as constituting total output of the domestic industry regardless of its intended market, domestic or export.

Production of AGPH decreased by 51% (Table 7). The reduction in production was attributed to AGPH's management decision to temporarily suspend its production in July 2006⁷ for regular commodity figured glass and instead shifted the production solely for solar glass which is intended for export.

It can be noted that AGPH can, at anytime, shift to the production of commodity figured glass since production of solar glass uses the same furnace. It was only in the middle of 2006 that AGPH decided to shift its production to solar glass because of its higher profit margin.

Sales

In the evaluation of AGPH's sales performance, the Commission considered both domestic and export sales.

AGPH sells figured glass domestically and to its affiliates abroad. While the company also imports figured glass for re-sale domestically, the sales figures in Table 7 refer only to the sales of its locally produced figured glass.

⁷ Ibid, footnote 5

Despite the continued imposition of safeguard measure in 2006, AGPH sales decreased by 21% from 2005. In 2007 and 2008, AGPH sold minimal volumes.

Finished Goods Inventory

A business practice followed by AGPH is to maintain an inventory level equivalent to two (2) to three (3) months of domestic sales. The inventory figures shown in Table 7 refer only to domestic production inventory excluding AGPH's figured glass imports. Discrepancies in ending inventories were due to breakages, sales returns, slow moving stocks thrown to cullet and physical count adjustment.

When AGPH temporarily stopped production in July 2006, inventory was reduced by 78% and continued to decrease in 2007 and 2008.

8.2.3 Capacity Utilization

Table 8. Capacity Utilization of F6 Furnace

Year	Capacity Utilization (%)	% Change
2005	46.78	-
2006*	41.48	(11.33)
2007	39.84	(3.95)
2008	63.37	59.06

Source of basic data: AGPH

** - AGPH temporarily stopped production on regular commodity figured glass in July 2006*

AGPH uses one furnace (F6) in the production of regular commodity figured glass and ultra clear figured glass (for solar glass panel) after its furnace underwent the planned cold repair in 2004. To reflect the actual capacity utilization of its furnace, the Commission includes production of ultra clear figured glass (Table 8).

In 2006, AGPH's furnace capacity utilization decreased to 42% from 47% in 2005. In 2007, there was a slight decrease in utilization. In 2008, however, capacity utilization increased to 63%.

8.2.4 Cost of Production

Table 9. Cost to Produce and Sell

Cost Components	In Percentage		% Change
	2005	2006	
Direct Raw Materials	18.87	19.60	16.92
Direct Labor	3.86	5.31	54.92
Manufacturing Overhead	58.34	56.98	9.97
Cost of Production	81.07	81.89	13.73
Selling & Admin	18.93	18.11	7.71
Cost to Produce & Sell	100.00	100.00	12.58

Source: AGPH

One of the efficiency measures committed by AGPH in its adjustment plan is to reduce the cost of production.⁸ However, the positive impact of this measure was offset by external factors such as increasing fuel prices⁹ and higher CIF prices¹⁰ of imported raw materials. Thus, cost to produce and sell increased by 13% in 2006 from its 2005 level (Table 9).

Were it not for the efficiency measure applied by AGPH to improve its costs, cost to produce and sell on figured glass would have been much higher.

8.2.5 Employment and Productivity

AGPH was able to downsize its operation when it outsourced several activities, e.g., loading and unloading operations, fabrication of boxes. This is a continuing program that is being implemented to enhance operational efficiencies.

With 36 employees directly involved in commodity figured glass production in 2006, productivity decreased by 7% from 2005.

⁸ See Section 9.2 (Specific efforts of the Domestic Industry) of this Report.

⁹ Table 3, Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 30 January 2009. See also Section 9.2 of this Report.

¹⁰ Due to the sharp rise in transport cost brought about by the increase in oil prices and the China factor (massive imports by China pushed up price levels of most commodities and caused shortage of vessels).

8.2.6 Profitability

Table 10. Financial Performance (% to Sales)

Particulars	2005	2006
Sales	100.00	100.00
Cost of Sales	(76.23)	(91.03)
Gross Profit (Loss)	23.77	8.97
Operating Expenses	(18.84)	(41.86)
Income (Loss) from Operation	4.93	(12.29)
Net Interest Income (Expense)	(2.32)	(2.33)
Other Income (Expense)	0.29	-
Income (Loss) Before Income Tax	2.90	(14.62)

Source: AGPH

Table 10 presents the financial performance of figured glass operation. Sales revenues decreased in 2006 which coincides with the decreased sales volume in the same year.

AGPH suffered loss from operation in 2006. This was due to the increasing costs in fuel and raw material prices which negated the efficiency measures¹¹ undertaken by AGPH. In addition, the loss can be attributed to the low priced imports which forced AGPH to sell below cost to produce and sell (Fig. 4). AGPH adopted import parity pricing in an attempt to defend its market share in 2006.

Huge interest expense was mainly due to the loans obtained for the purchase of equipment and machinery required for the cold repair of the figured glass furnace in 2004.

Despite substantial compliance of AGPH commitment as stated in its adjustment plan as well as the protection afforded by the continuous imposition of safeguard measure in 2006, AGPH incurred net loss equivalent to 15% of sales.

8.2.7 Return on Sales

Return on sales is derived by dividing income from operation by the sales revenue. Income from operations is adopted in favor of net income so as to exclude interest expenses, foreign exchange losses and other expenses (e.g., equity in net losses of an affiliate, deferred charges) which do not form part of the operating costs.

In 2006, return on sales was negative 12% since it incurred losses during that year.

¹¹ See Section 10.2 of this report

8.3 Findings

The imposition of the safeguard measure from 2003 to 2005 proved to be effective. The volume of imports were below the surge level in 2002. The domestic industry showed improvements in its market share, productivity and profitability.¹²

However, other factors, namely, increasing prices of fuel and raw materials, have adversely affected the industry's cost competitiveness. The situation worsened when imports came in at very low prices despite the continuous imposition of safeguard measure in 2006. In an attempt to maintain its market share, AGPH has to sell below cost thus resulting to loss from operation in 2006.

Consequently, AGPH decided to temporarily suspend its production in July 2006 for regular commodity figured glass and instead shifted the production solely for solar glass which is intended for export.

AGPH can, at anytime, shift to the production of commodity figured glass since production of solar glass uses the same furnace.

¹² Tariff Commission's Formal Investigation Report " Petition for Extension of Safeguard Measure on the Importation of Figured Glass (SG No. 01-2006)

9. DETERMINATION OF RECURRENCE OF INCREASED IMPORTS AND SERIOUS INJURY

Rule 12.3 of the IRR of RA 8800 states:

“A determination of threat of serious injury shall be based on facts and not merely on allegations, conjecture or remote possibilities. In making 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:

- a. a significant rate of increased in imports into the Philippines indicating the likelihood of substantially increased importations, evidence inter alia by the existence of letters of credits, supply or sales contract, the award of tender, and irrevocable offer or other similar contracts;*
- b. sufficient freely disposable, or an imminent, substantial increase in, production capacity of foreign exporters including access conditions they face in third country markets indicating the likelihood of substantially increased exports to the Philippines;*
- c. decline in sales, market share, and a downtrend in production, profits, wages, productivity or employment (or increasing underemployment) in the domestic industry and its inability to generate capital for modernization or maintain existence of levels of expenditures for research and development; and*
- d. growing inventories of the product being investigated whether maintained by the Philippine producers, importers, wholesalers or retailers.*

Not one of these factors can, by itself, necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further increased imports are imminent and that, unless protective action is taken, serious injury would occur.

9.1 Foreign Industry Developments

World production of flat glass is projected to increase 5.5 percent per year through 2010 to 56.6 million metric tons.¹⁸ Emerging markets, like India, with extremely low per capita consumption of glass present a potential growth opportunity.¹⁹ The market value of fabricated glass (basic flat glass as well as value-added products such as laminated, tempered, insulating and mirrored glass) is forecast to reach \$73 billion in 2012.

World figured glass production capacity increased by 10% from 1999 to 2006 and would ultimately remain stable at almost 3 million tons by 2006 onwards. Capacities are increasing in Asia, Brazil and Iran.²⁰

¹⁸ <http://www.bharatbook.com/productdetail.asp?id=8111>

¹⁹ <http://www.reportlinker.com/p0127470/Worldwide-Flat-Glass-Market-Report-2009-Edition.html>

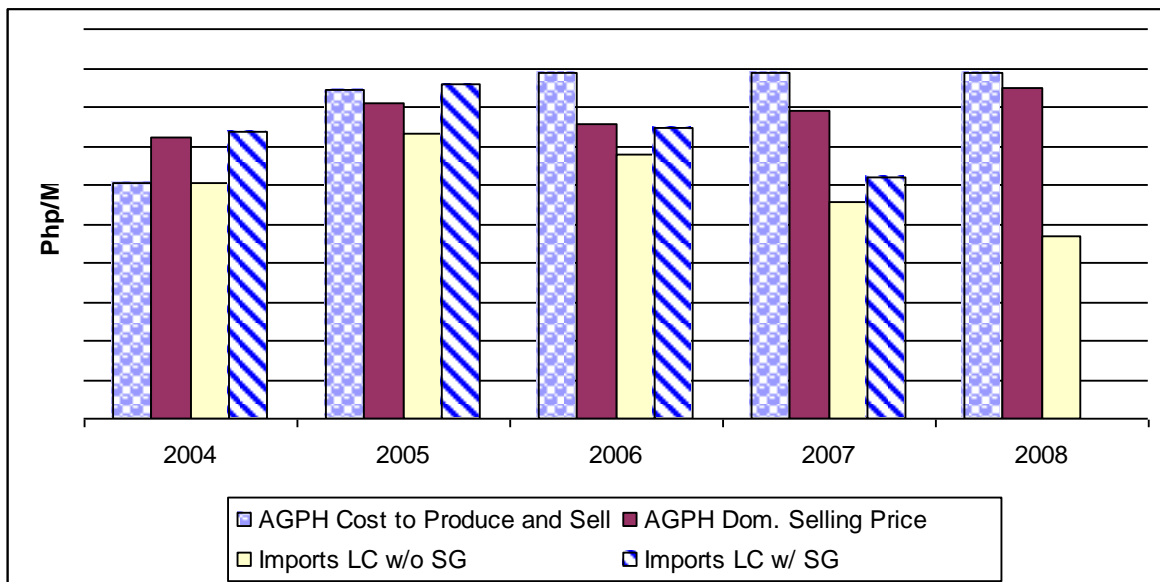
²⁰ www.pilkington.com

Saint-Gobain, leader on the Indian flat glass market, increases its production capacity with the construction of a third production line of flat glass in India. This latest investment will be located in the North of India, about 65 km away from Delhi. This project comes on top of the other capital expenditures in flat glass planned by Saint-Gobain in Poland, Egypt and Colombia.²¹

China is the largest producer of glass and glass products and has the greatest number of glass producing enterprises. From 1987 to 2007, China's glass output has risen, on average, by 18% annually. In 2008, China contributed over 31% of global glass production. China is the largest consumer of glass in the world, but declines in the real estate and automobile sectors combined with enormous excess capacity, have made exports the engine behind the industry's growth. Because of existing and planned production capacity, glass exports from China are expected to increase at least until 2011, far outpacing projected increases in domestic demand. China's glass and glass-products industry received at least \$30.3 billion in subsidies from 2004 to 2008. The subsidies spanned heavy oil, coal, electricity, and soda ash and have been growing steadily in this period, reaching about 35% of gross industrial output value of glass in 2008.²²

9.2. Impact of Safeguard Measure on Prices

Figure 4. Comparative Cost and Prices of AGPH and Imports



The increase in the landed cost of imports that resulted from the imposition of safeguard measures allowed the domestic industry to increase its domestic selling prices in 2004 and 2005 (Fig.4). This pricing strategy enabled the company to sell more as evidenced by the increased volume of domestic sales and became profitable during those years.

²¹ <http://www.encyclopedia.com/doc/1G1-180491394.html>

²² China Economic Information Network 2003-09, www.epi.org EPI BRIEFING PAPER #242

Beginning in 2006, imports came in at a much lower landed cost compared to 2005 level. Import prices were decreasing annually by 6% from 2006 to 2009. Even with the imposition of safeguard measure, landed cost of imports were much lower compared with AGPH's cost to produce and sell during the period of review. AGPH, adopting the import-parity pricing strategy to remain competitive and defend its market share, was forced to sell below cost resulting to negative profitability in 2006.

9.3 Findings

Should the safeguard measure be terminated, China, because of its proximity to the Philippines and its sufficient freely disposable production capacity, and as a major source of imports since 2002, poses a threat to the domestic industry as exports to the Philippines are likely to increase substantially. This likelihood was seen in 2008 with the significant increase of low priced imports from China when the imposition of the safeguard measure was suspended in December 2007.

Despite the continued imposition of the safeguard measure in 2006, the landed cost of imported figured glass was priced much lower than AGPH's cost to produce and sell in that year (Figure 4). AGPH, adopting the import-parity pricing strategy to remain competitive and defend its market share, was forced to sell below cost resulting to negative profitability in 2006.

Without the safeguard measure when AGPH resume production of regular commodity figured glass, it will sell below cost and serious injury would recur.

10. EFFORTS OF THE INDUSTRY TO ADJUST TO IMPORT COMPETITION

Sec. 19 of RA 8800 provides that subject to the review under Sec. 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and *there is evidence that the domestic industry is making positive adjustment to import competition.*

In case one or more firms of the benefiting industry which applied for safeguard measure failed to comply with their commitments as reflected in the approved adjustment plan, the safeguard measure shall continue to be in effect, provided however, that the firms which complied with their commitments constitute the majority in accordance with the definition of the domestic industry under Section 4 of paragraph (f) of RA 8800.

10.1 Adjustment Plan

Pursuant to the Commission Order dated 17 September 2009, AGPH submitted its updated/modified adjustment plan (*Annex F*) which listed the following priority measures that it will adopt to facilitate its positive adjustment to import competition for the next four (4) years. AGPH submitted its adjustment plan updates for 2008 to the Commission which contained the following measures:

- i. Profitability improvement/cost reduction
- ii. Power efficiency measures
- iii. Benchmarking with AGC Affiliates
- iv. Support in Anti-Smuggling Activities
- v. Implementation of Mandatory Standards
- vi. Streamlining of Organization
- vii. Production of Solar Glass Panel

10.2 Specific Efforts of the Domestic Industry

Among the specific efforts that AGPH had undertaken to comply with its adjustment plan are the following:

- ☉ Group-Wide Purchases and/or Pool-Buying Scheme of Imported Raw Materials

AGPH was able to avail the higher discounts on soda ash procurement which resulted to a lower CIF value.

- ☉ Use of more recycled cullet

By utilizing more recycled cullet, the proportion of cullet in batch cullet formulation is increased to 70:30 formulation in 2007 and 2008. During the first semester of 2009, batch cullet ratio increased further to 50:50 formulation thereby lowering overall AGPH's production cost.

☉ Simplification of glass stock sizes

A 30% reduction in trimming losses from 2% trimming or pattern losses in 2007 to 1.4% in 2008 was achieved by AGPH.

☉ Power efficiency measures

By obtaining a "clean line" from MERALCO, AGPH was able to minimize the disruptive effects of power disturbances such as voltage dips from 2.4 to 1.89 occurrences per month and power interruptions from 5 to 1 occurrence in 2008 and 2009, respectively.

AGPH, as a PEZA locator, obtained cheaper MERALCO rates under the ECOZONE Rate Arrangement (₱1/kw lower than the regular rate) which resulted to the reduction in price of power.

☉ Benchmarking with AGPH affiliates through the use of Curriculum Development Based on Ability Structure (CUDBAS) Training

The CUDBAS is a continuing program to identify and improve skill requirement in job process. This helped improved technical capabilities of employees and positively affects the company's profitability. Out of thirteen (13) teams, three (3) are set to graduate at the end of 2009.

Aside from CUDBAS, other technical training programs are being conducted. Total training costs in 2007 and 2008 amounted to more than ₱3 million.

☉ Production of solar glass panel

AGPH started exporting flat panel displays for high-definition television screens and plasma television screens to Japan, China and India.

☉ Installation of Dot Defect Detector (DDD)

Countermeasures for quality improvement which enables AGPH to do automatic on-line quality checking.

Ceramic welding of furnace crown skew line is scheduled to reduce stone defects of solar raw glass.

Purchase of casting machine rolls is also planned to likewise improve quality of solar raw glass.

☉ Streamlining of organization and capability-building to enhance operational efficiencies

10.3 Findings

The domestic industry is making positive adjustment to import competition by enhancing operational efficiencies.

The unsettled question, however, is whether the domestic industry is adjusting to import competition or avoiding competition by producing ultra clear figured glass (for solar glass panels) which is not imported instead of regular commodity figured glass.

11. FINAL DETERMINATION

11.1 Summary of Findings

1. The imposition of safeguard measure from 2003 to 2005 proved to be effective. Import volumes were below the surge level in 2002. The domestic industry showed improvements in its market share, productivity and profitability.
2. Should the safeguard measure be terminated, China, because of its proximity to the Philippines and its sufficient freely disposable production capacity, and as a major source of imports since 2002, poses a threat to the domestic industry as exports to the Philippines are likely to increase substantially. This likelihood was seen in 2008 with the significant increase of low priced imports from China when the imposition of the safeguard measure was suspended in December 2007.
3. Despite the continued imposition of the safeguard measure in 2006, the landed cost of imported figured glass was priced much lower than AGPH's cost to produce and sell in that year.
4. Without the safeguard measure when AGPH resume production of regular commodity figured glass, it will sell below cost and serious injury would recur. There is a threat of recurrence of serious injury if the safeguard measure is not extended.
5. The domestic industry made serious efforts to comply with its adjustment plan and there is evidence that the industry is making positive adjustment to import competition.
6. Factors outside the control of AGPH negated the gains resulting from its adjustment plan. AGPH needs more time to fully put in place its commitments in the adjustment plan to effectively face import competition.
7. AGPH decided to temporarily suspend its production of regular commodity figured glass and instead shifted the production solely for solar glass which is intended for export.
8. AGPH can, at anytime, shift to the production of regular commodity figured glass since production of solar glass uses the same furnace.
9. Once AGPH resume production of regular commodity figured glass, given the present market condition, it would need temporary protection to complete its adjustment plan to enable its figured glass operation to become viable and effectively deal with import competition.

11.2 Conclusion and Recommendation

The Commission concludes that the safeguard measure on figured glass continues to be necessary to prevent the recurrence of serious injury and that there is evidence that the domestic industry is making positive adjustments to import competition.

In view of the foregoing, the Commission recommends that the imposition of safeguard measure be extended for another three (3) years.²³ The Commission recommends further the conduct of a monitoring review after the first quarter of 2010 to determine if AGPH has complied with its commitment to resume production failing which, the termination of the safeguard measure should be considered. The Commission recommends finally the stay of the suspension of the imposition of the safeguard measure as contained in the DTI Order dated 10 December 2007 until lifted by another Order of the Secretary.

Should the recommendation be adopted, the Commission further recommends that the following actions be undertaken:

- i. comply with the notification and consultation requirements of Article 12 of the WTO Safeguard Agreement and Rule 17 of the IRRs of RA 8800;
- ii. imports originating from ASEAN Member States shall be governed by the provisions of Articles 6 and 8 of the Agreement on the CEPT Scheme;
- iii. imports originating from countries not identified as *de minimis* in the Order of the Secretary 14 April 2004, as amended by the DTI Order as dated 06 November 2009; and
- iv. countries previously in *de minimis* list but have exported more than 3% shall be deleted from the list.

²³ Section 19 paragraph 2 of RA 8800 provides that “ In case an extension is granted, the same shall be more liberal than the initial application.” Likewise, Article 7 paragraph 4 of the WTO Agreement on Safeguards provides that “a measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.”

12. DEFINITIVE MEASURE

Section 13 of RA 8800 provides that *“upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure, in the form of:*

1. *An increase in, or imposition of, any duty on the imported product;*
2. *A decrease in or the imposition of a tariff-rate quota (MAV) on the product;*
3. *A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;*
4. *One or more appropriate adjustment measures, including the provision of trade adjustment assistance;*
5. *Any combination of actions described in subparagraphs (a) to (e).*

Section 15 (3) of RA 8800 provides that *“an action described in Section 13(a), (b), or (c) that has an effective period of more than one (1) year will be phased down at regular intervals within the period in which the action is in effect”.*

The WTO Agreement on Safeguards provides that *“a measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period and should continue to be liberalized.”*

12.1 Recommended Definitive Safeguard Measure

The WTO Agreement on Safeguards and the domestic law contain provisions as to the reckoning of the extended measure and the intervals of its phase down. Rule 13.1.c of the IRR of RA 8800 further provides that *“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.”*

However, the Agreement and the IRR of RA 8800 do not specifically provide how the measure is progressively liberalized.

It may be mentioned that the Commission, in the first extension review of safeguard measure for figured glass²⁴, recommended to extend the safeguard duty for another three (3) years with the rate of reduction the same as during the first three (3) years. The linear rate of reduction of the specific duty was 5%.

Following the recommendation of the Commission, the Secretary ordered the continuous imposition of an additional specific duty for a period of three (3) years that was progressively liberalized each year and maintained the linear rate of reduction of 5%.

²⁴ Tariff Commission's Formal Investigation Report on the Petition for Extension of Safeguard Measure on the Importation of Figured Glass (SG Investigation No. 01 - 2006)

Should the Secretary adopt the recommendation of the Commission to extend the safeguard measure, the Commission recommends that the measure shall continue to be progressively liberalized each year at a linear rate of reduction of 5% or 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.

After extending the safeguard measure, should the Secretary adopt the recommendation of the Commission to stay the suspension of the imposition of the safeguard measure as contained in the DTI Order dated 10 December 2007 and then eventually orders its lifting, the Commission recommends that the applicable safeguard duty upon the lifting of the suspension shall be equal to the amount which DTI would have applied according to the schedule of progressive liberalization each year at a linear rate of reduction of 5% from the issuance of the last DTI Order dated 06 November 2006 liberalizing the imposed safeguard measure as if there was no suspension in the imposition of the measure.

The extension if ordered by the Secretary will allow the industry to adjust fully to import competition and thus help prepare it for the time when the action terminates.

12.2 Review of Definitive Measures

Rule 15.6 of the IRRs of RA 8800 provides that: *“The decision imposing 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 benefiting 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 benefiting industry fails to show any improvement, as may be determined by the Secretary.”*

Rule 16.1 of the same IRR of RA 8800 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.”*

13. EFFECTS OF THE AFFIRMATIVE RECOMMENDATION

Section 14 of RA 8800 provides that: *“The report (of the Commission) shall include a description of the short and long-term effects of the affirmative or negative recommendation, as the case may be, on the applicant, 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 discussed below:

13.1 On Competition

- ☉ The option to choose between local and imported figured glass remains as there are no quantitative restraints on imports.
- ☉ As the proposed measure is only temporary and will progressively be liberalized, competition will return to its normal level.

13.2 On the Domestic Industry

- ☉ Imports will be maintained at their pre-surge levels.
- ☉ Additional time will be provided to the domestic industry to complete its adjustment plan and put in place efficiency measures that will allow it to attain competitiveness *vis-à-vis* imports.
- ☉ Increase in output will facilitate the attainment of economies of scale.
- ☉ Recovered market share will be maintained enabling the industry to benefit from any growth of the market.

13.3 User Industries and Consumer Welfare

- ☉ Continued existence of a viable domestic industry assures consumers of on-time delivery of volume and small lot orders and after-sales services for replacements of breakages and defects.
- ☉ Credit line is extended by local industry to buyers.
- ☉ Presence of local products mitigates foreign exchange risk because transactions are on peso basis.

13.4 On Employment

- ☉ The expected continued increase in output and sales would ensure the tenure of employment not only in manufacturing but also in related sales and distribution services.

13.5 On Regional Development

- ☉ AGPH production facility is located in Pasig City, Metro Manila. The imposition of the definitive safeguard measure will ensure continuous operation of the industry. This will bring continuing community development to the city and nearby areas where AGPH is located.
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The Commission, after submitting the report to the Secretary of Trade and Industry, shall make it available to the public except for confidential information and publish a summary in two (2) newspapers of general circulation.

20 November 2009

EDGARDO B. ABON
Chairman

EDGARDO R. MARALIT
Acting Commissioner

MARILOU P. MENDOZA
Acting Commissioner