1. INTRODUCTION

1.1 The Initial Application of Definitive Safeguard Measure

On 14 April 2004, the Department of Trade and Industry (DTI) Secretary (hereinafter referred to as the "Secretary") after reviewing the Tariff Commission's Formal Investigation Report (SG Inv. No. 02-03), issued a decision imposing a definitive general safeguard duty for a period of three (3) years on imports of clear and tinted float glass.

1.2 Extension of Definitive Safeguard Measure

On 12 May 2006, AGC Flat Glass Philippines, Inc. (hereinafter referred to as "AGPH" or "Asahi") (formerly Asahi Glass Philippines, Inc.) filed a petition with DTI for the extension of the imposition of the definitive safeguard measure. On 05 October 2006, the Tariff Commission (hereinafter referred to as the "Commission") submitted its Formal Investigation Report (SG. No. 02-06) 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).

Based on the Department Orders and subsequent annual monitoring review conducted by DTI, the definitive safeguard duty for the two (2) three-year period is shown in Table 1.

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

Product	Original Imposition			1st Extension		
	1st Year*	2nd Year	3rd Year	4th Year	5th Year	6th Year
Tinted Float Glass	5,850	5,560	5,280	5,016	4,765.20	4,526.94
Clear Float Glass	4,630	4,400	4,180	3,971	3,772.45	3,583.83

** 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.*

Unless otherwise extended by the Secretary, the safeguard action will expire by 08 December 2009.

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 clear and tinted float glass.

The petitioner alleged that the extension of the safeguard measure on float glass is necessary to prevent or remedy the serious injury inflicted by imported clear and tinted float glass on the domestic industry. The extension of the safeguard measure is necessary in order that 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 covered 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 the 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) of RA 8800 took effect on 11 October 2000.

<u>Extension and Re-application of Safeguard Measures</u>

Section 19 of RA 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 of 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 clear and tinted float 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 clear and tinted float 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."*

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 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 float glass exporting countries, concerned Philippine government agencies, Philippine commercial attaches based at the exporting countries 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 *Manila Standard Today and The Manila Times* 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 float 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 petitioner (AGPH), Comglasco Aguila Glass Corp. (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 covering 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 pleadings/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.

3.3.1 Nitoo Enterprises, Inc.

In its letter of 13 October 2009, Nitoo intended to raise in the public hearing the following issues:

i. is AGPH's share in the country's entire tinted glass manufacturing industry substantial enough to merit further tariff protection? Corollary, can the government impose import quotas only on a particular kind of tinted glass; and

ii. what were the positive adjustments made by AGPH and what are the positive adjustments to be done? How many years will AGPH need to fully implement these adjustments?

3.3.2 Guardian Industries Corporation

In its letter to the Commission dated 12 October 2009, Guardian mentioned the following points:

i. current relief is substantial – clear glass imports were assessed a safeguard penalty of ₱3,583/MT and tinted glass was ₱4,526/MT in 2008. These duties were about 23% below the initial assessments when safeguards were instituted in 2003. Even so, the current rates equate to an ad valorem equivalent of approximately 20%, a substantial barrier by any measure;

ii. the current world economic downturn does not justify continued import relief – just as world leaders have committed not to raise trade barriers during the current downturn, the Philippines should not continue barriers that otherwise would be terminated;

iii. the domestic industry has a dominant domestic market share – a domestic market share of 87%, which AGPH enjoyed in 2008 (page 10 of the Staff Report SG Investigation No. 02/03-2009), should certainly be sufficient to achieve financial stability if the enterprise is viable over the longer term and would be grounds for concern regarding abuse of monopoly power;

iv. China is the predominant supplier of clear float glass – 76% of imports of clear float glass were of Chinese origin, which means that effectively there is only one source of import pressure and that the Tariff Commission and the Department of Trade and Industry should consider more focused remedies such as a tariff rate quota approach. They might also consider initiating an investigation under subsidy or dumping procedures targeted at the primary supplier to allow the Philippines to meet its trade commitments to other suppliers by restoring tariff rates to pre-safeguard levels;

v. China and Indonesia are the main suppliers of tinted float glass – 86% of imports of tinted float glass come from either Indonesia or China and therefore, the Tariff Commission should investigate the composition of these imports to determine whether the domestic supplier can furnish all types of tint demanded by the market place;

vi. AGPH appears competitive in export market – AGPH's exports doubled from 2006-2007 and doubled again from 2007-2008, which indicates a strong ability to compete in foreign markets;

vii. AGPH cannot meet all domestic demand – during the hearing, AGPH Vice President for Corporate Service indicated that AGPH has imported only tinted float glass to support customer requirements and that they export with no profit. Staff Report shows no imports from Thailand in 2008 (source: Import entries excluding imports of AGPH). In Attachment 1 World Trade Atlas Statistic (page 2 70052990) showed $639K value of clear float glass were imported from Thailand to the Philippines in 2008. This means that AGPH imports clear float glass to meet domestic demand;

viii. production costs are down substantially for clear float but not for tint – table 13 on page 15 of the Staff Report indicating that production costs were significantly reduced for clear float glass from 2007-2008 in nearly all categories, including raw materials and direct labor. The overall cost to produce and sell was down by 8% manifesting increased competitiveness. Tint costs are sharply increasing, however, according to the same table. These divergent trends are difficult to reconcile with the findings on Table 14 that labor productivity has increased impressively by 52% from 2006 to 2007, then by another 18% in 2007 to 2008;

ix. lower energy price will improve the industry's prospects – table 15 on page 16 of the Staff Report reveals that AGP's combined cost of sales for clear and tinted float glass increased 50% between 2006 and 2008; and

x. there is no proof of overcapacity – The Marketing and Import Monitoring Manager of AGPH provided an affidavit showing that currently there is an overcapacity in global production of float glass. He also mentioned, that 15 new furnaces have been placed in operation in the region. Attachment 2 shows numbers of float glass furnaces/companies that have been shut down during 2008 and 2009. The net current balance of demand and supply cannot be determined from evidence provided by AGP's data.

3.4 Public Hearing/Consultation

The marathon hearings were scheduled from 19 to 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 and the verification of its accounting records were conducted on 23 September 2009, 23 and 29 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, as published on 10 September 2009, was sent to all known interested parties. Interested parties were given until 28 October 2009 to submit their respective preliminary/supplemental position papers/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

AGPH through its counsel, submitted its position paper to the Tariff Commission on 01 October 2009. 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 serious injury being inflicted by imported float and 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 since it would make the landed cost of imported products lower than AGPH's cost to produce and sell. This would make AGPH more difficult to source the necessary capital to invest in its adjustment plan and decrease shareholders' confidence forcing AGP to adopt a policy of price parity with imported glass in order to protect its market share which would result to financial losses and derail its adjustment plan;

iv. the safeguard measure has been effective in giving AGPH the time it requires to make positive adjustments to import competition;

v. volume of imports drastically went down after the safeguard measure was introduced in 2003. As the amount of safeguard measure went down after its initial imposition in 2003, volume of imports went up. Such trend indicates that once the safeguard measure is terminated, imports would surge, cheaper imported float glass will flood the Philippines at a time when the petitioner has not yet completed its adjustment plan;

vi. the threat of cheaper imported float glass is even greater at this time; and

vii. there is still an overcapacity in the global production of float glass with total demand exceeding the saleable capacity of existing furnace, resulting to AGPH's having to export the products that the domestic market cannot absorb at lower prices.

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 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:

1. Profitability Improvement /Cost Reduction

   - ✓ group-wide purchase of strategic materials to attain low-cost production inputs.
   - ✓ exploring the development of a local silica sand supplier, as an alternative source of imported silica sand to minimize impact of increasing costs.
   - ✓ use of more recycled cullet by increasing the batch cullet ratio (from a 70/30 ratio to 50/50 ratio) to minimize the impact of increasing cost of raw materials. Also expanding on the nationwide retrieval and collection of cullet.
   - ✓ change from paper interleaf to powder interleaf for some products, resulting to a reduction in packaging costs
   - ✓ to minimize interest expense, the company goes into group financing with the rest of the AGC Group which resulted to a substantial lowering of financing cost and better cash flow.

2. Power Efficiency Measure

   - ✓ obtained from MERALCO a "clean line disruptive effects of power disturbances were minimized.
   - ✓ with PEZA registration, obtained cheaper power rates (Php 1/kw lower) from ECOZONE rate arrangement.

- ✓ implementation of additional power cost-down activities were done by energy consumption reduction/conservation through installation of power savers and thermometers, change of roofing structure to “skylight roofing” at warehouses, conversion of selected cooling air system from compressed air to cooling blower, etc.
- ✓ to reduce moisture content of silica sand from 5.5 to 3.5 percent by placing silica in covered buildings and allowing removal of water. A lesser moisture content results to lesser consumption of fuel oil.

3. Benchmarking with AGC Affiliates

   - ✓ Curriculum Development Based on Ability Structure (CUDBAS) is a continuing program to identify and improve skill requirement in job process.
   - ✓ engagement of trainor expats for technology transfer for high-value glass production and quality inspection.
   - ✓ utilization of foreign laboratory-aided glass diagnostic facility to determine glass quality and defects.
   - ✓ implementation of process control, quality checking and new equipment technologies for improving and upgrading current production capabilities.

4. Support in Anti-Smuggling Activities

5. Implementation of Mandatory Standards

   - ✓ continue to act against the proliferation of sub-standard quality flat glass in the market in coordination with DTI-Regional Operations Group (ROG).

6. Streamlining of Organization

   - ✓ reformation of the organization and capability-building to enhance operational efficiencies and customer requirement.
   - ✓ effect changes to improve and empower outsource manpower contracting.

7. Re-direction to Sustain Competition

   - ✓ explore production of high-value products such as Euro-Gray, Greenvue and NHI (automotive green-tempering quality) glasses.

8. Improvement on Float Glass Production

   - ✓ invested for the purchase of a cullet washing machine.
   - ✓ constantly reviewing batch formulation with the view of reducing ingredients without losing quality.
   - ✓ purchase of an online cutting and packing control software, thereby increasing productivity.
   - ✓ purchase of a mirror raw glass inspection facility system for higher output.

- ✓ to reduce stain and warp defects cold-end rollers and lehr drive modification will be purchased and done.

4.3 The Opposing Case

4.3.1 Guardian Industries Ltd. Corporation, Thailand

The company is a worldwide manufacturer of float glass and fabricated glass products for commercial, residential, construction and automotive industries for domestic and worldwide markets.

In its position paper submitted to the Commission on 14 September 2009, the company expressed its continuing opposition to the petition of AGPH on the following grounds to wit:

i. the six (6) years of relief already granted AGPH is more than enough time for any conceivable adjustments to be made especially when new float plants around the world are being built in 18 months or less including time for site work and worker training. After six years of protection, AGP should be expected to compete beginning this year;

ii. the Philippines would be handicapping its own economy if it provided another four (4) years of protection for AGPH since domestic prices for float glass in the Philippines are now well above prices prevailing in the ASEAN region. These higher prices create an inefficiency that ripples throughout the economy, beginning with glass fabricators and extending to building contractors, owners, and tenants;

iii. at some point, AGPH will need to demonstrate that it can compete with foreign manufacturers - although it is interesting to note that AGP has continued to ship substantial volumes of float glass to Thailand even while its own market has been effectively closed; and

iv. continued protection beyond this year would be inconsistent with the spirit of the Philippines' commitments under the ASEAN Free Trade Agreement and with more recent commitments among ASEAN members to avoid beggar-thy-neighbor policies in attempting to restore economic growth.

In its letter of 13 October 2009, Guardian stated the following information:

i. from 2006 to 2009, exports of float glass is nil;
ii. the company continues to operate two (2) float glass furnaces with a combined production output of 1,000 metric tons per day; and

iii. high tariffs imposed on float glass are excessively limiting trade between Thailand and the Philippines and giving hardship to the Filipino consumers.

4.3.2 Comglasco Aguila Glass Corporation

Comglasco, in its letter dated 25 September 2009, restated their continuing opposition to the extension of the safeguard measure to wit:

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) incurred 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 in its letter dated 30 September 2009, interposed its strong objection to the petition on the extension of the safeguard measure and argued that:

i. no serious injury is posed to AGPH by importation of clear and tinted float glass and figured glass;
ii. AGPH does not represent the domestic industry and producer insofar as tinted glass products are concerned because they produce only one kind of tinted glass which is bronze while they monopolize the flat glass manufacturing industry;
iii. AGPH is not entirely a Filipino corporation and is therefore of the same nature and footing as other domestic importers;
iv. 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 to not to reach the de minimis thresholds and negate the perceived negative impact of the import surge on our domestic glass industry;
vii. AGPH was already afforded ample time and opportunity to undertake adjustments against competition; and
viii. the reduction of the punitive duty which translated to a lower definitive general safeguard tariff on float glass has very minimal impact on the suppliers and only benefited AGPH in general.

4.3.4 San Francisco Mirror Corporation

In its position paper submitted to the Commission, San Francisco argued that:

i. the petition for extension of the safeguard measure against importation of float glass lacks merit and must therefore be denied since AGPH failed to establish the following elements:

- increased imports of float glass;
- existence of serious injury or threat thereof to the domestic industry; and
- causal link between the increased imports of the product and the serious injury

ii. AGPH continued to suffer serious injury despite the safeguard measures, positive adjustments made and decrease in imports of float glass.

4.3.5 Luoyang Glass Company Ltd. (China)

In its position paper submitted to the Commission dated 12 October 2009, informed that:

i. the company did not export glass products to the Philippines from 2006 to 1st half of 2009; and
ii. the company sells only to its domestic market

4.3.6 The Government of Thailand

In its position paper submitted to the Commission dated 20 October 2009, Thailand's Department of Foreign Trade, Ministry of Commerce through its Embassy manifested the following issues/arguments:

i. non-existence of causal link between importation and serious injury – the domestic producer claimed that it suffered serious injury from imports, the market share of imported float glass in the domestic market is limited to 20% while AGPH had a market share of 80%. Moreover, the company has good export performance that contributed to the increase of its overall sales revenue;

ii. the reason for its weak financial performance is partly due to the cost pressures from an increase in input prices such as energy and raw materials in the world market. This raises serious doubts that whether any serious injury claimed by AGPH was in fact caused by imports and not by other factors; and

iii. difference in product characteristics – clear float glass imported from Thailand has different grade and special quality which AGPH does not produce. Therefore, the extension of a safeguard measure will undoubtedly impose a burden to the mutual trade benefits of only Thai exporters but also the Philippine customers as well.

4.4 Other Submissions

4.4.1 Korea Trade Center, Manila

In its letter of 02 October 2009 submitted to the Commission, 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

Float glass is basically made from feldspar, dolomite, silica sand, soda ash, salt coke, calumite, cobalt oxide, and nickel sulfate. It is produced using the universal method for the manufacture of high-quality flat glass, i.e., the float process. It is used for the following applications: showcase windows, curtain walls, interior room partitions, exterior and interior window and door openings, huge scenic openings (glacade-suspended glass systems), decorative applications, furniture applications (tabletops, dressers, etc.), basic glass for mirrors, heat-treated safety glass, laminated glass, ballistic glass, and basic glass for tinted mirrors, automotive and building tempered glass.

AGPH manufactures clear and tinted float glass. The company's clear float glass has standard nominal thicknesses ranging from 2 mm to 19 mm with sizes of 1,220 mm x 915 mm to 10,160 mm x 3,050 mm. AGPH's tinted float glass, on the other hand, has several colors (dark blue, light blue, bronze, dark gray and light gray) with standard nominal thicknesses of 5 mm to 12 mm and sizes from 1,830 mm x 1,220 mm to 3,050 mm x 2,440 mm.

In the original investigation, it was established that locally produced float glass products are "like product" to imported float glass.

5.2 Market Participants

Supply of float glass in the Philippines comes from local production and imports.

5.2.1 Domestic Producer

AGPH is the sole manufacturer of clear and tinted float glass in the Philippines.

To complete its product slate, AGPH imports those float glass products that are not economical to produce locally e.g. because of low demand. A total of about 7,000 MT were imported from 2003 to 2005.

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 stakeholder of RAGC, executed a Deed of Absolute Sale of Shares whereby AGC purchased in aggregate total shares of 641,886 from RGHC constituting 49.8% of total issued and outstanding capital stock of RAGC. The purchase of 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 AGPH 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; and

✓ 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 (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).

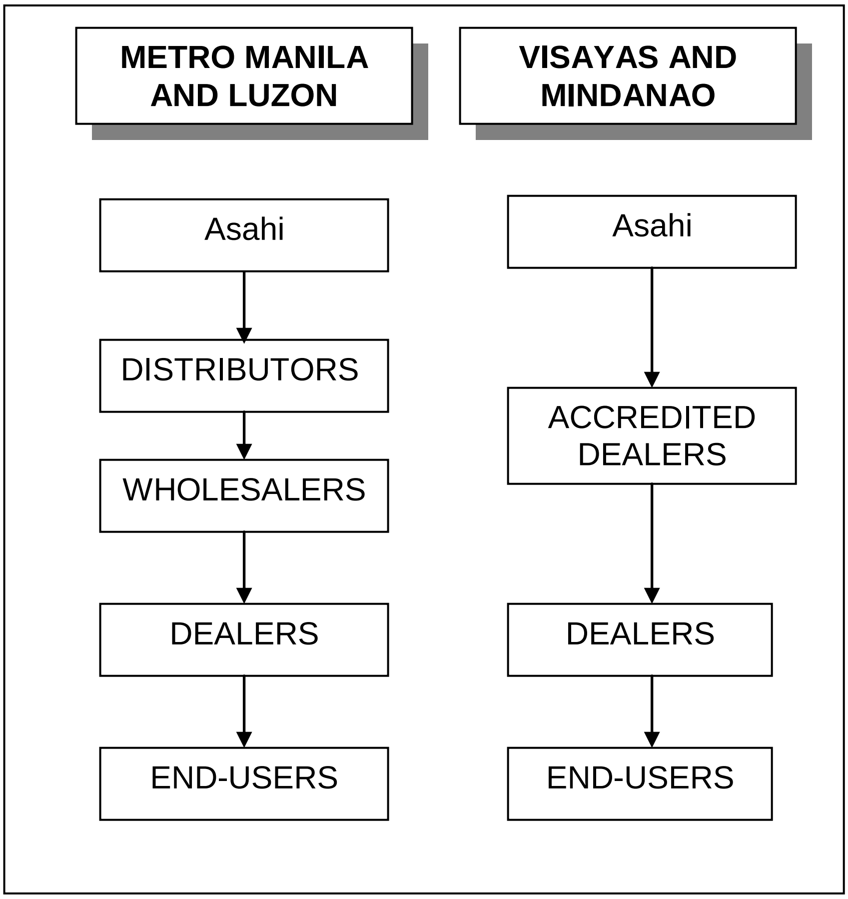
On 28 May 2007, AGPH became a PEZA-registered Ecozone Export Enterprise with Registration Certificate No. 07-33 as amended on June 29, 2007, for the manufacture of architectural flat glass products such as float glass, figured glass and mirrors, and industrial flat glass such as solar glass.

5.2.1.2 Production Capacity

As a result of the improvements undertaken for float glass production, AGPH upgraded its annual rated capacity from 109,000 MT to 141,864 MT in 2007.

5.2.1.3 Distribution Channels

Figure 1. Distribution Flow of Float Glass



Source: AGPH

AGPH does not sell directly to end-users. Instead, the float glass supplied by Asahi is further cut, processed, assembled and installed at the distribution stage, then sold according to the specified demand.

AGPH's float glass products are distributed through a marketing channel that involves several middlemen. There are two (2) distribution routes based on geographical area (Figure 1).

The distribution route for the Metro Manila-Luzon area is from AGPH's warehouse to a distributor, then to a wholesaler, dealer, retailer and finally, to the end-users, e.g., homeowners, developers, contractors, mirrorers, glaziers. For the Visayas and Mindanao areas, the distribution chain is shorter. The distribution and delivery of goods from AGPH's warehouse is direct to a network of franchised/accredited dealers, who then move the glass to sub-dealers, retailers, and end-users.

AGPH's nationwide marketing network consists of three (3) sales offices, five (5) warehouses and 108 distributors (Table 3).

In the Metro Manila-Luzon area, the warehouses are located in Laoag, Ilocos Norte; San Fernando, Pampanga; and Lipa, Batangas. In the Mindanao area, the warehouses are situated in Zamboanga and General Santos City.

Table 3. Marketing Network of AGPH

Area	Sales Office	Warehouse	Distributor
Metro Manila and Luzon	2	3	8
Visayas	-	-	49
Mindanao	1	2	51
Total	3	5	108

Source: AGPH

5.2.2 Importers

The top importers of clear float glass from 2006 to present are San Francisco Mirror Corporation (importing 21% of total imports), Asia Glass Palace at 18%, Comglasco Aguila Glass Corporation at 14%, Glassmatic Industrial Inc. at 12%, Glasstemp Industries Corporation at 11%, Cebu MMF Glass & Aluminum Supply at 6% and Chain Glass Enterprise, Inc. at 4%.

Table 4. Top Importers of Clear Float Glass */

Year	Importer	Country / (Port of Origin)
2006		
1	San Francisco Mirror Corp.	Bangladesh, Brazil, India, Malaysia, Pakistan, Vietnam
2	Glasmatic Industrial Inc.	China, Malaysia, Pakistan, Vietnam
3	Comglasco Aguila Glass Corp.	China, Malaysia, Pakistan, Vietnam
4	Asia Glass Palace, Inc.	Bangladesh, China, Malaysia
5	East Asia Aluminum Supply	China, Pakistan
6	Cebu MMF Glass & Aluminum Supply	India
7	Glasstemp Industries Corp.	Vietnam
8	All Plus Corporation	Pakistan
9	Arlo Aluminum Co. Inc.	China
10	Manila Technical Systems Co.	China
2007		
1	San Francisco Mirror Corp.	China, Indonesia, Malaysia, Taiwan, Vietnam
2	Asia Glass Palace, Inc.	Bangladesh, China, Indonesia
3	Comglasco Aguila Glass Corp.	China, Hong Kong, Malaysia, Taiwan, Vietnam
4	Glasmatic Industrial Inc.	Bangladesh, China, Vietnam
5	Glasstemp Industries Corp.	China, Vietnam
6	Cebu MMF Glass & Aluminum Supply	China, Vietnam
7	Arlo Aluminum Co. Inc.	China
8	All Plus Corporation	China
9	S-Fine Mfg & Trading Corp.	China
10	DM Consunji Inc.	China, Korea
2008		
1	Asia Glass Palace, Inc.	China, Indonesia,Taiwan

Year	Importer	Country / (Port of Origin)
2	Glasstemp Industries Corp.	China, Vietnam
3	Comglasco Aguila Glass Corp.	China
4	Glasmatic Industrial Inc.	China
5	Alucoat Metal Industries Inc.	Indonesia
6	San Francisco Mirror Corp.	China, Indonesia, Taiwan, Vietnam
7	Cebu MMF Glass & Aluminum Supply	China
8	All Plus Corporation	China
9	V. Roque Corporation	China
10	Chain Glass Enterprise, Inc.	China
2009*		
1	Chain Glass Enterprise, Inc.	China, Vietnam
2	Asia Glass Palace, Inc.	China, Vietnam
3	San Francisco Mirror Corp.	China, Hong Kong, Vietnam
4	Glasstemp Industries Corp.	China, Vietnam
5	Comglasco Aguila Glass Corp.	China
6	Glasmatic Industrial Inc.	China
7	Cebu MMF Glass & Aluminum Supply	China

Source: Import entries
Note: excludes imports of AGPH
**/ - Imports from January to August, 2009*

For tinted float glass, major importers from 2006 to the present are Chain Glass Enterprises, Inc. which accounted 25% of the total tinted float glass imports, followed by Comglasco Aguila Glass Corporation and Asia Glass Palace Inc. (both at 16%), San Francisco Mirror Corporation and Century Glass Center Inc. (both at 14%), and Cebu MMF Glass & Aluminum Supply (7%).

Table 5. Top Importers of Tinted Float Glass */

Year	Importer	Country / (Port of Origin)
2006		
1	Comglasco Aguila Glass Corp.	China, Indonesia, Malaysia
2	San Francisco Mirror Corp.	Korea. Malaysia
3	Chain Glass Enterprises, Inc.	China
4	Century Glass Center Inc.	China
5	Asia Glass Palace Inc.	China, Indonesia
6	Glasstemp Industries Corp.	Korea
7	Alucoat Metal Industries Inc.	China
8	Arlo Aluminum Co., Inc.	China, Korea
9	Glasmatic Industrial Inc.	China, Korea
10	Philtech Glass Industries Corp.	Vietnam
2007		
1	Comglasco Aguila Glass Corp.	Indonesia, Malaysia
2	Chain Glass Enterprises, Inc.	China, Indonesia, Korea
3	Century Glass Center Inc.	China, Taiwan
4	Asia Glass Palace Inc.	China, Indonesia, Malaysia
5	Cebu MMF Glass and Aluminum Supply	China, Indonesia
6	San Francisco Mirror Corp.	China, Indonesia, Malaysia
7	Glasstemp Industries Corp.	Indonesia
8	Integrated Multi Gold Enterprises	China
9	Glasmatic Industrial Inc.	China
10	R. Delos Reyes Builders and Supply	China
2008		
1	Chain Glass Enterprises, Inc.	China, Taiwan

Year	Importer	Country / (Port of Origin)
2	Asia Glass Palace Inc.	China, Indonesia
3	Century Glass Center Inc.	China, Taiwan
4	Comglasco Aguila Glass Corp.	China, Indonesia
5	San Francisco Mirror Corp.	China, Indonesia, Taiwan
6	Cebu MMF Glass and Aluminum Supply	China, Indonesia, Singapore
7	Overseas Enterprises	Indonesia
8	Kima Glass Supply Co. Inc.	Singapore
9	Sea & Air International Forwarding Corp.	China
10	R. Delos Reyes Builders and Supply	China
2009*		
1	Chain Glass Enterprises, Inc.	China, Indonesia, Taiwan, Vietnam
2	San Francisco Mirror Corp.	Indonesia
3	Asia Glass Palace Inc.	China, Indonesia
4	Century Glass Center Inc.	China, Taiwan
5	Heindrich Trading Corp.	China
6	Cebu MMF Glass and Aluminum Supply	Singapore

Source: Import entries
Note: excludes imports of AGPH
[/] - Imports from January to August, 2009*

5.2.3 Users

The major users of float glass are the residential and commercial construction industries, the furniture-making industry, the appliance industry, the automotive industry and direct purchasers at the 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[4]

The application of definitive safeguard duty is directed against imports of (a) clear float glass classified under 2007 ASEAN Harmonized Tariff Nomenclature (AHTN) subheading Nos. 7005.29.20 and 7005.29.90 and (b) tinted float glass falling under AHTN subheading Nos. 7005.21.20 and 7005.21.90.

For the period 2006 to 2009, the applied MFN rates of duty for clear and tinted float glass were maintained at 15%.

Table 6. Tariff Schedule

HS Code	2004 AHTN Code*	2007 AHTN Code	Description	2009 Tariff Duty (% ad val.)				
				MFN	AFTA**	ACFTA**	AKFTA**	JPEPA**
7005.21 90	7005.21.20] 7005.21.90]	7005.21.90	Tinted Float Glass	15	5	HSL	SL	12
7005.29.90	7005.29.20] 7005.29.90]	7005.29.90	Clear Float Glass	15	5	HSL	SL	12

**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.

Imports of clear and tinted float glass were levied with definitive safeguard duties (Table 1) and unless otherwise extended by the Secretary, the safeguard action will expire by 08 December 2009.

In addition to the safeguard measures, clear float glass from Indonesia are imposed definitive dumping duty[5] as the Secretary issued Department Order on 02 October 2006 extending the imposition of definitive anti-dumping duty on importation of clear float glass from Indonesia for a period of five (5) years.

[3] No comment 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 to all Parties.
[4] Imports originating from a developing country are excluded from the imposition of safeguard measures if its share of total imports of the product is less than 3%, provided, however, that developing countries with less than 3% share collectively account for not more than 9% of total imports.
[5] The DTI Secretary issued Department Order on 02 October 2006 extending the imposition of definitive anti-dumping duty on importation of clear float glass from Indonesia for a period of five (5) years

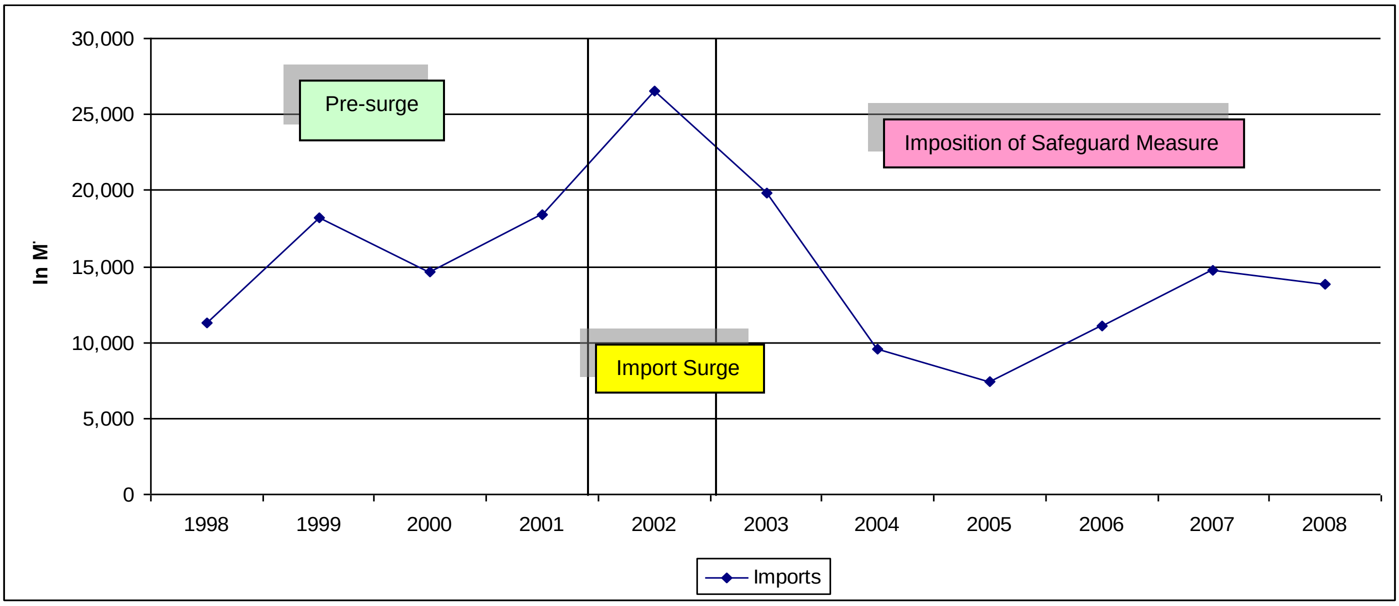
Table 7. Definitive Dumping Duty on Clear Float Glass

Exporter(s)	Nominal Thickness (mm) Tolerance Per PNS 193:2005	Estimated Weighted Average Dumping Margin (US$/MT)
PT Muliaglass	2	11.42
	3	30.36
	5	48.62
	6	76.52
	10	22.79
	12	20.48
PT Tensindo	3	34.18
	5	67.64
	6	56.59
	10	11.59
	12	3.16
PT Tunggal Majuasri	3	59.35
	5	143.05
	6	85.21
PT Abdi Rakyat Bakti	6	61.85
Other Exporters from Indonesia	2	11.42
	3	59.35
	5	143.05
	6	85.21
	10	22.79
	12	20.48

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 clear and tinted float glass were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The surge in imports commenced in 2002.

From 2003 to 2005, total imports of float glass decreased by an average of 33% annually when safeguard measures were in place.

Despite the continued imposition of the safeguard measure, imports increased by almost 50% to more than 11,000 MT in 2006 from 2005 level. While imports continued to increase in 2007 at a rate of 33%, it declined by 6% in 2008. In 2009 (January to August), imports reached 6,000 MT representing 44% of total imports in 2008.

7. 2 Volume of Imports Relative to Domestic Production

Imported float glass represented 18% of total domestic glass production in 2006. The share of imports declined to 16% in 2007. It went down further to approximately 12% in 2008 and 2009.

7.3 Country Suppliers

Table 8. Major Country Suppliers of Clear Float Glass

COUNTRY OF ORIGIN	2006 (MT)	% to total	2007 (MT)	% to total	2008 (MT)	% to total	2009* (MT)	% to total	Total 2006-2009 Imports (MT)	% to Total Imports
China	2,052	25.32	4,908	53.99	4,946	75.09	2,875	72.27	14,781	53.24
Vietnam	974	12.02	2,181	23.99	276	4.19	1,002	25.19	4,433	15.97
India	2,575	31.77	-		-	-	-	-	2,575	9.28
Malaysia	1,438	17.74	242	2.66	-	-	-	-	1,681	6.05
Indonesia	-	-	189	2.08	1,042	15.82	-	-	1,231	4.44
Taiwan	-	-	727	8.00	323	4.90	-	-	1,050	3.78
Bangladesh	187	2.31	768	8.45	-	-	-	-	954	3.44
Pakistan	814	10.04	-		-	-	-	-	814	2.93
Hong Kong	20	0.25	45	0.49	-	-	102	2.56	166	0.60
Korea	21	0.26	19	0.21	-	-	-	-	39	0.14
Brazil	24	0.30	-		-	-	-	-	24	0.09
Singapore	-	-	12	0.13	-	-	-	-	12	0.04
TOTAL	**8,105**	**100**	**9,091**	**100**	**6,587**	**100**	**3,978**	**100**	**27,762**	**100**

Source of Basic Data: Import entries excluding imports of AGPH
** as of August 2009*

China, Vietnam and India were the major suppliers of clear float glass from 2006-2009 with a combined share of 79% (Table 8). The imposition of safeguard measure does not prevent China from exporting to the Philippines as evidenced by its increasing share of imports from 25% in 2006 to 75% in 2008. The 72% share as of August 2009 will likely increase by the end of 2009, as China, despite competitive pressures from emerging markets, will be putting additional production capacity resulting to huge excess capacity.[6]

Table 9. Major Country Suppliers of Tinted Float Glass

COUNTRY OF ORIGIN	2006 (MT)	% to Total	2007 (MT)	% to Total	2008 (MT)	% to Total	2009* (MT)	% to Total	Total 2006-2009 Imports (MT)	% to Total Imports
China	1,194	39.41	2,454	43.02	3,202	43.90	754	34	7,604	41.72
Indonesia	583	19.24	2,559	44.86	2,837	38.89	969	44	6,948	38.12
Taiwan	-	-	103	1.81	1,147	15.73	308	14	1,558	8.55
Malaysia	643	21.22	415	7.28	-	-	-	-	1,058	5.80
Korea	533	17.59	172	3.02	-	-	-	-	705	3.87
Vietnam	76	2.51	-	-	-	-	129	6	204	1.12
Singapore	-	-	-	-	109	1.49	40	2	149	0.82
TOTAL	3,030	100	5,704	100	7,294	100	2,199	100	18,227	100.00

Source of Basic Data: Import entries excluding imports of AGPH
** as of August 2009*

[6] http://www.glassonweb.com/articles/article/572/ **"**Through China's looking glass" "Subsidies to the Chinese Glass Industry From 2004-08", Authored by Usha C. V. Haley, Asia Programs Fellow, Ash Institute for Democratic Governance and Innovation, Harvard Kennedy School, Harvard University.

Imports from China and Indonesia garnered the biggest share of 42% and 38% respectively of the total Philippine tinted float glass imports from 2006 to 2009.

China's annual share of tinted float glass imports increased from 39% in 2006 to 44% in 2008. It is likely that China's 34% share in 2009 (January to August) will continue to increase until December 2009. Because of existing and planned production capacity, China's glass exports are expected to increase until 2011 outpacing projected increases in demand and increasing trade surplus.[7]

Likewise, Indonesia was a big threat to the local industry as volume of imports of tinted float glass showed a steady increase from 2006 to 2008. Other importations came from Taiwan, Malaysia, Korea, Vietnam and Singapore.

7.4 *De Minimis Import Volume*

Imports of clear and tinted float glass from the following developing countries were found to be *de minimis* throughout the review period:

Table 10. Developing Countries with *De Minimis* Import Volume

Developing Country of Export	Share to Total Imports (%)		
	2006	2007	2008
Tinted Float Glass:			
Taiwan	-	1.81	-
Vietnam	2.51	-	-
Clear Float Glass:			
Bangladesh	2.31	-	-
Brazil	0.30		
Hong Kong	0.25	0.49	-
Indonesia	-	2.08	-
Korea	0.26	0.21	-
Malaysia	-	2.66	-
Singapore	-	0.13	-

The composition of developing countries with *de minimis* volume of imports will necessarily change depending on the most recent annual data available.

7.5 Findings

The current safeguard measure is effective. The volume of imports though increasing from 2006 to 2008 is still 50% below the surge level in 2002. The import share relative to domestic production showed a downward trend throughout the period of review.

[7] http://www.glassonweb.com/articles/article/572/ **"**Through China's looking glass"

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."*

8.1 Domestic Industry

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

8.2 Impact of the Safeguard Duty

8.2.1 Market Share

Figure 3. Market Share (%)

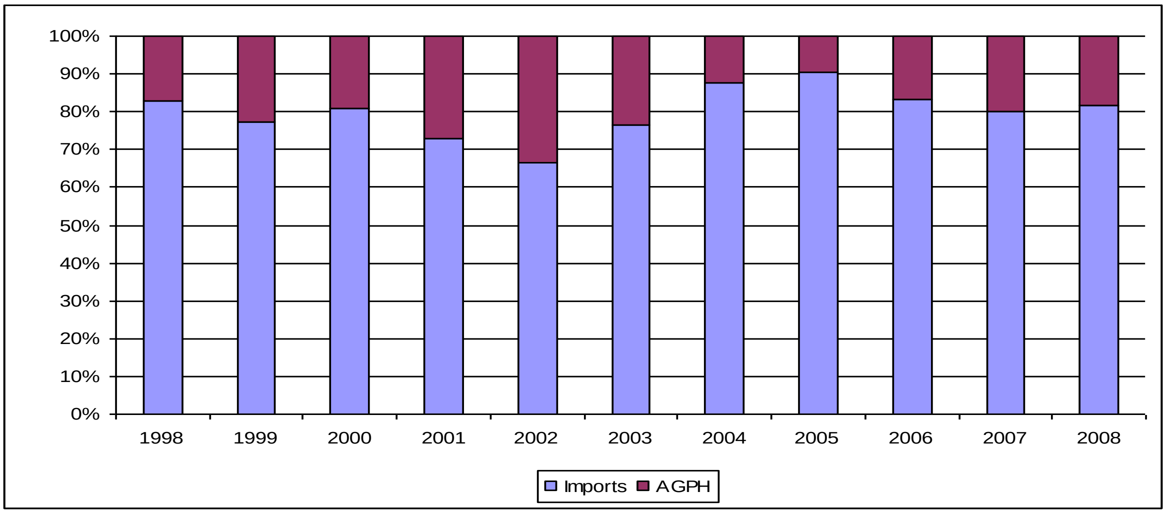


Figure 3 shows that the Philippine float glass market was predominantly supplied by the local industry with an average share of about 78% annually from 1998-2001. When imports surged in 2002, the share of the domestic industry dropped to its lowest level at 66%, increasing the share of imports to 34%.

With the imposition of the safeguard measure in 2003, AGPH regained market dominance capturing a market share of 76%. Its share in the market increased to 88% in 2004 and further to 90% in 2005.

Notwithstanding the continued imposition of the safeguard measures, share of imports increased to 17% in 2006 from 9% in 2005. AGPH's share, on the other hand, dropped to 83% in 2006 from 91% in 2005 and dipped further to 80% in 2007. As a consequence, imports increased to 20% in 2007, slightly lower than its average annual share of 22% during the pre-surge level (1998-2001). In 2008, AGPH's share went up a bit to 82% while the share of imports decreased to 18%.

8.2.2 Production, Sales and Inventory

Table 11. Production, Sales and Inventory

Year	Production % Change	Domestic Sales % Change	Export Sales % Change	Total Sales % Change	Inventory % Change
2005-2006	(37.95)	(21.72)	334.23	(5.84)	(22.41)
2006-2007	41.44	5.62	98.89	24.79	(29.00)
2007-2008	32.29	4.92	105.39	37.87	(22.76)

Source of basic data: AGPH

<u>Production</u>

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

AGPH produces both clear and tinted float glass using a single furnace. The company's production forecasts are based upon domestic demand and prospects for exports.

As part of its original adjustment plan, the float furnace underwent cold repair in 2006 to expand its capacity from 400 metric tons/day to 520 metric tons/day. The increased capacity allowed AGPH to produce more value added float glass (e.g. euro gray tinted float, extra clear, automotive green) products that enhanced productivity and quality improvement in its float glass operation.

As a result of the cold repair undertaken in 2006, production of float glass dropped by 38% from 2005 level (Table 11).

With the continued imposition of the definitive safeguard measure, production output bounced back by 41% in 2007 from 2006 level. With a projection of higher exports in 2008, production increased by 32%.

Sales

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

AGPH sells float glass domestically and to its affiliates abroad. While the company also imports float glass for re-sale domestically, the sales figures in Table 11 refer only to the sales of its locally produced float glass.

Despite the continued imposition of the safeguard measure in 2006, domestic sales of float glass dropped by 22% from 2005. The drop in the domestic sales was more than the decline in market demand in that year. Imports, on the other hand, increased by 50%.

In 2007, the volume of sales recovered by 25% from 2006 level. In 2008, sales volume further increased by 38%, the highest sales registered since 1998. The increasing sales volume from 2006 to 2008 was attributed to the huge increase of export sales during that period.

Finished Goods Inventory

A business practice followed by AGPH is to maintain an inventory level equivalent from two (2) to three (3) months of domestic sales. The inventory figures shown in Table 11 refer only to domestic production inventory excluding AGPH's float glass imports. Discrepancies in ending inventories were due to breakages, sales returns, slow moving stocks thrown to cullet and physical count adjustment.

In 2006, AGPH inventory was equivalent to 5 months of domestic sales (Table 11). The huge inventory in 2006 was attributed to lower sales due to the contraction of market demand as well as the increased imports during that year.

As the sales volume continued to increase in 2008, inventory settled back to its normal level which is equivalent to about three (3) months of sales.

8.2.3 Capacity Utilization

Table 12. Capacity Utilization

Year	Capacity Utilization (%)	% Change
2006*	84.24	-
2007	62.98	(25.24)
2008	83.31	32.28

Source of basic data: AGPH
** Furnace underwent cold repair*

AGPH's capacity utilization was 84% in 2006 when its furnace underwent cold repair. In 2007, with the expansion of its production capacity from 400 MT/day to 520 MT/day, the capacity utilization dropped to 63%. With a projected increase in sales in 2008, production went up thereby increasing utilization to 83%.

8.2.4 Cost of Production

Table 13. Cost to Produce and Sell

Cost Components	In Percentage (%)			% Change	
	2006	2007	2008	(2006-2007)	(2007-2008)
Tinted Float Glass					
Direct Raw Materials	26.03	23.88	25.81	(14.42)	28.47
Direct Labor	3.00	3.11	2.56	(3.47)	(2.44)
Manufacturing Overhead	53.79	55.53	56.12	(3.70)	20.12
Cost of Production	82.82	82.52	84.49	(7.06)	21.68
Selling & Admin	17.18	17.48	15.51	(5.09)	5.49
Cost to Produce & Sell	100.00	100.00	100.00	(6.72)	18.85
Clear Float Glass					
Direct Raw Materials	21.24	22.72	18.75	18.38	(21.79)
Direct Labor	3.20	3.32	3.05	14.95	(13.15)
Manufacturing Overhead	57.58	60.46	61.19	16.20	(4.05)
Cost of Production	82.02	86.50	82.99	16.72	(9.06)
Selling & Admin	17.98	13.50	17.01	(16.94)	19.50
Cost to Produce & Sell	100.00	100.00	100.00	10.66	(5.21)

Source: AGPH

One of the efficiency measures committed by AGPH in its adjustment plan is to reduce its cost of production.[8] However, the positive impact of this measure was offset by external factors such as increasing fuel prices and higher cost of imported raw materials[10] resulting to increased raw materials and manufacturing overhead costs in 2007 for clear float glass and in 2008 for tinted float glass (Table 13).

Float glass manufacturing overhead costs were higher during the period under review since with the cold repair in 2006, AGPH incurred additional cost (e.g. shutdown cost) and a much higher depreciation expense. However, in 2008, the cost of producing clear float glass improved with a 9% overall cost reduction from 2007 level which is the outcome of a significant raw material cost reduction of 22%.

Despite the increase in the number of employees in 2008, labor cost declined for both clear and tinted float glass which is attributed to the increased volume of production in that year resulting

[8] See Section 10.2 (Specific efforts of the Domestic Industry) of this Report.
[10] Table 3, Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 30 January 2009. See also Section 10.2 of this Report.

to a lower per unit cost as total cost is spread over a larger volume of production.

Were it not for the efficiency measures (e.g. pool buying scheme of imported raw materials and power efficiency measures) implemented by AGPH to improve its costs, cost to produce and sell of float glass would have been much higher.

8.2.5 Employment and Productivity

Table 14. Employment and Productivity

Year	Number of Employees % Change	Productivity % Change
2006-2007	(6.25)	50.87
2007-2008	12.50	17.59

Source: AGPH

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

Productivity improved by 51% in 2007 from 2006 and further by 18% in 2008 (Table 14). The improvement was mainly attributed to the increased production output during the period under review.

8.2.6 Profitability

Table 15. Financial Performance in Percentage (%)

Particulars	In Percentage (%)			% Change	
	2006	2007	2008	(2006-2007)	(2007-2008)
Sales	100.00	100.00	100.00	7.41	36.97
Cost of Sales	(88.99)	(110.38)	(103.28)	33.23	28.16
Gross Profit (Loss)	11.01	(10.38)	(3.28)	(201.31)	(56.77)
Operating Expenses	(17.34)	(17.35)	(20.29)	7.47	60.23
Income (Loss) from Operation	(6.33)	(27.73)	(23.57)	365.17	16.43
Net Interest Income (Expense)	(6.62)	(6.97)	(4.60)	13.04	(9.62)
Other Income (Exp)	6.33	13.13	(7.19)	122.73	(175.00)
Income (Loss) Before Income Tax	(6.62)	(21.57)	(35.36)	246.24	124.84

Source: AGPH

Table 15 presents the financial performance of float glass operation. Based on 2008 sales revenue, float glass accounted for almost 80% of AGPH operations.

With the increase in sales volume, revenues improved during the period under review. However, the revenues generated in 2006 and 2007 were still below the 2005 level despite the higher volume sold in 2007.

Regardless of the improvements in revenues, AGPH incurred gross losses of 10% of sales in 2007 and 3% of sales in 2008. This was due to the increasing costs of sales particularly fuel and raw material costs.[11]

During the first three-years of the imposition of the safeguard measure, AGPH showed healthy financial performances posting operating profits of 8% of sales in 2003, 7% in 2004 and 9% in 2005.[12] Notwithstanding the continued imposition of safeguard measure, landed costs of imports were decreasing in 2006 to 2008 (Fig. 4 & 5). This prompted AGPH to sell below cost[13] in order to compete with imports. This led to operating losses equivalent to 6% of revenues in 2006, 28% in 2007, and 24% in 2008.

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

AGPH's poor financial condition in 2006 to 2008 was a direct contrast to its financial performance during 2003 to 2005. Despite substantial compliance of AGPH's commitments as stated in its adjustment plan as well as the protection afforded by the continuous imposition of safeguard measure, AGPH incurred increasing net losses during 2006 to 2008. To demonstrate, AGPH suffered enormous net loss in 2008 equivalent to 35% of sales, the biggest financial loss during its eleven (11) years of operation.

8.2.7 Return on Sales

Table 16. Return on Sales

Year	Return on Sales (%)
2006	(06.40)
2007	(27.73)
2008	(23.57)

Source: AGPH

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 expense, 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.

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[11] Tariff Commission's Report on the Monitoring of the Adjustment Plan of the Domestic Flat Glass Industry (SG No. 01-2006, 02-2006,and 03-2006)

[12] Tariff Commission's Formal Investigation Report on the Petition for Extension of Safeguard Measure On the Importation of Clear and Tinted Float Glass (SG Investigation No. 02 - 2006)

[13] It should be noted that AGPH adopts the import parity pricing even though the price is below cost in order to defend its market share and maintains its market leadership during the period under review.

From 2006 to 2008, returns on sales were negative, a reflection of serious impairment on AGPH's financial condition.

8.3 Findings

The imposition of safeguard measures proved to be effective in providing relief to the domestic industry. There was a marked improvement in the industry performance as evidenced by the increased production, sales, market shares, productivity, rated capacity and capacity utilization.

However, other factors, namely, rising fuel and raw material prices 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. To maintain its market share, AGPH has to sell below cost resulting to serious impairment of AGPH's financial condition.

Without the safeguard measure, low priced imports will once again glut the market. When this happens, market share, production, sales, capacity utilization, employment and productivity would revert to levels approximating the conditions during the import surge when the industry suffered serious injury. This would negate the positive effects gained by the domestic industry's efforts to adjust to import competition.

9. DETERMINATION OF RECURRENCE OF INCREASED IMPORTS AND SERIOUS INJURY

Rule of 12.3 of 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 actions is taken, serious injury would occur.

9.1 Foreign Industry Developments

Global flat glass production is projected to increase by 5.5 percent per year throughout 2010 to 56.6 million metric tons, of which approximately 45-50 million metric tons will be high quality float glass.[14] Emerging markets, like India, with extremely low per capita consumption of glass present a potential growth opportunity.[15]

Saint-Gobain, an Indian flat glass market leader, increases its production capacity with the construction of a third production line of flat glass in India by the first quarter of 2010. This latest investment will be located in the North of India, about 65 km away from Delhi. The plant will

[14] http://www.bharatbook.com/productdetail.asp?id=8111
[15] http://www.reportlinker.com/p0127470/Worldwide-Flat-Glass-Market-Report-2009-Edition.html

operate a very large float line, with a capacity of 300 KT/year. The total investment cost is in the order of EUR100 million. This project comes on top of the other capital expenditures in flat glass planned by Saint-Gobain in Poland, Egypt and Colombia.[16]

A consortium of Vietnamese commercial banks and a finance company invested VND845 billion (US$52 million) for building a 1,000 hectare glass factory in central Chu Lai Economic Zone. The consortium consists of the state-owned Bank for Agriculture and Rural Development of Vietnam (Agribank), the Saigon-Hanoi Commercial Joint Stock Bank (SHB), Dai Duong (Ocean) Commercial Joint Stock Bank, and the Vietnam Coal and Mineral Industries Group (Vinacomin)-owned Finance Company. Work is ongoing and expected to be finished in 15 months. Once operational it will be the country's largest glass factory, which boasts a state-of-the-art float glass production line with a daily melting capacity of 700 tons and can produce over 40 million sq.m of glass products annually. The plant under construction (Chu Lai Glass Factory) has ready access to glass' major raw materials such as, silica sand, limestone and dolomite which will come from the province' nearby districts.[17] As such, Vietnam will essentially be providing a competitive landscape of the float glass market.

9.1.1 China

In 2008 up to the present, China's glass industry contributed over 31% of global-glass production. The country has the greatest number of float-glass production lines and the largest production capacity for float glass in the world. Concurrently, production capacity of glass in China has more than doubled since 2003, thus the country made a substantial increase in its exports to the different parts of the world including the Philippines. In the first six months of 2008, exports of Chinese glass and glass products exceeded US$4 billion, paralleling the growth rate of the industry (forty (40) production lines were constructed in 2008 contributing to the increased capacity). China's glass and glass-products industry received at least $30.3 billion in subsidies from 2004 to 2008. The subsidies spanned on 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.[18]

Based on 2008 trade statistics of INTRACEN, large volume of subject articles were exported to Japan, Korea, Vietnam and other countries within the region, including the Philippines. China represents 8.5% and 15.23% of world exports of tinted and clear float glass.

Float glass from China is subject of an anti-dumping case in India and safeguard cases in Australia and Turkey. On 15 July

[16] http://www.azom.com/news.asp?newsID=12688
[17] http://www.thanhniennews.com/business/?catid=2&newsid=31015
[18] China Economic Information Network 2003-09, www.epi.org EPI BRIEFING PAPER #242

2009, the Vietnamese Ministry of Industry and Trade has launched a safeguard investigation on float glass imports. Domestic producers had sought help due to rapidly increasing imports hurting their 90% market share. China was identified to be one of the major exporters to Vietnam. India is currently conducting a sunset review on the anti-dumping action against China's exports of float glass.

9.1.2 Indonesia

Indonesia exports more than 50% of its flat glass production. The export price dropped drastically due to the fierce competition with Chinese- made flat glass. Further, the rupiah's appreciation against foreign currencies reduced gains of the industry.[19]

In 2008, 28% of Indonesia's world exports of tinted float glass went to the Philippines.[20] The significant shares of Indonesia's export to the Philippines of tinted float glass with an average annual share of 94% from 2006-2009 show that the Philippines has long been a major export market of Indonesia.

In 2006, despite the imposition of the safeguard measure, Indonesia's exports to the Philippines almost doubled before it dropped in 2008 by 39%. Imports from Indonesia during the entire relief period continued to be in substantial quantity. Given these factors, it is very likely that the termination of the safeguard action would result to resumption of cheaper float glass imports from Indonesia at high levels.

Various trade remedy cases have been filed against float glass from Indonesia (anti-dumping case filed by India in 2003 which is currently under sunset review, anti-dumping against clear float glass imports in the Philippines and a recent countervailing case by the United States of America).[21] Indonesia is also one of the affected countries in regard to the safeguard measure currently under investigation by Vietnam.

9.1.3 Other Asian Countries

Asia has been a high priority in the international expansion of major players in the Flat Glass Industry. Establishing joint ventures with existing local partners, finding and developing technical and marketing synergies allow all parties to maximize opportunities. Leading producers of flat glass have established manufacturing plants and continue to upgrade capacities in Thailand, Korea, India and in other Asian countries. These countries are significant exporters to the Philippines. There is reason to believe that the Philippines will continue to be a target export market by these

[19] JETRO Jakarta Economic Review, January 2004 Vol.2 "Special Edition"
[20] Trademap_Intracen.org
[21] United States Court of International Trade, slip Op06-21

countries considering their proximity and the trade relations established with them in the past.

9.2. Impact of Safeguard Measure on Prices

Figure 4. Comparative Cost and Prices of AGPH and Imports on Tinted Float Glass

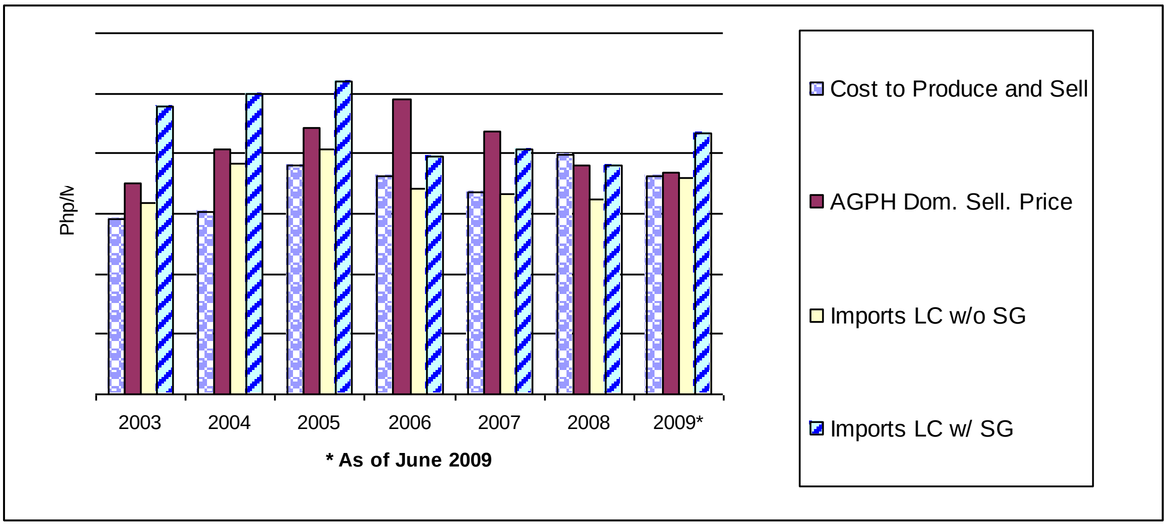
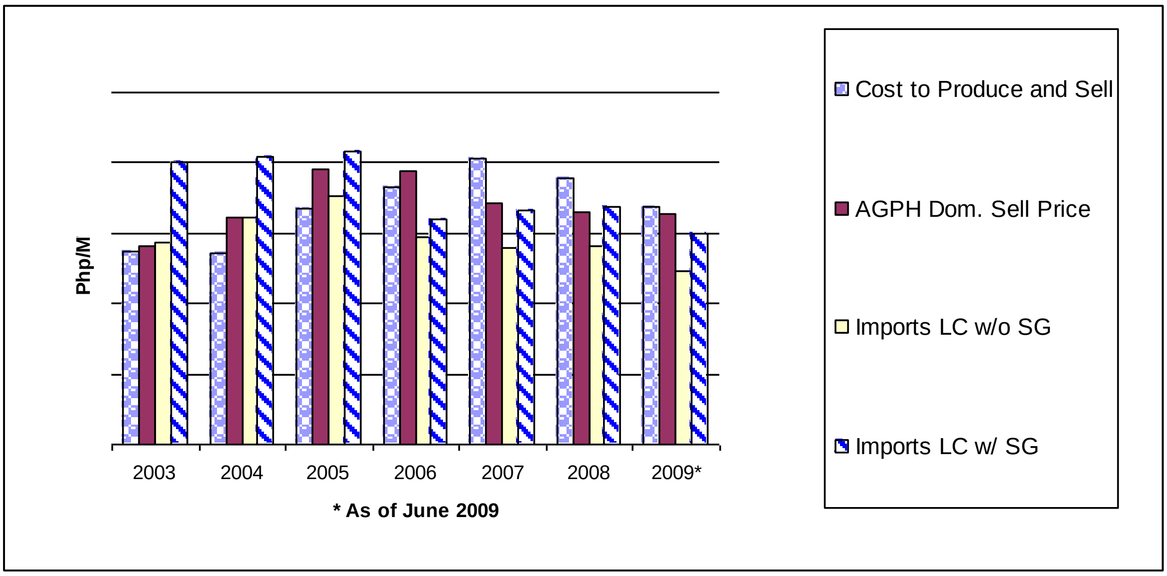


Figure 5. Comparative Cost and Prices of AGPH and Imports on Clear Float Glass (Peso/MT)



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 (Figure 4 & 5). This pricing strategy enabled the company to sell more and became profitable as evidenced by the increased volume of domestic sales and realization of net profit from 2004 to 2005 during those years.

Beginning in 2006, imports came in at a much lower landed cost compared to 2005 level. Import prices were decreasing annually by 7% for clear float glass and by 3% for tinted float glass from 2006 to 2009. Even with the imposition of safeguard measure, landed cost of imports is much lower compared with AGPH's cost to produce and sell of domestic clear float glass in 2006-2009 and for tinted float glass in 2008-2009. AGPH, adopting the import-parity pricing strategy to remain competitive and defend its market share, was forced to sell below cost for both float glass products. This resulted to serious impairment of the financial condition of AGPH as evidenced by its huge losses in operation in 2007 and 2008 (Table 15).

Removal of safeguard measure will result to much lower landed costs of imported float glass and cause further worsening of its financial condition jeopardizing the efforts of AGPH to make positive adjustment to import competition.

9.3 Findings

Should the safeguard measure be terminated, China and Indonesia, because of their proximity to the Philippines and their sufficient freely disposable production capacity, and as major sources of imports since 2002, pose a threat to the domestic industry as exports to the Philippines are likely to increase substantially.[22]

Several anti-dumping and safeguard cases filed against China and Indonesia further support the likelihood that exports from these countries will be diverted to the Philippines. Float glass from China is the subject of an anti-dumping case in India and safeguard cases in Australia and Turkey. Various trade remedy cases have been filed against float glass from Indonesia (anti-dumping case filed by India in 2003, and a recent countervailing case by the United States of America).

The bulk of these exports are likely to enter at relatively lower prices. Even with the imposition of safeguard measure, landed cost of imports is much lower compared with AGPH's cost to produce and sell. AGPH, adopting the import-parity pricing strategy to remain competitive and defend its market share, was forced to sell below cost for both float glass products. This resulted to serious impairment of the financial condition of AGPH as evidenced by its huge losses in operation in 2007 and 2008.

Without the safeguard measure, market share, production, sales, capacity utilization, employment and productivity would revert to levels approximating the conditions during the import surge when the industry suffered serious injury. This would negate the gains achieved by the domestic industry to make positive adjustment to import competition.

[22] Emerging producers like India and Vietnam present a potential growth opportunity as supplier in Asia. It is noted that China together with Vietnam and India were leading exporter of float glass from 20062009.

10. EFFORTS OF THE INDUSTRY TO ADJUST TO IMPORT COMPETITION

Sec. 19 of RA 8800 provides that subject to the review under Sec. 16, 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.[23]

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:

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. Expansion of Clear and Tinted Float Glass Production
viii. 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.

[23] TC Manual on Safeguards Investigation, p. 11b.

☯ Use of more recycled cullet

By utilizing more recycled cullet, the proportion of cullet in batch cullet formulation is increased to 70:30 formulations in 2007 and 2008 thus reducing the cost of raw materials in 2007 for tinted float glass and 2008 for clear float glass (Table 16). During the first semester of 2009, batch cullet ratio increased further to 50:50 formulations thereby lowering AGPH's production cost by about 9%.

☯ 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.

☯ Expansion of clear and tinted float glass production by investing new machines

In 2006, AGPH underwent a major expansion of its float glass production. Capital expenditure for this expansion mainly for the installation of new equipment and machinery. This measure resulted in the upgrading of float glass' annual rated capacity and improvement in glass recovery yield from 62% in 2007 to 75% in 2008.

In 2009, AGPH invested for a cullet washing machine. The company is intending to purchase another one to augment the support of a 50:50 batch ratio.

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

- ☯ Implementation of Mandatory Standards

  AGPH through the FGAPI, continue to act against the proliferation of sub-standard quality flat glass in the market stream. It participated in the monitoring and enforcement of compliance to the mandatory standards nationwide through the DTI-Regional Operations Group (ROG).

10.3 Findings

The Commission finds that the domestic float glass industry has complied substantially with its commitments as stated in its adjustment plan.

However, factors beyond the domestic industry's control have adversely affected its cost competitiveness. These include the steady increase in fuel and raw material prices. Thus, the full potential of the cost savings from the efficiency measures implemented so far, has not been fully realized by the domestic industry.

Further adjustment must be made by the domestic float glass industry to ease the pressure exerted by external factors. The current safeguard measure provides the domestic industry with the needed relief to respond to import competition. However, it requires more time to undertake the improvements as contained in its adjustment plan.

11. FINAL DETERMINATION

11.1 Summary of Findings

1. The current safeguard measure is effective. The volume of imports though increasing from 2006 to 2008 is still below the surge level.

2. The domestic industry showed improvements in its production, sales, market shares, productivity and capacity utilization, but still incurred losses indicating serious impairment in the financial condition of the domestic industry.

3. Should the safeguard measure be terminated, China and Indonesia, because of their proximity to the Philippines and their sufficient freely disposable production capacities, and as major sources of imports since 2002, pose a threat to the domestic industry as exports to the Philippines is likely to increase substantially.

4. Several anti-dumping and safeguard cases filed against China and Indonesia further support the likelihood that exports from these countries will be diverted to the Philippines.

5. Despite the continued imposition of the safeguard measure, imports came in at very low prices. In an attempt to maintain its market share, AGPH has to sell below cost resulting to serious impairment of AGPH's financial condition.

6. If safeguard measure is removed, AGPH will be forced to price its float glass even below its cost to protect its market share which will further worsen the financial condition of AGPH. There is a threat of recurrence of serious injury if the safeguard measure is not extended.

7. 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. However, factors beyond their control negated the gains resulting from its adjustment plan. AGPH requires more time to fully put in place its commitments in the adjustment plan to effectively face import competition.

8. Non-extension of the safeguard measure will likely lead to increased imports of float glass which will cause serious injury to the domestic industry.

11.2 Conclusion and Recommendation

The Commission concludes that the safeguard measure on float 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.[24]

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

i. complies with the notification and consultation requirements of Article 12 of the WTO Safeguard Agreement and Rule 17 of the IRR 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 dated 14 April 2004, as amended by DTI Orders dated 20 February 2006, 30 August 2006, 06 November 2006, 10 December 2007 and 10 December 2008 shall continue to be imposed the safeguard measure; and

iv. countries previously in *de minimis* list but have exported more than 3% shall be deleted from the list.

[24] 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 float glass[25], recommended extending 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 Tariff 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%.

[25] Tariff Commission’s Formal Investigation Report on the Petition for Extension of Safeguard Measure On the Importation of Clear and Tinted Float Glass (SG Investigation No. 02 - 2006)

The Commission recommends to the Secretary that the measure shall continue to be liberalized by at least 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.

The extension 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 float 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

- Asahi 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.

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