

# 1. INTRODUCTION

## 1.1 The Initial Application of Definitive Safeguard Measures

On 08 April 2003, the Department of Trade and Industry (DTI) officially accepted from Asahi Glass Philippines, Inc. (herein referred to as "Asahi") a properly documented application for the imposition of safeguard measures against imports of glass mirrors under Republic Act (RA) 8800 (otherwise known as the "Safeguard Measures Act"). Asahi alleged that glass mirrors were being imported into the Philippines in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry. The Bureau of Import Services (BIS) of DTI initiated a preliminary determination on 14 April 2003.

The DTI, following affirmative preliminary findings, issued on 01 September 2003 a Department Order directing the imposition of provisional measures in the form of cash bond amounting to ₱3,560.00/MT on glass mirrors. The imposition commenced on 13 October 2003, the date of the issuance of Customs Memorandum Order (CMO) 24-2003.

On 11 September 2003, the DTI Secretary endorsed to the Tariff Commission (herein referred to as the "Commission") the said application for formal investigation to determine the merits of imposing a definitive safeguard duty on imports of glass mirrors. The Commission concluded its formal investigation and submitted its report to the Department of Trade and Industry on 30 March 2004.

On 14 April 2004, the Secretary of the DTI, following the positive findings of the Commission, issued a Department Order imposing definitive safeguard duties for three (3) year on all imports of glass mirrors, except on those originating from the developing countries whose exports of glass mirrors to the Philippines were less than 3% of the total Philippine imports during the period of investigation. The imposition of definitive safeguard duty shown below will expire on 13 October 2006:

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

AHTN Code	Product	Safeguard Duty ₱/MT		
		1 <sup>st</sup> year	2 <sup>nd</sup> year	3 <sup>rd</sup> year
7009.91.00 7009.92.00	Glass Mirror	₱5,110/MT	₱4,855/MT	₱4,615/MT

## **1.2 The Monitoring of the Adjustment Plan**

Pursuant to Section 16 of RA 8800, the Commission conducted a public hearing on 09 August 2005 for the purpose of monitoring the adjustment plan submitted by Asahi. The Commission monitored the developments in the domestic industry, particularly on the progress and specific efforts made for positive adjustment to import competition.

On 08 December 2005, the Commission submitted to the DTI its report of findings that the domestic industry has complied substantially with its commitments as stated in its adjustment plan.

## **1.3 The Petition for Extension of the Safeguard Measures**

On 12 May 2006, Asahi filed a petition with the DTI-BIS requesting the extension of the imposition of the safeguard duty on glass mirrors. Asahi cited the following reasons for the petition:

- i. more time to complete the implementation of its adjustment plan and become import competitive; and
- ii. external factors, i.e., rise in power and fuel prices, overall transport costs and China's massive import demand which pushed up prices of most commodities, adversely affected their cost competitiveness.

The DTI Secretary, in his letter dated 17 May 2006, endorsed the petition to the Commission for formal investigation. The endorsement was received on 21 June 2006.

## **1.4 Period Under Review**

The period under review starts when the safeguard measure was put in place, i.e., from the year 2003 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) to RA 8800 took effect on 11 October 2000.

#### Extension and Re-application of Safeguard Measures

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.”*

## The Formal Investigation

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

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

The Commission shall conclude its formal investigation and submit a report of its findings and conclusions, whether favorable or not, to the Secretary within one hundred twenty (120) calendar days from the receipt of the referral by the Secretary, except when the Secretary certifies that the same is urgent, in which case the Commission shall complete the investigation and submit the report to the Secretary within sixty (60) days.

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.

## 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.<sup>1</sup>

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<sup>1</sup> In case of a negative final determination, the definitive safeguard measure on glass mirror will terminate on 13 October 2006.

## 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.”*<sup>2</sup>

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.

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.

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<sup>2</sup> The Tariff Commission, in the original investigation (SG Inv. No. 03-2003), concluded that glass mirrors were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production.

As mentioned in the original investigation, the circumstances provided in Article XIX of GATT 1994 need not be demonstrated for the reason that the glass mirrors 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 21 June 2006 upon receipt of the DTI Secretary’s endorsement of the petition. The Notice of Formal Investigation was published on 24 June 2006 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 glass mirror exporting countries, concerned Philippine government agencies, Philippine commercial attaches based at the exporting countries and private entities/consumer groups.

### **3.1.2 Schedule of Public Hearing/Consultation**

The Notice of Public Hearing/Consultation was published both in *Manila Standard Today* on 20 July 2006 and *The Manila Times* on 21 July 2006 (*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 glass mirror exporting countries, concerned Philippine government agencies and private entities/consumer groups.

### **3.2 Preliminary Conference**

The preliminary conference was held on 28 June 2006. In attendance were representatives from the following: Asahi, Comglasco Aguila Glass Corp. (Comglasco), PKG Expert, Reno Glass Corporation, Thailand Embassy, Taipei Economic and Cultural Office (TECO), US Asean Business Council and BIS. (*Annex C for List of Attendees*).

The Commission on 29 June 2006 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; and
- ix. schedule of public hearing/consultation.

On the oral motion made by an importer-oppositor for the deferment and resetting of the scheduled preliminary conference on the ground of lack of reasonable opportunity to prepare for the said conference on so short a notice, the Commission referred the movant to Section 3 of Commission Order No. 00-02 which states that “ within five(5) working days from receipt of the request and records of the case from the Secretary, the Commission shall notify in writing all parties on record on the commencement of the formal investigation, requiring them to appear at a Preliminary Conference to be set by the Commission within seven (7) calendar days on the commencement of the formal investigation, schedule of the Public

Consultation, submission of Preliminary Adjustment Plan and the Notice of Billing.”

With regard to the motion also raised by the same importer-oppositor for the discontinuance of the Commission’s formal investigation for the said petitions due to the pending case before the Court of Tax Appeals (CTA) involving the imposition of safeguard measure on glass products (now the subject of a petition for extension), the Commission ruled to proceed with the investigation, not having received any temporary restraining order or injunction from the CTA or from any other court.

Lastly, on the issue of the constitutionality of RA 8800 as raised by the Titus Villanueva Law Firm and Consultancy which moved for the discontinuance of the Commission’s formal investigation of the petitions, the Commission ordered the said counsel to submit a written motion before the Commission on which a resolution will be issued. The Commission has not received any written motion on the matter.

### **3.3 Staff Report**

For purposes of the public hearing/consultation, a staff report was issued which contained the Commission’s findings the product comparability, volume of imports and the preliminary determination on serious injury. All interested parties were furnished a copy of the staff report and were given five (5) calendar days from receipt of the said report to submit their comments on the staff report as well as a list of issues they want to explore during the public hearing/consultation.

Asahi, Comglasco, Ghani Float Glass Ltd., Guardian Industries Corporation and PKG Expert submitted a list of issues for consideration during the public hearing.

### **3.4 Public Hearing/Consultation**

The marathon hearings were scheduled on 31 July, 01-04 August 2006. (*Annex D* for the List of Attendees). The hearings allowed interested parties 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.

There being no more material evidence to be presented and the cross examination of witnesses completed, the public hearing was terminated on 02 August 2006.

### **3.5 Plant Visit/ Data Verification**

The Commission conducted an ocular inspection of Asahi's plant facilities (located in Brgy, Pinagbuhatan, Pasig City) on 13 July 2006. Asahi's glass mirror production line is under rehabilitation until September 2006.

Verification of Asahi's accounting records was conducted on 11 August 2006 while verification of Comglasco's import documents was on 09 August 2006.

## 4. THE PARTICIPANTS' VIEWS

### 4.1 Submissions to the Commission

The Notice of Formal Investigation, as published on 07 July 2004, was sent to all known interested parties. Interested parties were given until 07 August 2006 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

Petitioner Asahi, through its counsel, submitted its position paper to the Tariff Commission on 13 July 2006. It alleged that:

- i) extension of the safeguard measure is necessary to prevent and/or remedy the serious injury being inflicted to the industry. Termination of the measure at this time would result in financial losses and derailing its adjustment effort towards global competition;
- ii) Asahi will be faced with a market situation wherein its costs to produce and sell is higher than the landed cost of imported counterparts. The company will be forced to again adopt an import parity pricing policy with imported glass mirrors to protect its market shares resulting in financial losses;
- iii) current over capacity in the global production of float glass with total demand exceeding the saleable capacity of existing furnaces and more furnaces are being built to cover growth in demand. Import trends indicate that the Philippines will be flooded with cheaper imported float glass once the measure is terminated; and
- iv) domestic industry has taken steps towards a positive adjustment to import competition. The company needs at least four (4) more years to complete its adjustment plan to be competitive.

#### **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.”*

### **Asahi’s Adjustment Plan**

Pursuant to the Commission Order dated 29 June 2006, Asahi submitted its updated/modified adjustment plan which listed the following priority measures that it will adopt to facilitate its positive adjustment to import competition by the year 2010:

#### 1. Profitability improvement

- ✓ group-wide purchase of strategic materials
- ✓ benchmarking and adoption of best practices to improve operating systems and controls
- ✓ region-wide optimum production allocation to maximize group synergy and economies of scale
- ✓ reduction of power and fuel oil costs
- ✓ explore and continue sourcing of alternative local raw materials
- ✓ pursue petition for reduction of tariffs on raw materials and inputs not locally produced

#### 2. Strengthened manufacturing capability

- ✓ cold repair of furnace
- ✓ implement line improvements and modernization of glass mirroring plant

#### 3. Marketing improvements

- ✓ expansion of market coverage of present products and increase sales of high-value product types
- ✓ re-alignment of sales channels/network
- ✓ strengthening of market intelligence
- ✓ improvement of key buying factors

#### 4. Addition of new value-added products for the domestic and foreign markets

- ✓ cover glass for solar cells
- ✓ fire-resistant glass

5. Streamlining of organization thru re-engineering of basic processes, retain work force and pursue culture change program
6. Proposed utilization of funds derived from collected safeguard duties
  - ✓ development and installation of anti-pollution system to comply with the Clean Air Act
  - ✓ logistic support to prevention RA 8800 and to strengthen government's anti-smuggling efforts
  - ✓ other competitiveness-enhancing measures for local industries

### **4.3 The Opposing Case**

#### **4.3.1 Ghani Float Glass Ltd.**

Ghani is a major exporter of clear float glass from Pakistan. Represented by its counsel, the company interposed its strong objection to the petition since Asahi had already substantially complied with its adjustment plan as reflected in the Commission's Report on the Monitoring and Adjustment Plan of the Domestic Flat Glass Industry dated 08 December 2005. Accordingly, problems faced by Asahi is caused by factors other than increased imports, such as the rise in power and fuel prices, overall transport costs and China's massive import demand.

#### **4.3.2 Comglasco Aguila Glass Corporation**

Through its counsel, the company expressed its continuing opposition to the petition of Asahi on the following grounds to wit:

- i) Asahi has not shown any clear proof of injury or threat from the non-extension of the imposition of safeguard measure. Most of its injury are self-inflicted;
- ii) extending the imposition of safeguard measure will put the importers out of business and further strengthen the monopoly of Asahi in the local market. Asahi's gigantic price increases are contrary to public policy; and
- iii) Asahi as the benefiting industry from the application of safeguard measure has not shown any significant positive improvement with its adjustment plan.

#### **4.3.3 Asia Glass Palace, Inc.**

The company reiterated its continuing opposition to the imposition and possibly the extension of safeguard measure on glass products.

#### **4.3.4 Philippine Chamber of Glass and Aluminum Industry Sub-Committee on Glass Imports**

Through its counsel, the chamber opposed the continued imposition of safeguard measure. It averred that the proceedings on the safeguard measures are apparently in gross violation and disregard of the preliminary injunction on the application of RA 8800 which has been sustained by the Supreme Court in the case of Fil Metals Corp. vs. Secretary of the DTI (G.R. No. 157498, July 15, 2005). Until such time that the Supreme Court promulgated an order calling for the reversal of its decision sustaining the decision of the Valenzuela City Regional Trial Court, such decision remains.

#### **4.3.5 Guardian Industries Corporation**

The company is a worldwide manufacturer of float glass products that supplies the Philippine market primarily from its plants located in Thailand. According to the company, Asahi has already completed its adjustment plan and thus its petition for extension of safeguard measure is unjustified and therefore should be rejected.

#### **4.3.6 Malaysian Sheet Glass SDN. BHD**

The company claimed that Malaysia should continue to be exempted from the imposition of safeguard measure as Malaysian exports of glass products to the Philippines from 2004 to date still accounted for less than 3% of the Philippine total imports. The injury sustained by the domestic industry is not linked to increase in imports.

#### **4.3.7 PKG Expert**

PKG Expert expressed interest opposing the petition on behalf of the Filipino consumer. It contested Asahi's representation as the flat glass industry for its operation is just a small and distinct part of the flat glass manufacturing which should rightfully be called the "glass and aluminum industry". The company asserted that Asahi is a foreign company and is a local monopoly that has enjoyed 87% of the domestic market in 2005. Injury claimed by Asahi is self-inflicted.

#### **4.3.8 Taipei Economic and Cultural Office (TECO), Taiwan, ROC**

TECO invoked Articles 7, 8 and 12 of the WTO Agreement on Safeguards and suggested that if the Philippines is seeking an extension of the measure on glass products, it shall be brought into conformity with WTO Agreement which included evidence that the domestic industry is making adjustment to import competition, and for an adequate opportunity for prior

consultation with the affected exporting countries on the issue of trade compensation.

#### **4.3.9 The Government of Thailand**

The Thailand's Department of Foreign Trade, through its Embassy, submitted that extension of the existing safeguard measures beyond the three year period is unjustified for the domestic industry has already been provided sufficient time to restructure. Thailand invoked Article 8 of the WTO Agreement on Safeguards for trade compensation in case of positive determination.

Furthermore, the Department of Trade Negotiations cited the following reasons for the non-extension of safeguard measures on Thai float glass products: no condition to cause or threaten to cause serious injury to the Philippine float glass industry since domestic industry as a monopoly constituted 90.5% of the domestic consumption of float glass and Thai's export of float glass products to the Philippines accounted for less than 3% of the Philippines' total importation of float glass products. It requested a prior consultation, in case of the extension of safeguard measures, in order to accomplish a mutually satisfied conclusion on the matter.

#### **4.3.10 The Government of Pakistan**

The Embassy of Pakistan strongly opposed the petition as it will hamper the free flow of trade between two developing countries. Float glass imports from Pakistan is minimal that could hardly cause serious injury to the Philippine flat glass industry.

## **5. THE DOMESTIC INDUSTRY AND MARKET**

### **5.1 The Domestic Product**

Glass mirrors are made from top-of-the-line float glass chemically treated with silver through automatic sprayers to ensure evenness of reflection. It is copper coated to prevent peeling, and backed by double paint coatings oven-cured to maintain durability through the years.

Mirrors exude brilliant, distortion-free reflections. They are protectively sealed to prevent corrosion resulting from cyclic moisture and temperature changes.

The clear glass mirrors have standard nominal thicknesses ranging from 2 mm to 6 mm with sizes of 1,220 x 915 mm to 3,050 mm x 2,440 mm. The colored glass mirrors, on the other hand, have several colors (bronze, gray and blue) with standard nominal thicknesses of 3 mm, 5 mm and 6 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 glass mirrors are like product to imported glass mirrors.

### **5.2 Market Participants**

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

#### **5.2.1 Domestic Producer**

Asahi is the only manufacturer of clear and colored glass mirrors. In 2005, Asahi imported 19 MT of glass mirrors from Malaysia.

#### **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 stake holder of RAGC, executed a Deed of Absolute Sale of Shares whereby RGHC sold, and Asahi purchased, an aggregate of 641,886 shares of RGHC which constituted 49.8% of the total issued and outstanding capital stock of RAGC. The purchase of said RGHC shares gave Asahi 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. 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 the common shares of Asahi totaling 1,258,599,992 is owned by AGC, of which 98% is paid up.
- Nominal shares of subscribed and paid-up common shares of stocks of Asahi are individually held by the following: Hironari Kotoda, Yutaka Ohta, Kunio Nakano, Keita Shikii, Yoshitaka Tanaka and Hiromasa Sawai.
- Filipino ownership of Asahi constitute 19%, representing 300,000,000 subscribed common shares of stocks, of which 30,000,000 is paid up.

### **Production Capacity**

Asahi's production capacity for glass mirrors is 8,182 MT per year. The plant operates on three (3) shifts, 24 hours a day. The mirroring plant undergoes a 1-shift preventive maintenance every week to prevent machine trouble/abnormalities.

### **Distribution Channels**

Demand for glass mirror varies in terms of the required size and thickness. Hence, Asahi does not sell directly to end-users. Instead, the glass mirrors supplied by Asahi is further cut, processed, assembled and installed at the distribution stage, then sold according to the specified demand. Asahi's glass products are distributed through a marketing channel that involves several middlemen. There are two (2) distribution routes based on geographical area.

The distribution route for the Metro Manila-Luzon area is from Asahi'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 Asahi's warehouse is direct to a network of franchised/accredited dealers, who then move the glass to sub-dealers, retailers, and end-users.

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

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.

### 5.2.2 Importers

The top importers of glass mirrors are San Francisco Mirror Corp, Malabon Mirror Factory, Comglasco, Asia Glass and Times Glass, Inc.

**Table 2. Top Importers of Glass Mirror**

<b>Year / Importer</b>	<b>Quantity (MT)</b>	<b>Country (Port of Origin)</b>
<b>2003</b>		
San Francisco Mirror	647	China, Indonesia, Taiwan
Malabon Mirror Factory	462	China, Indonesia
East Asia Alum.Supply	187	China
Times Glass Inc.	182	China
Comglasco Corp.	159	Thailand, Indonesia
S-Fine Mfg. & Trading	155	China, Taiwan
Asia Glass Palace Inc.	122	China, Taiwan, Thailand
Moon House Marketing	114	China, Taiwan, Vietnam
Prestige Glass Corp.	103	China
Eternal Ind. Enterprises	95	Indonesia
<b>2004</b>		
San Francisco Mirror	413	Vietnam, Indonesia, China
Malabon Mirror Factory	388	Indonesia, China
Comglasco	368	Indonesia, Thailand, China
Times Glass Inc.	291	China, Taiwan
Asia Glass Palace	203	Thailand, China
S-Fine Mfg. & Trading	67	China
Glasmatic Indl. Inc.	60	Taiwan
Bongga Villa	21	China
Hocheng Phils. Corp.	15	Taiwan
G.D. Edison Laboratories	15	Hongkong, China
<b>2005</b>		
San Francisco Mirror	528	China, Indonesia
Comglasco	301	China, Thailand
Times Glass Inc.	228	Taiwan
Asia Glass Palace, Inc.	205	China, Taiwan, Thailand
Rovet Intl. Ent.	106	Indonesia
Malabon Mirror Fty.	80	China, Indonesia
Hocheng Phils. Corp.	28	China, Taiwan
Cebu MMF Glass Alum.	24	India
Cebu Glasscrafts, Phils.	19	China
Goldtown Import	18	China
Decoarts Mktg. Inc.	17	China

Source : Import Entries

Note : excludes import of Asahi

### **5.2.3 Users**

The principal users of glass mirrors are construction companies engaged in both private and public housing and building projects, the furniture-making industry, the appliance industry, the automotive industry as well as direct purchasers at the retail level.

## 6. TARIFF PROFILE

The application of definitive safeguard duty covers imports of glass mirror classified under AHTN Codes 7009.91.00 and 7009.92.00

Most-Favoured-Nation (MFN) tariff rates on subject articles in 2003 to 2006 were maintained at 15%. The Philippines did not bind the tariff rates on glass mirrors in the WTO. The ASEAN rates on glass mirrors under the CEPT Scheme for the AFTA were at 5%.

**Table 3. Tariff Schedule of Glass Mirror**

AHTN Code	Product	Duty Type	Rate of Duty (%)			
			2003	2004	2005	2006
70.09	Glass mirrors, whether or not framed, including rear view mirrors.					
	- Other:					
7009.91 00	- - Unframed	MFN	15	15	15	15
		CEPT	5	5	5	5
7009.92 00	- - Framed	MFN	15	15	15	15
		CEPT	5	5	5	5

On 13 October 2003, definitive safeguard duties were imposed on imports of glass mirrors (Table 1).

## 7. IMPACT OF SAFEGUARD ACTION ON IMPORTS

### 7.1 Volume of Imports

#### 7.1.1 In Absolute Terms

In the original investigation, the Commission concluded that glass mirrors are being imported in increased quantities, both in absolute terms and relative to domestic production. The surge in imports commenced in year 2002.

Imports of glass mirror declined steadily during the period of review. In 2003, imports dropped from the surge level of more than 3,400 MT in 2002 to about 2,375 MT in 2003. In 2004, imports plunged to less than 2,000 MT or a decline of 19% from the previous year's level. Imports continued to fall in 2005 at a rate of 13%.

**Table 4. Volume Imports**

Year	Imports (MT)	Increase/Decrease (MT)	Growth Rate (%)
2002	3,400	--	--
2003	2,375	(1,025)	(30.15)
2004	1,920	(455)	(19.16)
2005	1,665	(255)	(13.28)

*Source of basic data: Import entries*

#### 7.1.2 Relative to Domestic Production

Share of imports to Asahi's total domestic production of glass mirror accounted for 102% in 2002. When the safeguard measure was imposed in 2003, the share instantly went down by more than half of the previous year's level. The share of imports continued to decline to 35% in 2004 and further to 27% in 2005.

**Table 5. Share of Imports to Domestic Production**

Year	Imports (MT) <sup>a/</sup>	Domestic Production (MT) <sup>b/</sup>	Share of Imports to Total Production (%)
2002	3,400	3,330	102.10
2003	2,375	5,570	42.64
2004	1,920	5,510	34.85
2005	1,665	6,175	26.96

*Source of basic data: <sup>a/</sup> Import Entries  
<sup>b/</sup> Asahi*

### 7.1.3 Country Suppliers

Four (4) countries were the main suppliers of glass mirrors, namely, China, Indonesia, Thailand and Taiwan. Importations from China were dominant as it captured the biggest percentage share of imports during the period of review. Although importations from these countries were declining, they continued to be the principal suppliers of imported glass mirrors in the country.

**Table 6. Country Suppliers of Glass Mirrors**

Country of Origin	2003		2004		2005		2006 *	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
China	1,259	53.01	911	47.52	719	43.21	418	44.70
Taiwan	468	19.71	220	11.48	273	16.41	96	10.26
Indonesia	282	11.87	419	21.86	305	18.33	166	21.39
Thailand	200	8.42	274	14.29	333	20.01	2	17.75
Hongkong	50	2.11	22	1.15	11	0.66	43	0.21
India	43	1.81	--	--	24	1.44	--	--
Vietnam	30	1.26	61	3.18	--	--	--	--
Japan	20	0.84	0.5	0.03	--	--	--	--
Belgium	12	0.51	--	--	--	--	--	--
Singapore	5	0.21	0.2	0.01	--	--	--	--
USA	4	0.17	--	--	--	--	0.1	0.01
Korea	3	0.13	2	0.10	--	--	0.4	0.04
Malaysia	--	--	3	0.16	--	--	--	--
Germany	--	--	1	0.05	--	--	--	--
Sweden	--	--	1	0.05	--	--	--	--
Total	2,375	100.00	1,917	100.00	1,664	100.00	935	100.00

Source: Import entries on file with the Commission

\* January – June 2006

### 7.2 De Minimis Import Volume

The volume of glass mirror imports from the following countries was found to be *de minimis* throughout the period of review:

**Table 7. Developing Countries with De Minimis Import Volume**

Developing Country of Export	Share to Total Imports (%)		
	2003	2004	2005
Hongkong	2.11	1.15	0.66
India	1.81	--	1.44
Korea	0.13	0.10	--
Malaysia	--	0.16	--

Source: Import entries on file with the Commission

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

### **7.3 Findings**

The safeguard measure proved to be effective in discouraging importation of glass mirrors. This was manifested by the reduced importation of glass mirrors in 2003 to 2005 both in absolute terms and relative to production.

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

Rule 19.1 of the IRRs 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.”*<sup>3</sup>

The Commission, in its evaluation, will compare the prevailing condition of domestic industry during the period under review and the original period of investigation (POI) which is from 1998 to 2002.

### **8.1 Domestic Industry Requirement**

Asahi is the only manufacturer of glass mirror in the Philippines and thus accounted for 100% of total domestic production of the subject article. This satisfies the requirement under Section 4(f) of RA 8800 which for purposes of determining injury and threat thereof, defines domestic industry as:

*“the domestic producers as a whole, of like or directly competitive products manufactured or produced in the Philippines, or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of these products.”*

### **8.2 Impact of the Safeguard Duty Imposition**

#### **8.2.1 Market Share**

The Philippine glass mirror market was mainly supplied by the local glass industry. From 1998 to 2001, the industry enjoyed an average market share of 71%. In 2002, the market share of Asahi declined significantly when imports cornered a high 49% share from a low 20% in 1998.

When safeguard measure was imposed in 2003, Asahi bounced back as its domestic sales increased to 67%. The increase in the demand in 2003 was captured by the domestic industry. Domestic market share further increased to 73% in 2004 and 2005, exceeding its average market share in the pre-surge period. As of June 2006, apparent consumption totaled 3,265

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<sup>3</sup> In the original investigation, the Commission found that the domestic industry suffered a significant overall impairment in the position of the industry.

MT which is almost half the 2005 level. Of this volume, domestic sales accounted for 74%.

**Table 8. Apparent Domestic Consumption and Market Share**

Year	Domestic Sales <sup>a/</sup> (MT)	Imports <sup>b/</sup> (MT)	Total Apparent Consumption (MT)	% Share to Apparent Consumption	
				Domestic Industry	Imports
1998	4,285	1,040	5,325	80.47	19.53
1999	4,820	2,000	6,820	70.67	29.32
2000	5,130	2,080	7,210	71.15	28.85
2001	3,565	2,120	5,685	62.71	37.29
2002	3,580	3,400	6,980	51.29	48.71
2003	4,880	2,375	7,255	67.26	32.74
2004	5,170	1,920	7,090	72.92	27.08
2005	4,520	1,665	6,185	73.08	26.92
2006*	2,410	855	3,265	73.81	26.19

Source of basic data: <sup>a/</sup> Asahi

<sup>b/</sup> Import Entries

\* As of June 2006

## 8.2.2 Production, Sales and Inventory

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

From an increase of 25% in 1999, production suddenly dropped in 2001 by 33%. In 2002, despite the significant market recovery, domestic production lagged behind imports as the latter captured the growth in demand.

In 2003, Asahi expanded its production by 67% from 3,330 MT in 2002 to 5,570 MT in 2003. The minimal contraction of production in 2004 was compensated in 2005 when volume of production increased to 6,175 MT, the highest level in eight-year operation.

**Sales.** Asahi's domestic sales significantly declined from 5,130 MT in 2000 to 3,565 MT in 2001. In 2002, when the market grew by 23%, domestic sales were maintained while imports increased and took 49% of the market.

When safeguard measure was imposed in 2003, domestic sales increased by 36% and further increased by 6% in 2004. In 2005, domestic sales decreased by 13% due to the contraction of market demand. It is noted that during this year, Asahi exported 18 MT to Sri Lanka.

**Finished Goods Inventory.** It is a business practice of Asahi to maintain an inventory level equivalent to two to three months of domestic sales. The inventory figures shown in Table 9 refer only to inventory of Asahi's domestic production. The finished goods inventory for glass mirrors

are net of breakages, own use, adjustments/difference between physical count and accounting record and inclusive of those transferred from recutting/washing.

In 1999, inventory increased by 3% from the previous year's level. The increase was much bigger in 2000 when inventory rose by 47%. Inventory, however, dropped by 53% in 2001 due to slow down in production and domestic sales brought about by the contraction in demand. In 2002, the decrease was 38% from the previous year's level.

The inventory levels for the periods 2001 to 2005 proved difficult to manage as expected demand for glass mirrors did not materialize.

**Table 9. Production, Sales and Inventory**

Year	Production (MT)	% Change	Domestic Sales (MT)	% Change	Inventory (MT)	% Change
1998	4,270	--	4,285	--	960	--
1999	5,350	25.31	4,820	12.51	990	3.12
2000	5,330	(0.32)	5,130	6.45	1,460	47.37
2001	3,575	(32.98)	3,565	(30.56)	680	(53.32)
2002	3,330	(6.77)	3,580	0.45	420	(38.32)
2003	5,570	67.18	4,880	36.24	1,110	163.33
2004	5,510	(1.06)	5,170	5.95	1,300	17.45
2005	6,175	12.09	4,520	(12.20)	2,765	112.78
2006*	1,890	--	2,410	--	2,140	--

Source of basic data : Asahi

\* As of June 2006

### 8.2.3 Capacity Utilization

As a result of import surge, Asahi had the lowest capacity utilization in 2002. With the imposition of safeguard duty, it was able to improve its capacity utilization to 68% in 2003 and 75% in 2005.

**Table 10. Capacity Utilization**

Year	Rated Capacity (MT)	Production (MT)	Capacity Utilization	% Change
1998	8,182	4,270	52.15	--
1999	8,182	5,350	65.35	25.31
2000	8,182	5,330	65.14	(0.32)
2001	8,182	3,575	43.65	(32.99)
2002	8,182	3,330	40.70	(6.76)
2003	8,182	5,570	68.04	67.17
2004	8,182	5,510	67.32	(1.06)
2005	8,182	6,175	75.46	12.09
2006*	8,182	1,890	23.06	(69.44)

Source of basic data : Asahi

\* As of June 2006

## 8.2.4 Cost of Production

In 2005, the cost to produce and sell of glass mirrors increased by 21% due to escalation in the costs of raw materials, manufacturing overhead and other operating expenses as well as re-allocation of costs of packaging materials and supplies at the expense of glass mirror production.

**Table 11. Cost to Produce and Sell**

Product/Cost Components	% Change		
	2003-2004	2004-2005	2003-2005
Raw Materials	(0.34)	5.30	4.94
Direct Labor	13.13	11.61	26.26
Mfg. Overhead	17.92	121.81	161.56
Cost of Production	2.03	18.33	20.73
Operating Expenses	(17.25)	59.89	24.04
Cost to Produce & Sell	(0.24)	21.41	21.12

Source of basic data : Asahi

## 8.2.5 Employment and Productivity

More people were added in 2004 as production was sustained to meet the anticipated increase in demand. Productivity invariably was maintained at the same level.

**Table 12. Employment and Productivity**

Year	No. of Employees	% Change	Production (MT)	Productivity	% Change
1998	35	--	4,270	122	--
1999	34	(2.86)	5,350	157	28.69
2000	34	--	5,330	157	--
2001	27	(20.59)	3,575	132	(15.92)
2002	26	(3.70)	3,330	128	(3.03)
2003	33	26.92	5,570	169	32.03
2004	42	27.27	5,510	131	(22.48)
2005	44	4.76	6,175	140	6.87

Source of basic data: Asahi

## 8.2.6 Profitability

With the imposition of safeguard duty in 2003, Asahi recovered when its sales revenue increased by 23% from 2002. With a slight reduction in its selling price in 2003, Asahi was able to improve its sales volume from 3,579 MT in 2002 to 4,876 MT (Table 9) to realize an increase by 440% in income from operation. In the succeeding years, Asahi was able to sustain its financial performance.

**Table 13. Financial Performance**

Particulars	% Change						
	1998 1999	1999 2000	2000 2001	2001 2002	2002 2003	2003 2004	2004 2005
Sales	7.44	27.69	(23.49)	(12.60)	23.42	16.79	(6.88)
Less: Cost of Sales	(7.27)	(6.86)	13.68	(3.70)	7.69	9.82	(8.94)
Gross Profit /(Loss)	163.64	144.83	(71.83)	(65.00)	257.14	48.00	--
Less: Operating Expenses	--	--	25.00	140.00	(33.33)	(25.00)	66.67
Operating Income (Loss)	257.14	168	(79.10)	(135.71)	440.00	82.35	(12.90)
Less: Interest Expenses	12.50	55.56	(21.43)	(72.73)	--	--	--
Add/(Less):Other Income/(Expense)	(100.00)	(500.00)	100.00	(300.00)	133.33	(110.00)	(400.00)
Net Profit/(Loss) Before Tax	45,614.29	200.00	93.75	(466.67)	218.18	115.38	(12.50)

Source of basic data: Asahi

### 8.2.7 Return on Sales

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

Return on sales in 2001 declined from a high of 40% to 11%. The loss from operations in 2002 resulted in unfavorable return on sales of 4.5%. Improved returns on sales in the following years were attributed to a higher sales revenue and profitability.

**Table 14. Return on Sales**

Year	Return on Sales (%)
1998	5.78
1999	19.23
2000	40.36
2001	11.02
2002	(4.50)
2003	12.41
2004	19.38
2005	18.12

Source of basic data: Asahi

### 8.3 Findings

Asahi, as the sole manufacturer of glass mirrors, represents the domestic industry.

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, capacity utilization, employment and profitability.

## **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 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.*

*No 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**

The significance of China as an exporter of glass mirror has been pronounced due to her increasing volume of production and sales. China's total production capacity in 2005 was 20.5 million tons. The newly added capacity is estimated to be more than 7 million tons with the market growing faster than 10 percent per annum. China is set to continue its increased production by putting its more than 120 float glass lines in operation.<sup>4</sup> The rapid growth in glass output outpaced the demand resulting to excessive production capacity, prompting these producers to access the export market by selling at lower cost. Comparing China's landed cost with the domestic selling price of Asahi without safeguard duty, glass mirror from China is cheaper by more than ₱5,000/MT.

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<sup>4</sup> China Economic Net Review on China Flat Glass Industry

## 9.2. Impact of Safeguard Measures on Prices

The imposition of safeguard duty enabled Asahi to increase its domestic selling price to a level at which the company realized profit and could still compete with imports.

Without the safeguard duty, the weighted average landed costs of imported glass mirrors were consistently below Asahi's average domestic selling prices.

Removal of safeguard duty will result to lower landed costs of imported glass mirrors. Asahi would then have to reduce its price to a level that is below the average landed costs of imports to protect its market share.

**Table 15A. Price Difference <sup>la</sup> between the Landed Cost (LC) <sup>lb</sup> and Asahi's Ex-factory Domestic Selling Price (DSP) <sup>lc</sup> on Mirror Glass \***

Year	Without Safeguard Duty on Landed Cost (%)	With Safeguard Duty on Landed Cost (%)
2003	(16.32)	14.93
2004	(8.40)	8.14
2005	(11.96)	2.89
2006 **	(17.11)	(2.18)

\* - Net of VAT

\*\* - As of June 2006

Note: <sup>la</sup> - Formula =  $\frac{LC - DSP}{DSP}$

<sup>lb</sup> - weighted average- all countries

Sources: <sup>lb</sup> - Import Entries

<sup>lc</sup> - Asahi

**Table 15B. Asahi's Domestic Selling price, Cost to Produce and Sell, and Earnings Before Interest and Taxes**

Year	Domestic Selling Price (%)	Cost to Produce and Sell (%)	Earnings Before Interest and Taxes (%)
2003	100.00	82.58	16.20
2004	100.00	74.73	14.27
2005	100.00	85.78	14.53
2006*	100.00	96.38	3.76

Source: Asahi

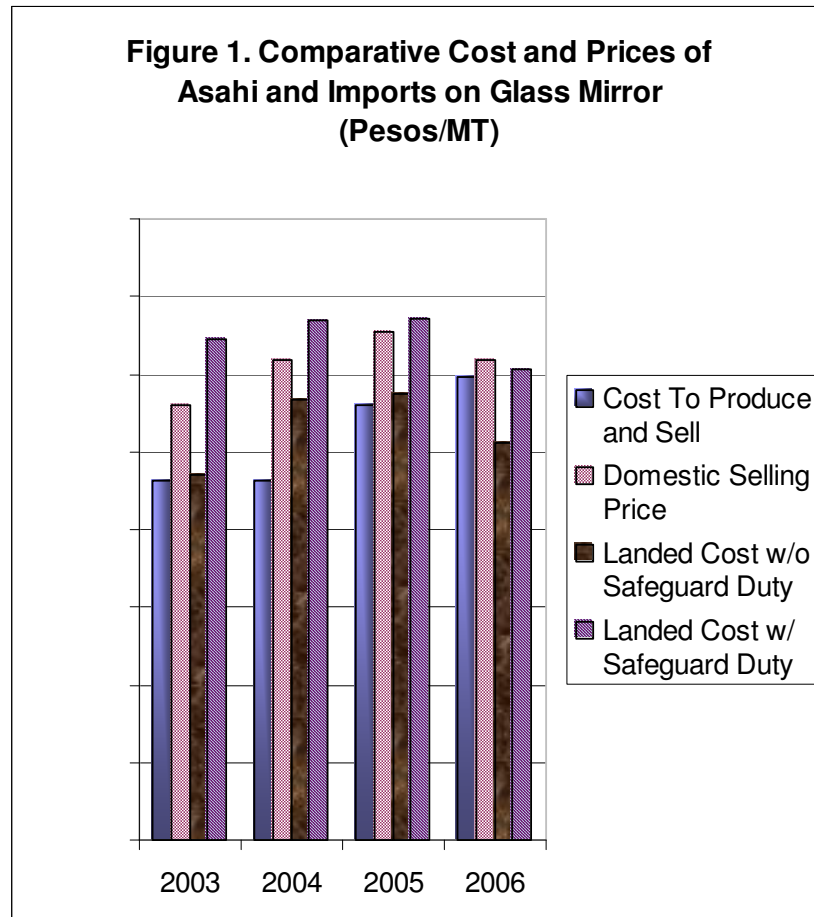
\* As of June 2006

### 9.3 Findings

The proximity of China to the Philippines and its sufficient freely disposable production capacity indicate the likelihood of substantially increased exports to the Philippines if the safeguard measure is terminated.

The resumption of increased importation of cheap glass mirrors from China is very likely to recur. Without the safeguard duty, the landed cost of imported glass mirror has a price advantage over Asahi's domestic selling price (Figure 1). The wider the gap between landed cost and domestic selling price which worsened in 2006 to 17%, the more likely the import surge would recur. Asahi will be forced to price its glass mirrors at par with its imported counterpart even below its cost to produce and sell to protect its market share.

Without the safeguard duty, 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 from the domestic industry's efforts to adjust to import competition.



## **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.<sup>5</sup>

### **10.1 Adjustment Plan**

Asahi submitted on 06 October 2003 an adjustment plan which contained the following priority measures that it will adopt to facilitate its positive adjustment to import competition:<sup>6</sup>

- i) profitability improvement/cost reduction;
- ii) strengthening of manufacturing capability;
- iii) marketing improvements;
- iv) addition of new value-added products for the domestic and foreign markets;
- v) streamlining of organization; and
- vi) proposed utilization of funds derived from the imposition of safeguard duties for: (a) development and installation of anti-pollution system to comply with the Clean Air Act; (b) logistical support to prevent circumvention of RA 8800 and to strengthen government's anti-smuggling effort; and (c) other competitiveness-enhancing measures for local industries.

### **10.2 Specific Efforts of the Domestic Industry**

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

- ☉ Group purchase of raw materials to avail of discounts from strategic pricing

Asahi was able to reduce the cost of its strategic raw materials in 2004, however, the expected reduction in CIF prices was not realized due to sharp rise in transport cost brought about by the increase in oil prices

<sup>5</sup> TC Manual on Safeguards Investigation, p. 11b.

<sup>6</sup> p. 14-15, Formal Investigation Report (SG No. 02-2003).

and the China factor.<sup>7</sup> Were it not for the change in purchase method, Asahi's purchase price would have been higher, e.g., for soda ash, the CIF price would have been greater by 18% and 4% in 2004 and 2005, respectively.

- Exploitation of substitution possibilities between imported and local strategic raw materials and modification of raw material mix, subject to technology constraints, to minimize costs

The blending of local silica sand with imported sand (ratio is 1:9) in 2005 has resulted to savings of Asahi on the raw material cost in producing float glass since local silica sand was cheaper. However, the positive impact was negated by surge in prices of sand by 76%.

- Adoption of power mix scheme and change in fuel purchase method to mitigate fuel and power price increases

Were it not for this efficiency measure, 2004 and 2005 fuel costs could have been much higher relative to the huge increase in oil prices (from US\$26.1/barrel in 2003 to US\$ 37.7/barrel in 2004 and to US\$55.10/barrel in 2005)<sup>8</sup> during those years which negated the expected savings for Asahi's new purchase method.

Asahi cost of production might have been higher by 5% to 8% in 2004 and 2005, had they not changed their purchase method of Bunker Fuel Oil (BFO).<sup>9</sup>

- Investment in maintenance and refurbishing, such as furnace cold repair, to gain better quality, higher yield, and improved fuel consumption

Extending the length of the oven to improve the curing of the mirror's paint backings. The correction of paint thickness for better control of paint allocation which was implemented in February 2004, resulted to reduction in silver solution formulation without affecting quality. Local sourcing of silver nitrate instead of importing was implemented. Tests are being conducted on paints sourced from Korea rather than Italy. These would further improve Asahi's manufacturing capability and efficiency, at reduced cost.

- Benchmarking with other affiliates to increase factory yield, improve product quality, maximize power and fuel consumption efficiency, increase truck utilization, and reduce breakages

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<sup>7</sup> Massive imports by China pushed up price levels of most commodities and caused shortage of vessels

<sup>8</sup> Crude Oil (Saudi Arabian Light) – European Spot or Free market is the middling “rate” between the dealers bids and offers, Northwest Europe, 11 a.m. EDT New York, FOB loading Ports. Source: <http://www.bsp.gov.ph/statistics/keystat/swcp4.htm>

<sup>9</sup> Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005.

In 2004, Asahi was able to achieve some reductions in its consumption of bunker fuel oil and liquefied petroleum gas (LPG) when quantity consumed per MT of glass product was reduced by 3% and 6%, respectively. Likewise, power consumption reduced by 7% in 2004 while gas consumption reduced by 76% MT. Power and gas consumption further reduced in 2005.

- Adoption of computer systems, i.e., Accounting Package (ACCPAC) or computerized accounting system, and Data Collection and Reporting System (DCRS) to facilitate production planning and inventory management
- Streamlining of organization and capability-building to enhance operational efficiencies
- Fostering of closer relations with industrial users and consumers as well as enhancement of marketing and distribution strategies and initiation of mandatory product standards to increase market share

### 10.3 Findings

The Commission finds that the domestic mirror 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 rise in power and fuel prices and China's massive import demand which pushed up prices of most commodities and overall transport costs. Thus, the full potential of cost savings from the efficiency measures implemented so far, has not been fully realized by the domestic industry.<sup>10</sup>

Further adjustment must be made by the domestic mirror industry to alleviate the pressure exerted by external factors. The current safeguard measure provides the domestic industry with the needed relief to respond to import competition by undertaking the improvements<sup>11</sup> as contained in the adjustment plan requires more time to achieve its objective.

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<sup>10</sup> Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005, p. 23.

<sup>11</sup> The Commission notes export sales as an area for improvement.

## 11. FINAL DETERMINATION

### 11.1 Summary of Findings

1. As the sole manufacturer of glass mirror, petitioner Asahi accounted for all domestic production of subject articles. 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.
2. The current safeguard measure is effective. The volume of imports decreased below the pre-surge level. The domestic industry showed improvements in its production, sales, market shares, productivity, capacity utilization and profitability.
3. Without a safeguard duty, domestic selling prices will fall below levels not enough to recover cost to produce and sell. There is a substantial threat of serious injury if safeguard duty is not extended.
4. Current overcapacity in China market, more furnaces being built and import trends in the Philippines indicate that the resumption of substantial increase imports is very likely once the safeguard measure is discontinued.
5. The proximity of China to the Philippines and their sufficient freely disposable production capacities indicate the likelihood of substantially increased exports to the Philippines if the safeguard measure is terminated.
6. Factors outside the control of Asahi negated the gains resulting from its stalled adjustment plan. Asahi needs more time to fully put it in place to effectively face import competition.
7. Non-extension of the safeguard measure will likely lead to increased imports of glass mirror which will cause serious injury to the domestic industry.

## 11.2 Conclusion and Recommendation

The Commission concludes that safeguard action on glass mirrors continues to be necessary to prevent serious injury and that there is evidence that the domestic industry is making positive adjustment to import competition.

In view of the foregoing, the Commission recommends that the imposition of safeguard duty be extended for another three (3) years - the timeframe needed by the industry to fully implement its adjustment plan and be competitive against imports.

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

- i) comply with the notification and consultation requirements of Article 12 of the WTO Safeguard Agreement and Rule 17 of the IRRs to 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 and 30 August 2006, shall continue to be imposed the safeguard duty; and
- iv) countries previously in *de minimis* list but have exported more than 3% shall be deleted from the list.

## 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).*

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.”*

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”.*

### **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 to 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 to RA 8800 do not specifically provide how the measure is progressively liberalized.

It may be mentioned that the Commission, in the formal investigation report of the ceramic tiles industry: extension of safeguard action against imports (SG Inv. 01-2004), recommended to extend the safeguard duty for another three (3) years with the rate of reduction the same as during the first 3 years.

In the original investigation of this petition, the Secretary ordered the imposition of an additional specific duty for a period of three (3) years that was progressively liberalized each year. The linear rate of reduction of the specific duty was 5%.

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 to 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 to 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 industrial users 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 Asahi is located.

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The Commission, after submitting the report to the Secretary of Trade and Industry, shall make it available to the public except for confidential information and publish a summary in two (2) newspapers of general circulation.

4 October 2006

**EDGARDO B. ABON**  
Chairman

**EDGARDO R. MARALIT**  
Acting Commissioner

**MARILOU P. MENDOZA**  
Acting Commissioner