

# 1. INTRODUCTION

## 1.1 The Initial Application of Definitive Safeguard Measure

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 figured glass under Republic Act (RA) 8800 (otherwise known as the “Safeguard Measures Act”). Asahi alleged that figured glass 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 16 April 2003.

The DTI, following the BIS’ affirmative preliminary findings, issued on 01 September 2003 a Department Order directing the imposition of a provisional measure in the form of cash bond amounting to ₱1,535.00/MT on the importation of figured glass. 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 figured glass. 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 the Department Order imposing definitive safeguard duties for three (3) years on all imports of figured glass except on those originating from the developing countries whose exports of figured glass to the Philippines was 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 (₱/MT)**

AHTN Code	Product	1 <sup>st</sup> year	2 <sup>nd</sup> year	3 <sup>rd</sup> year
7003.12 20	Figured Glass	₱2,655/MT	₱2,520/MT	₱2,394/MT
7003.12 90				
7003.19 20				
7003.19 90				

## **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 Measure**

On 12 May 2006, Asahi filed a petition with the DTI-BIS requesting the extension of the imposition of the safeguard duty on figured glass. 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. 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 (Safeguard Measures Acts) 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 figured glass 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. 01-2003), concluded that figured glass 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 figured glass is 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 *Manila Standard Today* and *The Manila Times (Annexes A-1 and A-2)*. The notice indicated the date of the Preliminary Conference and the matters for discussion in the said conference.

Individual notices were sent to all identified interested parties, embassies in the Philippines of figured glass exporting countries, concerned Philippine government agencies, 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 *The Manila Times and Manila Standard Today* on 18 July 2006 (*Annexes B-1 and B-2*). The notice directed concerned parties to submit to the Commission within five (5) calendar days before the scheduled consultation a list of issues they want to explore other than the issues of product comparability and volume of imports. Likewise, parties were required to submit to the Commission the affidavits of their witnesses three (3) days prior to the public hearing. All principal parties, counsels, affiants, deponents and other interested parties were required to appear before the Commission on the first day of the public consultation.

Individual notices were sent to all identified interested parties, embassies in the Philippines of figured glass exporting countries, concerned Philippine government agencies and private entities/consumer groups.

### 3.2 Preliminary Conference

The preliminary conference was held on 28 June 2006. In attendance were representatives from the following: Asahi, Comglasco Aguila Glass Corporation (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 on 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 and 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 cross examination of witnesses completed, the public hearing was terminated on 02 August 2006.

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

The Commission conducted an ocular inspection of Asahi's plant facilities (located in Brgy, Pinagbuhatan, Pasig City) on 13 July 2006. Verification of Asahi's accounting records was conducted on 11 August 2006.

The Commission likewise conducted a verification of Comglasco's import documents 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 on the industry. Termination of the measure at this time would result in financial losses and derail its adjustment effort towards global competition.
- ii) Asahi will be faced with a market situation wherein its costs to produce and sell are higher than the landed cost of imported counterparts. The company will be forced to again adopt an import parity pricing policy with imported float glass to protect its market shares resulting in financial losses.
- iii) There is current overcapacity 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.
- iv) The domestic industry has taken steps to make 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 Plans**

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 / cost down
  - ✓ group-wide purchase of strategic materials to attain low-cost production inputs.
  - ✓ benchmarking and transfer 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, re-train 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 circumvention 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 promulgates 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. The company contested Asahi's representation as the flat glass industry for its operation is just a small and distinct part of the flat glass manufacturing and thus should be rightfully called "glass and aluminum industry". It 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, Thailand's Department of Trade Negotiations cited that the safeguard measure on Thai float glass should not be extended for the following reasons: (a) no condition exists to cause or threaten to cause serious injury to the Philippine float glass industry since said industry is a monopoly and constituted 90.5% of the domestic consumption of float glass and (b) Thai exports of float glass products to the Philippines accounted for less than 3% of the Philippines' total importation of float glass products. The Department requested prior consultation, in case of the extension of the safeguard measure, in order to reach a mutually acceptable 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. DOMESTIC INDUSTRY AND MARKET**

### **5.1 The Domestic Product**

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

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

### **5.2 Market Participants**

Supply of figured glass in the Philippine market comes from local production and imports.

#### **5.2.1 Domestic Producer**

Asahi is the sole manufacturer of figured glass in the Philippines. A total of 755 MT of figured glass was imported in 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 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 Asahi's common shares totaling 1,258,599,992 are owned by Asahi, out of which 98% is paid up.
- ✓ Nominal shares of subscribed and paid-up common shares of stocks of Asahi are individually held by the following: Hironari Kotoda, Yutaka Ohta, Kunio Nakano, Keita Shikii, Yoshitaka Tanaka and Hiromasa Sawai.
- ✓ Filipino ownership of Asahi constitutes 19%, representing 300,000,000 subscribed common shares of stocks, of which 30,000,000 is paid up.

#### **5.2.1.2 Production Capacity**

Asahi's annual production capacity for figured glass is 54,500 MT.

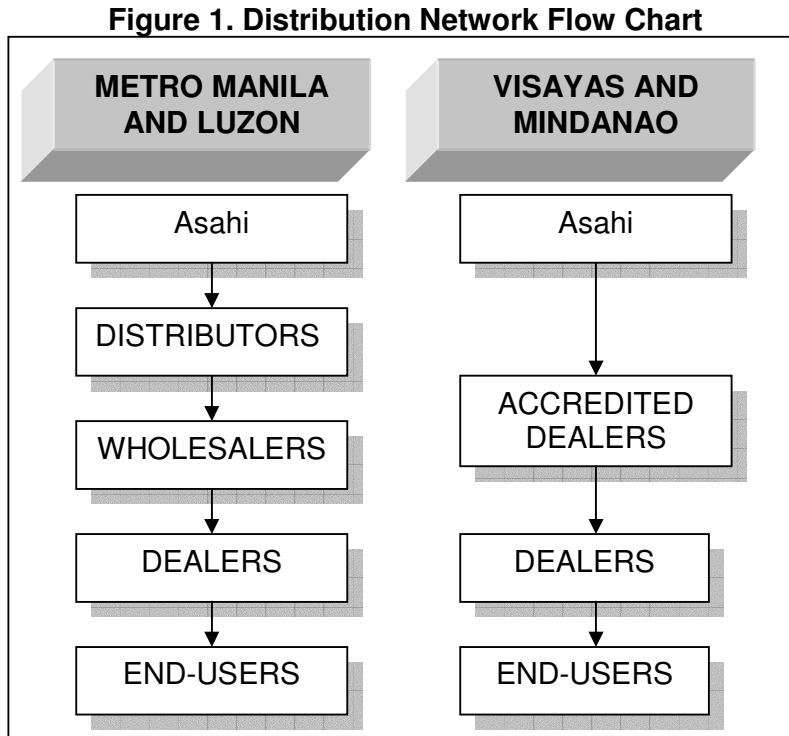
#### **5.2.1.3 Distribution Channels**

At present, Asahi has two distribution channels for figured glass. The distribution route for Metro Manila and Luzon goes from the company warehouse to a distributor, then to a wholesaler, dealer, retailer and subsequently to the end-users, who are housing owners, developers, contractors, mirrorers or glaziers.

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

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

Presented below is the schematic diagram of flat glass distribution flow.



Source: Asahi

The distribution channel consists of seven (7) branches and ten (10) sales offices set up nationwide.

### 5.2.2 Importers

Table 2 shows the list of importers of figured glass for years 2003 to 2005.

**Table 2. Importers of Figured Glass**

Year / Importer	Imports (MT)	Country (Port of Origin)
<b>2003</b>		
Artiflex Trading	140	China, Thailand
Asia Glass Palace, Inc.	680	China, South Africa
Chain Glass	510	South Africa
Comglasco Corporation	1,410	China, South Africa, Thailand
East Asia Aluminum Supply	50	China
Kitani Glassworks	20	Belgium
Limpio's Trading	170	China
Malabon Mirror	1,230	China
Philtech Glass Industries, Inc.	260	China, South Africa, Thailand
Prestige Glass Corporation	190	China
S-senses Corporation	1,015	China, Korea
Times Glass Incorporated	40	China
<b>2004</b>		
A-1 Industries	60	China
Asia Glass Palace	1,125	China, Thailand, Taiwan
Cebu MMF Glass	80	China
Chain Glass	20	South Africa
Comglasco	1,450	China, Thailand
Malabon Mirror	810	China
Par Mdsg. Ventures	40	Thailand
Philtech	390	China, South Africa, Thailand
Times Glass	60	Vietnam
<b>2005</b>		
A-1 Industries	60	China
Apollo Trading	60	USA
Asia Glass Palace	1,005	China, Indonesia, Taiwan, Thailand
Cebu MMF	290	Indonesia
Chain Glass	60	China
Comglasco	340	China, Thailand
East Asia Aluminum	60	China
Malabon Mirror	550	China, Thailand
Philtech	230	China, South Africa, Thailand

Source: Import Entries

\* Based on available Import Entries

### 5.2.3 Users

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

## 6. TARIFF PROFILE

The application of definitive safeguard duty covers imports of figured glass classified under Harmonized System (HS) subheading Nos. 7003.12 90 (or AHTN Nos. 7003.12.20 and 7003.12.90) and 7003.19 90 (or AHTN Nos. 7003.19.20 and 7003.19.90).

For the years 2003 to 2006, MFN tariff duties on figured glass were at 15% while its CEPT rates were at 5%.

**Table 3. Tariff Schedule**

AHTN Code	Product	Duty Type	Rate of Duty (%)			
			2003	2004	2005	2006
70.03	Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.					
7003.12	- - Coloured throughout the mass (body tinted), opacified, flashed or having an absorbent, reflecting or non-reflecting layer:					
7003.12.20	- - - Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut) (i.e., Tinted Figured Glass)	MFN	15	15	15	15
		CEPT	5	5	5	5
7003.12.90	- - - Other (i.e., Tinted Figured Glass)	MFN	15	15	15	15
		CEPT	5	5	5	5
7003.19	- - Other:					
7003.19.20	- - - Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut) (i.e., Clear Figured Glass)	MFN	15	15	15	15
		CEPT	5	5	5	5
7003.19.90	- - - Other (i.e., Clear Figured Glass)	MFN	15	15	15	15
		CEPT	5	5	5	5

## 7. EFFECTIVENESS OF SAFEGUARD ACTION ON IMPORTS

### 7.1 Volume of Imports

#### 7.1.1 In Absolute Terms

In the original investigation, the Commission concluded that figured 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.

Importations of figured glass during the period of review were declining. During the first year of imposition of the safeguard duty in 2003, imports dropped to about 5,700 MT from the surge level of 9,800 MT. Importations were further reduced in 2004 and 2005.

**Table 4. Volume of Imports**

Year	Imports (MT)	Increase/ (Decrease) (MT)	% Change
2002	9,800	--	--
2003	5,730	(4,070)	(41.53)
2004	4,040	(1,690)	(29.49)
2005	2,660	(1,380)	(34.16)

Source of basic data: Import Entries

#### 7.1.2 Relative to Domestic Production

Imports of figured glass accounted for 33% of total domestic production in 2002. With the imposition of the safeguard duty in 2003, the share of imports continuously declined to 18% in 2003, 15% in 2004 and 14% in 2005.

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

Year	Imports (MT) <sup>1/</sup>	Domestic Production (MT) <sup>2/</sup>	Share of Imports to Total Production (%)
2002	9,800	29,990	32.68
2003	5,730	31,055	18.45
2004	4,040	26,220	15.41
2005	2,660	18,640	14.27

<sup>1/</sup> Import entries

<sup>2/</sup> Asahi

### 7.1.3 Country Suppliers

China, despite the imposition of the safeguard duty in 2003, continued to be the top supplier of imported figured glass. It posted the highest share at 78% in 2003 from 35% in 2002. South Africa and Thailand combined for 13% share in 2003 as against 29% and 33%, respectively, in 2002.

In the succeeding years, importation of figured glass decreased following the drop in imports from China and South Africa. Thailand, on the other hand, posted increased importations at 17% and 21% in 2004 and 2005, respectively. Other importations in 2005 came from Indonesia and Taiwan who were both included in the *de minimis* list in the original case.

**Table 6. Country Suppliers**

Country Of Origin	2002		2003		2004		2005	
	(MT)	% to Total	(MT)	% to Total	(MT)	% to Total	(MT)	% to Total
China	3,440	35.10	4,480	78.18	3,095	76.61	1,340	50.38
Australia	60	0.61	--	--	--	--	--	--
Korea*	90	0.92	460	8.03	--	--	--	--
South Africa*	2,820	28.78	390	6.81	80	1.98	20	0.75
Thailand	3,260	33.27	380	6.63	680	16.83	570	21.43
Belgium	20	0.20	20	0.35	--	--	--	--
Taiwan*	--	--	--	--	130	3.22	235	8.83
Vietnam*	--	--	--	--	55	1.36	--	--
Indonesia*	--	--	--	--	--	--	430	16.17
Malaysia	60	0.61	--	--	--	--	--	--
Singapore	10	0.10	--	--	--	--	--	--
USA	40	0.41	--	--	--	--	65	2.44
Total	9,800	100.00	5,730	100.00	4,040	100.00	2,660	100.00

\* countries excluded from the imposition of safeguard duty

### 7.2 De Minimis Import Volume

Vietnam is the only developing country whose volume of imports of figured glass in 2003 to 2005 was found to be *de minimis*.

### 7.3 Findings

The safeguard duty was effective in discouraging the entry of imported figured glass into the country. Import share relative to domestic production of figured glass declined during the period of review.

## **8. DETERMINATION OF THE EFFECTIVENESS OF SAFEGUARD ACTION TO 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 figured glass 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**

Asahi’s market share from 1998 to 2001 ranged from 73% to 84%. When imports surged in 2002, Asahi’s market share dropped to 68%.

In 2003, when the safeguard measure was in place, Asahi increased its market share to 80%. Asahi’s market share further grew in 2004 and 2005.

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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.

**Table 7. Apparent Domestic Consumption and Market Shares**

Article/ Year	Domestic Sales <sup>1</sup> (MT)	Imports <sup>2</sup> (MT)	Apparent Consumption ( MT)	% Share to Apparent Consumption	
				Domestic Industry	Imports
1998	21,685	4,035	25,720	84.31	15.69
1999	20,890	6,685	27,575	75.76	24.24
2000	21,480	8,090	29,570	72.64	27.36
2001	20,910	6,180	27,090	77.19	22.81
2002	20,840	9,800	30,640	68.02	31.98
2003	22,260	5,730	27,990	79.53	20.47
2004	22,080	4,040	26,120	84.53	15.47
2005	20,230	2,660	22,890	88.38	11.62
June 2006	9,860	1,660	11,520	85.59	14.41

Sources: <sup>1</sup> Asahi  
<sup>2</sup> Import Entries

### 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.

The volumes of production in 1999 to 2003 hovered from 27,000 MT to 31,000 MT. In 2003 with the imposition of safeguard measures, figured glass production slightly increased compared to the previous years. In 2004, production declined due to the cold repair of the figured glass furnace in June to September and further decreased in 2005 as the market contracted.

**Sales.** Asahi's sales refer to locally produced figured glass and exclude those imported by Asahi for re-sale.

Domestic sales remained relatively stable in 1998 to 2002 despite the market expansion for figured glass. In 2003 with the safeguard measure imposition, domestic sales improved despite the market contraction. In the succeeding years, domestic sales followed the decline in market demand. The decrease in market demand is caused by the shift in customer preferences from jalousie windows to clear or tinted glass windows.

**Finished Goods Inventory.** The inventory of finished goods refers only to those produced locally. Discrepancies in ending inventories were due to breakages, sales returns, slow moving stocks thrown to cullet and physical count adjustment.

In 2002, inventory level grew by 21% as the company did not achieve its sales forecast due to influx of imports. In 2003, the company perked up production to achieve a higher inventory level that would satisfy market needs when the furnace undergoes its planned cold repair from June to September 2004. In 2005, Asahi reduced its production to properly manage its inventory level.

**Table 8. Production, Sales and Ending Inventory**

Article/ Year	Prod'n (MT)	% Change	Sales (MT)						Ending Invty (MT)	
			Domestic	% Change	Export	% Change	Total	% Change	Total	% Change
1998	34,900	--	21,685	--	8,300	--	29,985	--	7,600	--
1999	31,000	(11.17)	20,890	(3.67)	7,000	(15.66)	27,890	(6.99)	9,000	18.42
2000	27,100	(12.58)	21,480	2.82	7,600	8.57	29,080	4.27	5,600	(37.78)
2001	31,000	14.39	20,910	(2.65)	10,100	32.89	31,010	6.64	6,500	16.07
2002	29,990	(3.26)	20,840	(0.33)	5,500	(45.54)	26,340	(15.06)	7,880	21.23
2003	31,055	3.55	22,260	6.81	7,545	37.18	29,805	13.15	9,480	20.30
2004	26,220	(15.57)	22,080	(0.81)	2,560	(66.07)	24,640	(17.33)	10,770	13.61
2005	18,640	(28.91)	20,230	(8.38)	40	(98.44)	20,270	(17.74)	8,410	(21.91)
June 2006	8,050	--	9,860	--	--	--	9,860	--	6,490	--

Source: Asahi

### 8.2.3 Capacity Utilization

The utilization rate for figured glass dropped from 76% in 2003 to 34% in 2005. It can be noted that Table 9 does not represent the actual utilization of the furnace because when Asahi underwent its planned cold repair, modifications were made to produce solar glass and to increase the rated capacity from 40,900 MT to 54,500 MT. Thus, if solar glass production is taken into account, the utilization rate of this furnace would not have been at this level.

**Table 9. Rated and Actual Capacity Utilization**

Year	Rated Capacity (MT)	Actual Production (MT)	Utilization Rate (%)	% Change
1998	40,900	34,900	85.33	--
1999	40,900	31,000	75.79	(11.17)
2000	40,900	27,100	66.26	(12.58)
2001	40,900	31,000	75.79	14.39
2002	40,900	29,990	73.33	(3.26)
2003	40,900	31,055	75.93	3.55
2004*	54,500	26,220	48.11	(36.64)
2005	54,500	18,640	34.20	(28.91)
June 2006	27,250	8,050	29.54	--

Source: Asahi

\*- Cold Repair (16 June - 20 September 2004)

## 8.2.4 Cost of Production

On account of the efficiency measures undertaken by Asahi to reduce production costs, cost to produce and sell of figured glass dropped by 5% in 2004 from 2003 level. In 2005, cost to produce and sell increased significantly by 39% due to the rise in raw materials, labor and manufacturing overhead costs. Were it not for the efficiency measures applied by Asahi to improve its costs, its cost to produce and sell would have been much higher.

**Table 10. Cost to Produce and Sell**

Factors of Production	% Change		
	2003-2004	2004-2005	2003-2005
Raw Materials	(0.36)	13.98	13.57
Direct Labor	37.50	18.18	62.50
Manufacturing Overhead	(8.12)	49.85	37.68
Cost of Production	(4.26)	37.98	32.11
Operating Expenses	(5.93)	43.69	35.17
Cost to Produce and Sell	(4.57)	39.03	32.68

Source: Asahi

## 8.2.5 Employment and Productivity

Asahi was able to downsize its operation when it outsourced several activities, e.g., loading and unloading operations, fabrication of boxes. From a high of 65 employees in 2003, the company was able to bring the number of employees down to 33 in 2004.

Labor productivity in 2003 decreased from a high of 793 in 1998 to 478. In the following year, productivity increased by 66% despite the drop in production on account of the reduction of employees. The reduction in productivity in 2005 was caused by the cutback in production as a result of the market contraction.

**Table 11. Employment and Productivity**

Year	Number of Employees	% Change	Production (MT)	Productivity	% Change
1998	44	--	34,900	793	--
1999	54	22.73	31,000	574	(27.62)
2000	57	5.56	27,100	475	(17.18)
2001	60	5.26	31,000	517	8.67
2002	57	(5.00)	30,000	526	1.87
2003	65	14.04	31,055	478	(9.22)
2004	33	(49.23)	26,220	795	66.33
2005	34	3.03	18,640	548	(31.00)

Source: Asahi

## 8.2.6 Profitability

With Asahi's operating income in 1998, Asahi experienced a loss of 388% in 2002. This was due to import parity pricing policy adopted by Asahi to be able to compete head-on with imported figured glass. Selling below its cost to produce and sell, sales revenue decreased resulting in a net loss from operation. The huge interest expense charged to the operation affected the company's financial performance as shown by the reduced net profit in 1998 and net losses in 1999 to 2002.

Income from operation steadily declined from 1998 to 2001. In 2002, Asahi was able to bring down its interest expense after it has retired most of its outstanding loans. Despite this, Asahi suffered the largest net loss in a single year as it was forced to use import parity pricing to compete head-on with imported figured glass to protect its market share.

Asahi's financial performance showed a turn around starting 2004 as it was able to put in place efficiency measure to reduce costs and increased its prices with the imposition of the safeguard duty. Building on the positive impact of its adjustment plan, Asahi continued to maintain its financial performance in 2005.

**Table 12. Financial Performance (% change)**

	1999	2000	2001	2002	2003	2004	2005
Sales Revenue	(17.69)	12.38	19.42	(19.66)	8.46	(3.06)	(0.86)
Cost of Sales	(2.64)	19.91	15.09	(24.92)	26.64	(14.83)	6.48
Gross Profit /(Loss)	(41.10)	(6.98)	33.75	(70.09)	115.63	31.88	(9.89)
Operating Expenses	(34.62)	39.22	39.44	(44.44)	12.73	(12.90)	20.37
<b>Income/(Loss) from Operations</b>	(48.53)	(74.29)	(11.11)	(387.50)	130.43	428.57	(54.05)
Other Income/(Expenses)-net:	(100.00)	(1,700.00)	(100.00)	(900.00)	55.56	400.00	100.00
Interest Expense (net)	(14.55)	(17.02)	15.38	(48.89)	(65.22)	(12.50)	14.29
Income/(Loss) Before Tax	(175.00)	(291.67)	21.28	(48.65)	90.91	700.00	(66.67)

Source: Asahi

### 8.2.7 Return on Sales

Return on sales is derived by dividing income from operation by sales revenue. Income from operations was adopted in favor of net income so as to exclude interest expenses, foreign exchange losses and other expenses which do not form part of the operating costs.

Asahi's return on sales was at a comfortable level in 2004 at 11%. This is a great improvement compared in 2002 when imports surged, wherein a negative return on sales was registered. In 2005, Asahi continued to realize a positive return on sales.

**Table 13. Return on Sales**

<b>Year</b>	<b>Return on Sales (%)</b>
1998	18.23
1999	11.4
2000	2.61
2001	1.94
2002	(6.95)
2003	1.95
2004	10.63
2005	4.93

Source: Asahi

### 8.3 Findings

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

The imposition of safeguard measure proved to be effective in providing relief to the domestic industry. There was improvement in the industry performance as evidenced by the increased market shares, productivity and profitability.

However, other factors, namely, rise in power, fuel and transport costs, direct labor costs and China's massive import demand which pushed up prices of raw materials and other inputs, have adversely affected the industry's cost competitiveness. Thus, the potential financial gains from the safeguard duty imposition and the efficiency measures implemented have not been fully realized by the domestic industry.

## **9. DETERMINATION OF RECURRENCE OF INCREASED IMPORTS AND SERIOUS INJURY**

Rule 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, conjectures or remote possibilities. In making a determination regarding the existence of a threat of serious injury, the Secretary and the Commission, at their respective stages of investigation, shall consider the following among others:*

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

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

### **9.1 Foreign Industry Developments**

In 2004, the global market for the flat glass industry was approximately 38 million tons, heavily influenced by strong demand in China. At current price levels, this represents a value at the level of primary manufacture of around EUR 15 billion. Over the long term, glass demand is expected to grow in volume terms at nearly 4% annually.<sup>4</sup>

Of this demand, around 2 million tons is for figured or rolled glass. A portion of some of the figured glass is further processed by laminating, toughening, coating and silvering, for use typically in insulating glass units or

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<sup>4</sup> [www.pilkington.com](http://www.pilkington.com)

automotive glazings. At this level the industry has a value of approximately EUR 44 billion.<sup>5</sup>

World figured glass production capacity increased by 10% from 1999 to 2006 and would ultimately remain stable at almost 3 million tons by 2006 onwards. Capacities are increasing in Asia, Brazil and Iran.<sup>6</sup>

China is said to be the largest manufacturer of figured glass with an annual capacity of 1,055 tons.<sup>7</sup>

In addition to the present capacity of figured glass manufacture, a manufacturing plant known as Trakya Glass in Tarsus, Turkey has been doing test production since December 2005. Net production capacity is 45,000 tons annually. It will be producing colored/colorless figured glass, wired glass and low iron collector glass. The investment, financed by shareholder's equity, amounted to \$ 19 million.<sup>8</sup>

Bucha Glassworks S.A. based in Kiev-Ukraine produces packaging products as well as figured glass. The company recently achieved a 90% productivity level, managing an increase of 20%.<sup>9</sup>

## **9.2 Impact of Safeguard Measure 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 figured glass were consistently below Asahi's average domestic selling prices.

Removal of safeguard duty will result to lower landed costs of imported figured glass. 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.

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> World Economic Outlook

<sup>8</sup> [www.stirom.ro/news](http://www.stirom.ro/news)

<sup>9</sup> Ibid

**Table 14A. Price Difference <sup>a</sup> between the Landed Cost (LC)<sup>b</sup> and Asahi's Ex-factory Domestic Selling Price (DSP)<sup>c</sup> on Figured Glass\***

Year	Without Safeguard Duty On Landed Cost (%)	With Safeguard Duty On Landed Cost (%)
2004	(16.61)	1.80
2005	(9.67)	5.85
2006**	(20.19)	(5.74)

\* Net of VAT

\*\* As of June 2006

Note: <sup>a</sup> - Formula =  $\frac{LC-DSP}{DSP}$ <sup>b</sup> - weighted average – all countries.Sources: <sup>b</sup> - Import Enties<sup>c</sup> - Asahi**Table 14B. 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	102.01	(2.01)
2004	100.00	83.81	16.19
2005	100.00	103.76	(3.76)
2006*	100.00	111.19	(11.19)

Source: Asahi

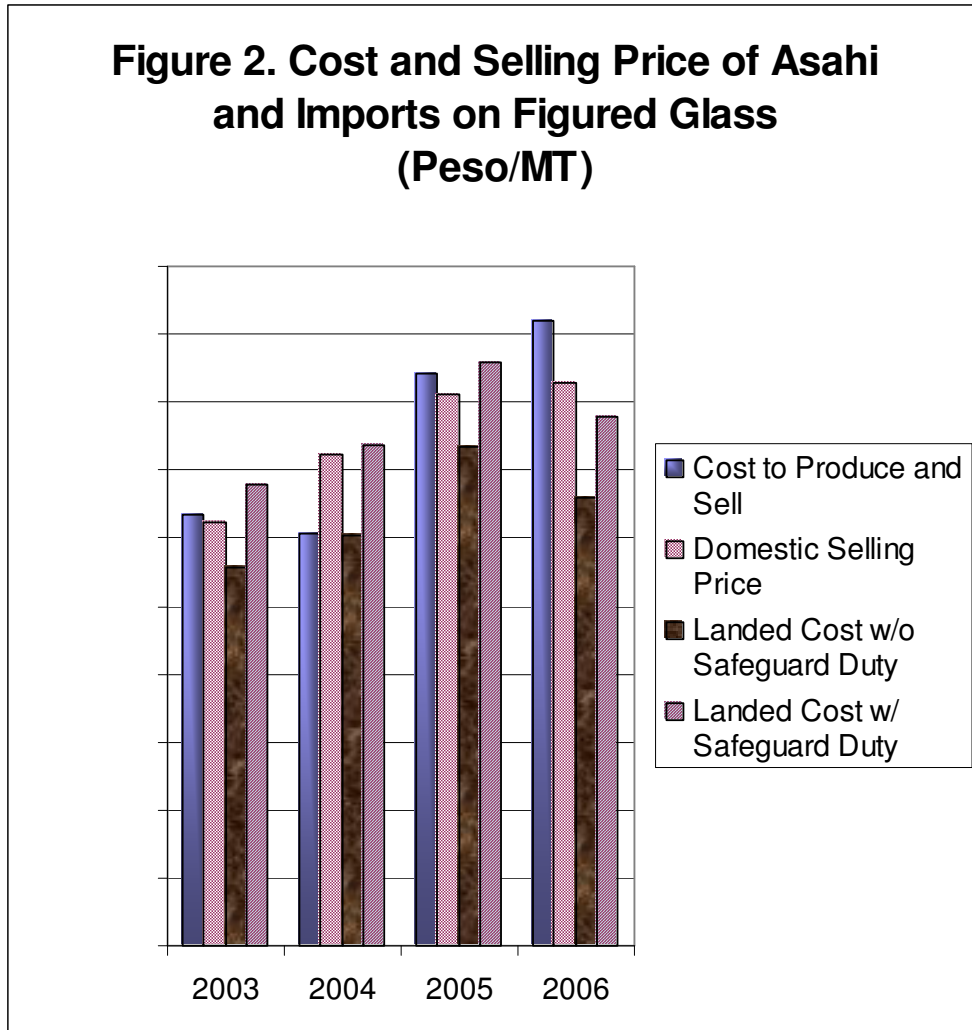
\* As of June 2006

### 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.

Without the safeguard duty, the landed cost of imported figured glass has a price advantage over Asahi's domestic selling price (Figure 2). The wider the gap between landed cost and domestic selling price which worsened in 2006 to 20%, the more likely the import surge would recur. Asahi will be forced to price its figured glass 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>10</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>11</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: development and installation of anti-pollution system to comply with the Clean Air Act; logistical support to prevent circumvention of R.A. 8800 and to strengthen government's anti-smuggling effort; and 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 fully realized due to sharp rise in transport cost brought about by the increase in oil prices and the China factor.<sup>12</sup> Were it not for the change in

<sup>10</sup> TC Manual on Safeguards Investigation, p. 11b.

<sup>11</sup> TC Formal Investigation Report (SG No. 01-03), p. 13-14

<sup>12</sup> Massive imports by China pushed up price levels of most commodities and caused shortage of vessels

purchasing method, Asahi's purchase price for its raw materials 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 (1:9) in 2005 has resulted to savings of Asahi on the raw material cost 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, the costs of bunker fuel and diesel in 2004 and 2005 could have been much higher because of the increasing 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>13</sup> During these years, the circumstances negated the expected savings from this new purchase method.

Asahi's 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>14</sup>

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

In June 2004, Asahi's figured glass furnace (F6) underwent "cold repair", resulting to a major improvement in its production capabilities. Asahi now has a multi-purpose furnace capable of producing low-iron glass for solar glass application. However, to date, the targeted efficiencies have not yet been attained because the company is still in the process of stabilizing operations.

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

In 2004, Asahi was able to reduce its consumption of bunker fuel oil and liquefied petroleum gas (LPG) when the amount required per MT of glass product was lessened by 3% and 6%, respectively. Likewise, power consumption reduced by 7% in 2004 while gas consumption

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<sup>13</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>14</sup> Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005.

reduced by 76% in the same year. Consumption of both power and gas was further reduced in 2005.

- ④ 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
- ④ Streamlining of organization and capability-building to enhance operational efficiencies
- ④ 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 figured 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 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 potential of cost savings from the efficiency measures implemented so far, has not been fully realized by the domestic industry.<sup>15</sup>

Further adjustment must be made by the domestic figured glass industry to alleviate the pressure exerted by external factors. The current safeguard measure provides the domestic industry with the needed time to respond and undertake the improvements<sup>16</sup> that are necessary if the objective of attaining import competitiveness is to be achieved.

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<sup>15</sup> Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005, p. 23.

<sup>16</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 figured glass, petitioner Asahi accounted for all the 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 of figured glass decreased below the pre-surge level. The domestic industry showed improvements in market shares, productivity and profitability.
3. 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.
4. Without the safeguard duty, domestic selling prices will fall below the levels not enough to recover Asahi's cost to produce and sell. There is a substantial threat of serious injury in the form of increased imports of figured glass if safeguard duty is not extended.
5. Without the extension of the safeguard measure, the positive gains that were realized by the domestic industry will be negated as it still needs time to fully put in place its adjustment plan to effectively face import competition.

### 11.2 Conclusion and Recommendation

The Commission concludes that safeguard action on figured glass 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 figured glass remains as there are no quantitative restraints on imports.
- ☉ As the proposed measure is only temporary and will progressively be liberalized, competition will return to its normal level.

### 13.2 On the Domestic Industry

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

### 13.3 User Industries and Consumer Welfare

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

### 13.4 On Employment

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

### **13.5 On Regional Development**

- 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.

04 October 2006

**EDGARDO B. ABON**  
**Chairman**

**EDGARDO R. MARALIT**  
**Acting Commissioner**

**MARILOU P. MENDOZA**  
**Acting Commissioner**