
**REPORT OF FINDINGS ON THE EXPIRY REVIEW
OF THE DEFINITIVE ANTI-DUMPING DUTIES ON THE
IMPORTATION OF CLEAR FLOAT GLASS
[HS HEADING NO. 7005.29 90 (AHTN CODE NOS. 7005.29 20
AND 7005.29 90)] FROM INDONESIA UNDER SECTION 301 OF
THE TARIFF AND CUSTOMS CODE, AS AMENDED
(Expiry Review No. 05-01)**

(PUBLIC VERSION)

26 September 2006

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ABBREVIATIONS

AGP	Asahi Glass Philippines
AHTN	ASEAN Harmonized Tariff Nomenclature
BIS	Bureau of Import Services
CFG	Clear Float Glass
DOF	Department of Finance
DTI	Department of Trade and Industry
FOB	Free On Board
GATT	General Agreement on Tariffs and Trade
HS	Harmonized System
IRR	Implementing Rules and Regulation
MT	Metric Tons
POI	Period of Investigation
RAGC	Republic Asahi Glass Corporation
ROS	Return on Sales
SGS	Societe Generale de Surveillance
VAT	Value Added Tax
WTO	World Trade Organization

1. EXECUTIVE SUMMARY AND CONCLUSION

1.1 BACKGROUND

On 25 May 1999, Republic Asahi Glass Corporation (RAGC) filed a dumping protest with the Department of Finance (DOF) against importations of Clear Float Glass (HS Heading No. 7005.29 90) and Tinted Float Glass (HS Heading No. 7005.21 90) from Indonesia.

The dumping protest was endorsed to the Bureau of Import Services (BIS) of the Department of Trade and Industry (DTI) on 17 August 1999. BIS endorsed the protest to the Tariff Commission (Commission) after an affirmative preliminary finding of dumping was made.

On 09 November 1999, the Commission commenced formal investigation of the protest. The investigation was conducted pursuant to Section 301 of the Tariff and Customs Code of the Philippines, as amended by Republic Act 7843, and Article VI of the General Agreement on Tariffs and Trade 1994 (the WTO Anti-Dumping Agreement).

In its decision, the Department of Finance (DOF) ordered the imposition of definitive anti-dumping duties for five (5) years beginning 7 January 2001 on the following exporters of clear float glass (CFG) originating from Indonesia:

Exporter(s)	Nominal Thickness (mm)	Weighted Average Dumping Margin	
	<i>(Tolerance \pm 0.2mm)</i>	<i>(US\$/MT)</i>	<i>(% of Export Price)</i>
PT Muliaglass	2	11.42	7.41
	3	30.36	25.66
	5	48.62	45.56
	6	76.52	72.25
	10	20.12	11.82
	12	3.81	2.06
PT Tensindo	3	34.18	35.68
	5	67.64	48.81
	6	56.59	53.51
	10	11.59	7.12
	12	3.16	2.37
PT Tunggal Majuasri	3	59.35	191.88
	5	143.05	333.03
	6	85.21	128.23
PT Abdi Rakyat Bakti	6	61.85	55.37

On the other hand, the case against tinted float glass imports from Indonesia was dismissed for lack of merit.

The imposition of the definitive dumping duties expired on 07 January 2006.

On 17 October 2005, Asahi Glass Philippines (AGP), formerly RAGC, requested the continued imposition of the definitive dumping duties against the importation of Clear Float Glass from Indonesia.

The petition alleged that the expiry/non-extension of the imposition of the definitive dumping duties would most certainly result in the continuation or recurrence of dumping and injury to the domestic industry.

On the basis of sufficient evidence submitted by AGP, the Commission initiated the review to determine whether the continued imposition of definitive anti-dumping duties is necessary or warranted to prevent the continuation or recurrence of dumping and injury.

The public hearing was originally scheduled from 16 to 19 January 2006. However, with no other parties to present relevant material evidence as well as arguments to the case, the hearing was terminated on 16 January 2006.

1.2 FINDINGS

1.2.1 On Continued Dumping and Injury

Export Price

Export price is the price paid or the selling price to an importer in the Philippines of articles purchased at arms' length transaction, excluding any post exportation charges such as ocean freight and overseas insurance.

The Commission based its estimates of export price on import entries submitted by AGP and on file with the Commission.

During the POI for dumping determination, PT Muliaglass was the sole Indonesian exporter of CFG to the Philippines. Said exporter supplied CFG with nominal thicknesses of 10mm and 12mm (i.e., CFG of thicknesses 2mm, 3mm, 5mm, and 6mm were not exported).

Verification of said prices from the actual commercial invoices of PT Muliaglass revealed that the FOB export prices of CFG with thicknesses 10mm and 12mm were inclusive of inland freight, customs clearance, export packing cost, and fumigation cost. These incidental expenses were deducted from the FOB prices (net of insurance and sea freight) to arrive at the ex-factory level.

Shown below are the exporter's (PT Muliaglass) adjusted weighted average export prices (FOB) of CFG during the POI:

Table 1: PT Muliaglass' Adjusted Weighted Average Export Prices During the POI (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average FOB Export Prices (US\$/MT)
PT Muliaglass	10	227.25
	12	239.17

Source: import entries (September 2004 - December 2005) for PT Muliaglass' 10mm & 12mm CFG; export commercial invoices of PT Muliaglass

Normal Value

Based on verified domestic sales invoices of PT Muliaglass, the Commission determined the actual domestic selling prices (in Indonesia) of CFG with nominal thicknesses of 10 mm and 12 mm. To set the export price and normal value at the same level of trade, i.e., at ex-factory level, costs for inland freight, commission and local packing were deducted from the domestic selling prices.

Below are the exporter's (PT Muliaglass) adjusted weighted average normal values during the POI:

Table 2: PT Muliaglass' Adjusted Weighted Average Normal Values During the POI (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average Normal Value (US\$/MT)
PT Muliaglass	10	250.04
	12	259.65

Source: PT Muliaglass' domestic sales invoices

Estimated Dumping Margin

Based on the weighted average normal values and export prices of PT Muliaglass during the POI, dumping margins are estimated at US\$22.79/MT and US\$20.48/MT, or 10.03% and 8.56% of export price, for CFG of nominal thickness 10 mm and 12 mm, respectively.

Table 3: Estimated Weighted Average Adjusted Dumping Margin (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average Dumping Margin	
		US\$/MT	% of Export Price
PT Muliaglass	10	22.79	10.03
	12	20.48	8.56

Sources: import entries; domestic sales invoices of PT Muliaglass

Being not less than 2% of export price, the dumping margins shown in Table 3 are clearly not *de minimis*.

Volume of Dumped Imports

Negligible Volume of Dumped Imports

Imports from Indonesia of CFG (10 mm and 12 mm only) at dumped prices accounted for 42% and 10% of total Philippine CFG imports for September - December 2004 and the whole of 2005, respectively. Over the POI, volume of dumped imports amounted to almost 13% of total imports. Not being less than 3% of total imports, the volume of dumped imports is above the *de minimis* threshold.

Volume Effect

Relative to total domestic consumption over the POI, dumped CFG imports from Indonesia were insignificant.

Price Effects of Dumped Imports

Price Undercutting

A comparison of the average landed cost of dumped CFG from Indonesia against the average domestic selling prices of locally produced CFG shows that the former is significantly lower than the latter despite the imposition of anti-dumping duties.

In September to December 2004, the average landed cost of dumped CFG was lower than the domestic selling price by 29% and 22% for CFG with nominal thickness 10 mm and 12 mm, respectively. (Table 6)

In 2005, the price difference was 33% for 10mm CFG and 19% for 12mm CFG, thus, the existence of price undercutting during the POI.

The price undercutting was remedied for 12 mm CFG, however, by the simultaneous application of the safeguard measure which increased its landed cost.

Price Depression

Following the simultaneous application of anti-dumping and safeguard duties during the POI, there was no evidence of price depression from dumped CFG imports. In 2004, AGP increased its prices by 40% (for 12mm CFG) and 51% (for 10mm CFG) despite reductions in production cost.

Price Suppression

With the simultaneous imposition of the anti-dumping duty and safeguard duty, AGP was able to increase its price. At its price level, price suppression was not evident as the domestically produced CFG was competitive vis-à-vis the imported counterpart from Indonesia. These measures permitted the domestic industry to raise its price at more than the level of the increase in its cost of production.

Impact of Dumped Imports on the Domestic Industry

Market Share

AGP dominated the Philippine CFG market from 1996 to 2005, with market shares ranging from 90% to a high of 96%.

In the first year of the implementation of the dumping duties in 2001, domestic industry's market share shrank from 80% to 70%; lost market share was grabbed by imports from Indonesia and from other countries. The increase in imports from Indonesia was traced to the continued exports of PT Muliaglass and PT Tensindo of its CFG (all thicknesses). Also contributory to the rise in imports from Indonesia was the exports made by exporters not covered by the dumping duties (i.e., PT Bali Permai Grafindo and PT Asahimas) and the significant exports made by an exporter of CFG with nominal thickness not imposed with dumping duties (i.e., PT Abdi Rakyat Bakti exported the 3 mm and 5 mm CFG instead of the 6 mm CFG, which was the one slapped with dumping duty)¹.

In 2002, the second year of imposition of the dumping duties, imports from Indonesia fell by 60% from the previous year's level, corresponding to a 63% decline in market share, indicative of the dumping duty's deterrent effect. The domestic industry also saw an improvement in its domestic sales.

However, said sales improvement was not sufficient for the industry to regain lost market share. The 11% increase in apparent consumption during the year was taken mainly by imports sourced from other countries (with the dumping barrier, importers had to source CFG from countries other than Indonesia).

It is noted that Singapore (with no CFG facility) was one of the principal suppliers of CFG during the period of imposition of dumping duty in 2001 to 2003.

¹ Import entries (September 2004 – December 2005)

AGP saw improvement in its market performance in 2003 when its share grew to 79%. Imports from Indonesia fell to less than 600 MT while imports from other countries contracted by 22%. While the final quarter of this year saw the imposition of safeguard duties on CFG imports, the negligible market share of Indonesian CFG, where only a single Indonesian exporter (PT Muliaglass) remained active in the market, is indicative of the effectiveness of the dumping duty to remove injury by allowing the domestic industry to recapture market share from dumped Indonesian CFG.

In 2004 and 2005, AGP's market shares breached the 90% mark, attributable to the combined impact of the dumping and safeguard duties. While there was a slight increase in the market share of imports from Indonesia during these years, said shares are much lower than that gained prior to the imposition of dumping duty and thus, indicative of the effectiveness of the anti-dumping duty in counteracting injurious dumping.

Production and Sales

Production

Production data from 2002 to 2005 are indicative of the effectiveness of the dumping duty to offset dumping and remove injury to the domestic industry. In 2002, AGP, in anticipation of higher demand brought about by the imposition of the dumping duty, expanded its production by 70% from some 46,000 MT to an all-time high of 78,738 MT.

In 2003, production contracted by 10%, but volume was still way above the 1999 volume, its peak year prior to the imposition of the dumping duty. The high production volume may be attributed to the confluence of the following factors: (1) imposition of the dumping duty, which deterred dumping and allowed the industry to increase domestic sales, (2) imposition of the safeguard duties in the last quarter of the year, which had a chilling effect on all CFG imports and again, permitted higher domestic sales, and (3) the higher demand for local CFG for export. With increased production, the domestic industry was able to achieve economies of scale, making its cost of production lower and its selling prices competitive in both the domestic and export markets.

In 2004 and 2005, production continued to expand which can be attributed to the combined restrictive impact on CFG imports of the anti-dumping duty and the safeguard duty.

Domestic Sales

Domestic sales improved from 2002 to 2005, reflecting the value of the anti-dumping duty in thwarting injurious dumping of Indonesian CFG.

In 2002, when imports from Indonesia fell to 5% of the market (from the previous year's 15%) despite the marked growth in the domestic market, domestic sales rose by 7%. The following year, domestic sales grew even further by 21% when the safeguard duty (levied starting October of said year) combined with the anti-dumping duty to provide relief to the domestic industry.

In 2004 and 2005, removal of injury continued when AGP was able to surpass its highest domestic sales record prior to the imposition of the dumping duty in 2001. As safeguard duty was also levied on imports during this period, the removal of injury may not be attributable solely to the anti-dumping duty. The low market share held by Indonesian CFG from 2003 to 2005 indicates the contribution of the anti-dumping duty to the removal of injury.

Finished Goods Inventory

To achieve economies of scale, lower production costs and competitive prices, AGP produced more than the expected demand during the period. Thus, inventory levels were on the uptrend from 2001 to 2005.

The spike in inventory in 2005 was due to additional production in preparation for the cold repair of the CFG furnace in 2006.

Cost of Production

Costs of production during the implementation of the dumping duty were higher compared to the previous years' levels, peaking in 2001. However, in the succeeding years (2002 and 2003), reductions in costs were achieved that were traceable to the decline in the costs of all factors of production especially overhead costs resulting from increased production.

In 2004 and 2005, however, production costs rose slightly, due to higher raw material and labor costs brought about by rising world oil prices. Overhead costs, which could have increased also, declined instead due higher production volumes.

Employment and Labor Productivity

Declining employment during the period was the result of management's continuing effort or program to cut costs and improve operational efficiency.

With the improvement in production volumes and the reduction in its labor complement, AGP improved significantly its labor productivity in the last four (4) years.

Actual Capacity Utilization

There have been improvements in the domestic industry's utilization rates from 2002 to 2005 with the imposition of the anti-dumping duty. The highest utilization level was attained in 2002 attributable to the sharp drop in imports from Indonesia and the consequent increase in production of the domestic industry.

In 2004 and 2005, with both anti-dumping and safeguard duties in place, utilization rates were almost at par with the 2002 utilization level (when only the anti-dumping duty was being applied). The significantly higher utilization rates achieved by AGP during the POI maybe attributed to the import-deterrent effect of the anti-dumping duties and safeguard duties.

Financial Performance/Profitability

During the period of imposition of the anti-dumping duty, the domestic industry showed steady improvement in its financial operations.

With the anti-dumping duty in place beginning 2001, the domestic industry was able to drastically reduce its operating losses from ₱64 million in 2002 to ₱8 million in 2003. Profitability may not have been attained but the magnitude of the reduction in operating losses, by ₱56 million or 87%, was not insignificant to the industry.

As dumping and safeguard duties were simultaneously levied in 2004 and 2005, recovery was on track as the industry, suffering from previous losses, finally realized gains from operations amounting to ₱122 million in 2004 and ₱146 million in 2005.

Bottom line results of operations likewise improved with a reduction in the deficit in 2003 and incomes gained the following years.

Return on Sales

Due to its enhanced sales and profitability levels during the period of imposition of the anti-dumping duties and safeguard duties, AGP's Return on Sales improved significantly.

1.2.2 On the Recurrence of Dumping and Injury

Excess Production Capacity in Indonesia

Indonesia currently has nine (9) float glass facilities with total annual capacity of close to 1.1 million MT. The industry's capacity is expected to grow further with the additional facility to be put up by PT Tensindo in 2007, an exporter subject to anti-dumping duties.

The Indonesian flat glass industry is export-oriented. From 2002 to 2005, exports outstripped domestic sales. This trend is expected to continue through 2008, where exports are projected to reach 546,000 MT.

The Philippines as a Target Market

The Philippines is a major export market of Indonesia. In the four (4) years prior to the imposition of dumping duties in 2001, from 22% to 96% of Indonesia's annual exports of CFG went to the Philippines. In 2001 and 2002, the Philippine share in Indonesia's annual export volumes remained substantial at 19% and 14%, respectively. These exports came from parties not levied dumping duties (PT Bali Permai Grafindo and PT Asahimas). Exports were also made by a party subject to anti-dumping duties, PT Abdi Rakyat Bakti, which exported CFG with thicknesses not covered by said duties (3mm and 5mm).

That the Philippines is targeted for exportation is plausible by its proximity to Indonesia and the resultant lower transport costs. Freight costs from Indonesia to the Philippines range from US\$400/FCL (Manila) to US\$600/FCL (Davao) whereas transport costs to other countries range from US\$450/FCL (Malaysia) to US\$1,050/FCL (India).

In 1996, Indonesia was already exporting CFG to the Philippines. This indicates that commercial contacts are in place and that relationships are well established between Indonesian exporters of CFG and Philippine importers. Hence, the Philippines remains an accessible market for Indonesian CFG.

Other Dumping Action Against Indonesia

India imposed a definitive anti-dumping duty on CFG imports effective August 2003.² This limits the export markets available to Indonesia.

Price Comparison

The removal of the dumping duty would widen the price gap between the average landed cost (with safeguard duty only) and the domestic selling price which may result to significant depressing and suppressing effects on AGP's prices.

1.3 CONCLUSION

The Commission concludes that:

1. there is continued dumping on CFG of thicknesses 10mm and 12mm and the likelihood of recurrence of dumping on thicknesses of 2mm, 3mm, 5mm, and 6mm due to excess production capacity of Indonesia; and
2. there is a likelihood of recurrence of injury for thicknesses 10mm and 12mm as shown in the suppressing and depressing effects on AGP's prices and for thicknesses of 2mm, 3mm, 5mm and 6mm due to excess production capacity of Indonesia.

² Australian Customs Services: Customs Act 1901 – Pat XVB
Trade Measures Branch, Statement of Essential Facts No. 106 dated February 2006

1.4 RECOMMENDATION

In view of the foregoing conclusions, the Commission hereby orders the extension of the imposition of the definitive anti-dumping duties on the importation of Clear Float Glass from Indonesia for a period of five (5) years. The corresponding anti-dumping duties shall be imposed on the following exporters:

Exporter(s)	Nominal Thickness (mm) Tolerance ± 0.2 mm	Estimated Weighted Average Dumping Margin (US\$/MT)
PT Muliaglass	2	11.42
	3	30.36
	5	48.62
	6	76.52
	10	22.79
	12	20.48
PT Tensindo	3	34.18
	5	67.64
	6	56.59
	10	11.59
	12	3.16
PT Tunggal Majuasri	3	59.35
	5	143.05
	6	85.21
PT Abdi Rakyat Bakti	6	61.85
Other Exporters from Indonesia	2	11.42
	3	59.35
	5	143.05
	6	85.21
	10	22.79
	12	20.48

There being no exports of CFG with thicknesses of 2mm, 3mm, 5mm and 6mm which prices are needed for the computation of dumping margins, the dumping duties to be imposed are those levied in the original case as they have proven effective to remedy the material injury suffered by the domestic industry.

For other exporters, the highest dumping duties shall be imposed.

1.5 ISSUANCE OF DEPARTMENT ORDER

Paragraph (l). Section 301 of TCCP, as amended by RA 8752 provides:

“The Secretary shall, within ten (10) days from receipt of the affirmative final determination by the Commission, issue a Department Order imposing an anti-dumping duty on the imported product, commodity, or article, unless he has earlier accepted a price undertaking from the exporter or foreign producer. He shall furnish the Secretary of Finance with the copy of the Order and request the latter to direct the Commissioner of Customs to collect within three (3) days from receipt thereof of the definitive anti-dumping duty.”

1. INTRODUCTION

1.1 BACKGROUND

On 25 May 1999, Republic Asahi Glass Corporation (RAGC) filed a dumping protest with the Department of Finance (DOF) against importations of Clear Float Glass (HS Heading No. 7005.29 90) and Tinted Float Glass (HS Heading No. 7005.21 90) from Indonesia.

The dumping protest was endorsed to the Bureau of Import Services (BIS) of the Department of Trade and Industry (DTI) on 17 August 1999. BIS endorsed the protest to the Tariff Commission (Commission) after an affirmative preliminary finding of dumping was made.

On 09 November 1999, the Commission commenced formal investigation of the protest. The investigation was conducted pursuant to Section 301 of the Tariff and Customs Code of the Philippines, as amended by Republic Act 7843, and Article VI of the General Agreement on Tariffs and Trade 1994 (the WTO Anti-Dumping Agreement).

In its decision, the Department of Finance (DOF) ordered the imposition of definitive anti-dumping duties for five (5) years beginning 7 January 2001 on the following exporters of clear float glass (CFG) originating from Indonesia:

Exporter(s)	Nominal Thickness (mm)	Weighted Average Dumping Margin	
	(Tolerance \pm 0.2mm)	(US\$/MT)	(% of Export Price)
PT Muliaglass	2	11.42	7.41
	3	30.36	25.66
	5	48.62	45.56
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	10	20.12	11.82
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PT Tensindo	3	34.18	35.68
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	6	56.59	53.51
	10	11.59	7.12
	12	3.16	2.37
PT Tunggal Majuasri	3	59.35	191.88
	5	143.05	333.03
	6	85.21	128.23
PT Abdi Rakyat Bakti	6	61.85	55.37

On the other hand, the case against tinted float glass imports from Indonesia was dismissed for lack of merit.

The imposition of the definitive dumping duties expired on 07 January 2006.

1.2 THE PETITION FOR EXPIRY (SUNSET) REVIEW OF THE ANTI-DUMPING DUTIES

On 17 October 2005, Asahi Glass Philippines (AGP), formerly RAGC, requested the continued imposition of the definitive dumping duties against the importation of Clear Float Glass from Indonesia.

The petition alleged that the expiry/non-extension of the imposition of the definitive dumping duties would most certainly result in the continuation or recurrence of dumping and injury to the domestic industry.

On the basis of sufficient evidence submitted by AGP, the Commission initiated the review to determine whether the continued imposition of definitive anti-dumping duties is necessary or warranted to prevent the continuation or recurrence of dumping and injury.

1.3 THE WTO ANTI-DUMPING AGREEMENT

Article 11 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 provides:

Article 11. Duration and Review of Anti-Dumping Duties and Price Undertakings

An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

The provisions of this Article shall apply mutatis mutandis to price undertaking accepted under Article 8.

1.4 ROLE OF THE TARIFF COMMISSION

Section 19(b) of Joint Administrative Order No. 1, Series of 2000 (Implementing Rules and Regulations Governing the Imposition of an Anti-Dumping Duty Under Republic Act 8752 – The Anti-Dumping Act of 1999) provides:

“Sec. 19. Duration and Review of the Anti-Dumping Duty

(b) The duration of the definitive anti-dumping duty shall not exceed five (5) years from the date of its imposition, or from the date of the most recent review if that review has covered both dumping and injury, unless the Commission has determined, in a review initiated before that date on their own or upon a duly substantiated request made by or in behalf of the domestic industry at least six (6) months prior to the termination date, that the termination of the anti-dumping duty will likely lead to the continuation or recurrence of dumping and injury. The anti-dumping duty shall remain in force pending the outcome of such an expiry review.

An expiry review shall be initiated when there is sufficient evidence that the expiry of the definitive anti-dumping duty would likely result in a continuation or recurrence of dumping and injury. Such a likelihood may be indicated, for example, by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of the duty or evidence that the circumstances of the foreign exporters, or market conditions, are such that these would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the foreign exporters, the representatives of the country of export or origin and the

domestic producers and importers shall be provided with the opportunity to comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of the definitive anti-dumping duty would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury. x x x."

2. THE COMMISSION'S REVIEW

The Commission's review included the following courses of action:

- identification of all parties concerned;
- notification of foreign governments concerned and sending of questionnaires to all parties, both domestic and foreign;
- conduct of consultation, pre-hearing conference and public consultations;
- gathering of relevant economic and financial data such as production, sales, inventory and employment;
- conduct of ocular inspection and/or verification of information submitted by parties concerned;
- conduct of on-site investigation in the territory of the exporting country;
- acceptance of memoranda and counter-memoranda of the parties;
- evaluation and analysis of all information submitted/gathered to determine the likelihood that expiry of the definitive anti-dumping duty would result in a continuation or recurrence of dumping and injury;
- disclosure to all interested parties of the essential facts which form the basis for the decision of whether or not to extend the definitive anti-dumping duty; and
- preparation of report of final determination and submission of said report to the DTI for the issuance of a Department Order for the extension of the definitive anti-dumping duty, if affirmative, or the termination of the anti-dumping duty, if negative.

2.1 PRODUCT UNDER CONSIDERATION

The product under consideration is Clear Float Glass.

2.2 PERIOD OF INVESTIGATION (POI)

The WTO Anti-Dumping Agreement does not establish any specific POI or provide guidelines for determining an appropriate POI. To assist Members, the Committee on Anti-Dumping Practices adopted the following recommendations: (1) as a general rule, the period of data collection for dumping investigations should normally be twelve (12) months, and in any case no less than six (6) months, ending as close to the date of initiation as practicable, and (2) as a general rule, the period of data collection for injury investigations should normally be at least three (3) years, unless a party from whom data are being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation¹

¹ Czako, Judith, Johann Human and Jorge Miranda, 2003, *A Handbook on Anti-Dumping Investigations*, Cambridge University Press, Cambridge

Section 11(a) of the Implementing Rules and Regulations of Republic Act 8752 provides that the “*POI for the determination of dumping or price difference shall cover import transactions made at least six (6) months prior to the date of filing of the petition..*”.

For purposes of the Commission’s expiry review, the POI for dumping is from September 2004 to December 2005 and for injury, from January 2003 to December 2005.

2.3 NOTIFICATIONS

2.3.1 Notice of Impending Expiry of Effectivity of Definitive Anti-Dumping Duty

Notice of Impending Expiry of Effectivity of Definitive Anti-Dumping Duty was published in *The Manila Times* and *The Manila Standard Today* on 23 September 2005. **(See Annex 1)**

2.3.2 Notice of Formal Investigation

Notice of Formal Investigation was published in *The Manila Times* and *The Manila Standard Today* on 08 November 2005. **(See Annex 2)**

Individual notifications with attached questionnaires were likewise sent to AGP, eleven (11) identified importers, and ten (10) exporters on 08 November 2005. Parties were given thirty (30) days from receipt of the questionnaire to accomplish and return the same to the Commission.

The embassy of the country of exportation (Indonesia) was formally notified on 10 November 2005 that the case was now under review by the Commission.

Generally, the contents of the notification letters sent were: (a) formal notification to the interested parties of the commencement of the expiry review; (b) request for financial data from importers and exporters and (c) invitation to attend the preliminary conference.

2.3.3 Notice of Public Consultations

Notice of Public Consultation was published in *The Manila Times* and *The Manila Standard Today* on 29 December 2005. Individual notices were likewise sent to all known interested parties and concerned government agencies. **(See Annex 3)**

2.4 PRELIMINARY CONFERENCE

A Preliminary Conference was conducted on 21 November 2005. During said conference, the parties discussed the schedules and procedures of the expiry review, the presentation of documentary evidences, timelines, and other relevant matters necessary for the expeditious and orderly conduct of the consultations and the review.

Parties in attendance were representatives from AGP, Comglasco Corporation and the Bureau of Customs. The agreements reached were contained in a Commission Order issued to all interested parties on 23 November 2005. **(See Annex 4)**

2.5 PUBLIC HEARING

The public hearing was originally scheduled from 16 to 19 January 2006. However, with no other parties to present relevant material evidence as well as arguments to the case, the hearing was terminated on 16 January 2006.

In attendance during the public hearing were representatives from AGP and PT Muliaglass as well as the Indonesian Commercial Attaché.

2.6 REPLIES TO QUESTIONNAIRES

2.6.1 Asahi Glass Philippines, Inc.

AGP completely answered the manufacturer's questionnaire and provided information vital to dumping margin and injury determination (e.g., export prices, normal values, selling prices, production, sales, imports, capacity utilization, cost of production, audited financial statements, import entries). Supporting documents as well as other information related to CFG production and material injury allegedly being suffered by the domestic industry were also submitted.

2.6.2 PT Muliaglass

Response to the Exporter's Questionnaire was received by the Commission on 2 January 2006. The company completely filled-in the exporter's questionnaire and submitted evidences essential to the Commission's review.

2.6.3 Importers

The following identified CFG importers did not respond to the Commission's inquiry:

- Glass Temp Industries Corporation
- San Francisco Mirror Corporation
- Isla Industrial Sales/Malabon Mirror Factory
- Aluminum Industries, Inc.
- Comglasco Corporation
- Asia Glass Palace
- Winform Enterprises, Inc.
- Philippine Chamber of Glass and Aluminum Industries, Inc.
- New Times Glass
- The Sun Industrial Corporation
- Artiflex Trading

Comglasco Corporation, on the other hand, participated only as observer.

2.7 PLANT OCULAR INSPECTION AND VERIFICATION OF ACCOUNTING RECORDS

2.7.1 Asahi Glass Philippines, Inc.

Ocular inspections of the CFG plant in Bo. Pinagbuhatan, Pasig City and verification of accounting records were conducted in September 2005 which included inspection of sales invoices, cost of production reports, import figures, capacity utilization, audited financial statements and other information forming part of AGP's submissions.

2.7.2 PT Muliaglass

An ocular inspection of the company's plant facilities in Jakarta, Indonesia and verification of accounting records were conducted on 01 - 04 February 2006. Verified were the following data:

- sales invoices for September 2004 - December 2005 export sales to the Philippines of CFG with nominal thicknesses of 10mm and 12mm;
- sales invoices for September 2004 - December 2005 export sales to the Philippines of colored float glass of nominal thicknesses of 2mm, 3mm, 5mm, 6mm, 10mm and 12mm;
- sales invoices for September 2004 - December 2005 domestic sales of CFG and colored glass of all nominal thicknesses mentioned above;
- documentary evidences of the incidental expenses for export and domestic sales (e.g., inland freight, commission, fumigation, clearance, packaging) mentioned in the Answers to the Questionnaire;
- cost of production reports of CFG of the above-mentioned nominal thicknesses from 2003 to 2005; and
- audited financial statements from 2003 to 2005.

2.8 COLLEGIAL DELIBERATION

While the Formal Investigation has been completed in January 2006, collegial deliberation commenced only in June 2006 with the appointments of two (2) new Acting Commissioners.

3. PARTICIPANTS' VIEWS

3.1 PETITIONER: ASAHI GLASS PHILIPPINES, INC.

Company Profile

AGP, the lone CFG producer in the Philippines, was incorporated in 1998 and is a joint venture between Republic-Asahi Glass Holdings Corporation of the Philippines and Asahi Glass Company, Ltd. of Japan.

Its float plant started commercial operations in 1991. The float process is a state-of-the-art technique that floats molten glass on top of a molten tin bath to produce distortion-free glass of superior quality. The whole production line is controlled by high-tech equipment and computer systems that are integrated in a control room which monitors and regulates the whole production process.

The company has also diversified into different product lines such as figured or patterned glass; special processed glass such as fabricated glass for automotive glass application; mirrors; and architectural glass such as tempered, heat-strengthened glass, reflective glass, insulated glass, laminated glass and security glass.

Positions/Arguments

AGP presented two (2) witnesses who reiterated the positions contained in the company's initial memoranda, thus:

- i. The expiration or non-extension of the imposition of the definitive anti-dumping duties would likely result in the continuation or recurrence of dumping.
 - Dumping continued after the imposition of the anti-dumping duty. Submission of comparative data between the export price and home consumption value shows that the export price is lower than the home consumption value.
- ii. The injury caused by the dumped product that was established during the anti-dumping proceedings was partly or solely removed with the imposition of the anti-dumping duty.
 - After the anti-dumping duty was imposed, the industry was able to increase its prices by 18%. Also, volume of production and sales increased.

iii. The continued imposition of the anti-dumping duty is necessary to offset dumping.

The company's final memorandum was submitted on 11 February 2006 and contained the following claims:

- Termination of anti-dumping duty will result in the recurrence of injury to the local industry.
- There are strong evidences that Indonesia will be selling at lower prices and increase the volume of its exports if the dumping duty is lifted.
- Indonesia has no motive to refrain from continuing its export of CFG to the Philippines at prices lower than its domestic prices.
- The current market conditions exert tremendous pressure on Indonesia to continue its current practice of low pricing to get rid of excess production.

3.2 OPPOSITORS

3.2.1 PT Muliaglass

Company Profile

PT Mulia Industrindo is the holding company of the Mulia Group for its Industrial Division and has two operational subsidiaries, namely, PT Muliaglass and PT Muliakeramik Indahraya. The production facilities of the Mulia Industrindo Group are located in Cikarang, 45 km. east of Jakarta, Indonesia.

The first float glass plant was constructed in 1991 and started commercial operations in September 1992. Currently, in addition to the three (3) float glass plants with a combined capacity of 1,700 tons per day, it also operates three (3) furnaces for the production of glass containers and glass blocks with a combined capacity of 580 tons per day. A recent addition to Muliaglass' production line is automotive safety glass.

PT Muliaglass has been awarded the ISO 9002 – Quality Management Systems Certification by the SGS for its production of clear and colored float glass.

Positions/Arguments

PT Muliaglass presented three (3) witnesses each with sworn affidavits on the following:

- i. company profile; company's production process and raw materials used; recent investments, company's accounting system, costing, domestic pricing policy
- ii. all documents submitted to the Commission are true and correct and sales to the Philippines are made at profit level and not for dumping purposes
- iii. During the POI, only PT Muliaglass exported CFG to the Philippines at 10mm and 12mm thicknesses which were subjected to anti-dumping duties of 11.82% and 2.06% of export price, respectively. Export prices are negotiated on the basis of established price lists.

Mention was made of the issue of simultaneous imposition of anti-dumping and safeguard duties and that such practice is restrictive and overprotective of the domestic industry. Likewise, the company submitted additional and updated financial documents.

PT Muliaglass' final memorandum, received by the Commission on 27 January 2006, stated that the lifting of the anti-dumping duty will not lead to a continuation or recurrence of dumping and injury to the domestic industry in view of the following:

- The company's current production capacity is fully utilized and that finished goods of all thicknesses are completely absorbed by the local and export market. The product is sold to established distributors and buyers, thus, there is no reason for dumping the product in the Philippines and other countries.
- The company has no plans of expanding production capacity.
- During the POI, there were no exports of CFG to the Philippines of 2, 3, 5 and 6 mm thicknesses.
- The company's exports of 10mm and 12mm were insignificant.

3.2.2 PT Tunggal Majuasri, PT Abdi Rakyat Bakti, PT Tensindo and PT Tossa Shakti

The Directorate of International Trade Cooperation, Ministry of Trade of the Republic of Indonesia, in a letter dated 5 December 2005, informed the Commission that the above-named four (4) exporters submitted a declaration stating that they did not export CFG to the Philippines since the imposition of the definitive anti-dumping duty in 2001. Thus, it was not necessary for them to complete the exporter's questionnaire. Said declarations were forwarded to the Commission on 6 December 2005.

4. **TARIFF STRUCTURE/PROFILE**

Table 1: Rates of Duty of Clear Float Glass: 2003-2005

AHTN Code	Description	Type of Duty	Rate of Duty (%)		
			2003	2004	2005
70.05	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.				
7005.29	- Other non-wired glass				
7005.29.20	- - - Other: squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut)	MFN CEPT	15 5	15 5	15 5
7005.29 90	- - - Other	MFN CEPT	15 5	15 5	15 5

Source: Tariff and Customs Code of the Philippines

In addition to the above regular duty (ad valorem), and anti-dumping duties, safeguard duties were also imposed simultaneously on imports of CFG from Indonesia. This was by virtue of the DTI Order issued on 14 April 2004, following the positive findings of the Tariff Commission contained in its Final Report of Findings dated 30 March 2004. The imposition of the definitive safeguard duties is for a period of three (3) years amounting to ₱ 4,630/MT (1st year), ₱ 4,400/MT (2nd year) and ₱ 4,180/MT (3rd year).

The three-year implementation period of the safeguard measures started with the imposition of the provisional duties, effective upon the issuance of Customs Memorandum Order No. 24-2003 dated 13 October 2003.

5. DETERMINATION OF CONTINUED DUMPING AND INJURY

Section 19(b) of the Implementing Rules and Regulations of Republic Act 8752 provides that:

“The duration of the definitive anti-dumping duty shall not exceed five (5) years from the date of its imposition, or from the date of the most recent review if that review has covered both dumping and injury, unless the Commission has determined, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or in behalf of the domestic industry at least six (6) months prior to the termination date, that the termination of the anti-dumping duty will likely lead to the continuation or recurrence of dumping and injury. x x x”

5.1 DETERMINATION OF CONTINUED DUMPING

Dumping occurs when any specific kind or class of foreign article is imported or brought into the Philippines at a price, i.e., export price, less than its normal value.

Determination of continued dumping is limited to CFG with thicknesses of 10 mm and 12 mm only as there were no exports of other thicknesses (i.e., 2 mm, 3 mm, 5 mm, and 6 mm) during the POI.

Article 2.1 of the WTO Anti-Dumping Agreement provides that:

“A product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from the country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.”

5.1.1 Export Price

Export price is the price paid or the selling price to an importer in the Philippines of articles purchased at arms' length transaction, excluding any post exportation charges such as ocean freight and overseas insurance.

The Commission based its estimates of export price on import entries submitted by AGP and on file with the Commission.

During the POI for dumping determination, PT Muliaglass was the sole Indonesian exporter of CFG to the Philippines. Said exporter supplied CFG with nominal thicknesses of 10mm and 12mm (i.e., CFG of thicknesses 2mm, 3mm, 5mm, and 6mm were not exported).

Verification of said prices from the actual commercial invoices of PT Muliaglass revealed that the FOB export prices of CFG with thicknesses 10mm and 12mm were inclusive of inland freight, customs clearance, export packing cost, and fumigation cost. These incidental expenses were deducted from the FOB prices (net of insurance and sea freight) to arrive at the ex-factory level.

Shown below are the exporter's (PT Muliaglass) adjusted weighted average export prices (FOB) of CFG during the POI:

Table 2: PT Muliaglass' Adjusted Weighted Average Export Prices During the POI (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average FOB Export Prices (US\$/MT)
PT Muliaglass	10	227.25
	12	239.17

Source: import entries (September 2004 - December 2005) for PT Muliaglass' 10mm & 12mm CFG; export commercial invoices of PT Muliaglass

5.1.2 Normal Value

Section 3(s) (3) of Republic Act 8752 defines normal value as follows:

“(3) Normal value refers to a comparable price at the date of sale of the like product, commodity or article in the ordinary course of trade when destined for consumption in the exporting country.”

Based on verified domestic sales invoices of PT Muliaglass, the Commission determined the actual domestic selling prices (in Indonesia) of CFG with nominal thicknesses of 10 mm and 12 mm. To set the export price and normal value at the same level of trade, i.e., at ex-factory level, costs for inland freight, commission and local packing were deducted from the domestic selling prices.

Below are the exporter's (PT Muliaglass) adjusted weighted average normal values during the POI:

Table 3: PT Muliaglass' Adjusted Weighted Average Normal Values During the POI (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average Normal Value (US\$/MT)
PT Muliaglass	10	250.04
	12	259.65

Source: PT Muliaglass' domestic sales invoices

5.1.3 Estimated Dumping Margin

Article 2.4 of the WTO Agreement sets the terms for comparing normal value and export price:

“A fair comparison shall be made between the export price and normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability...”

Based on the weighted average normal values and export prices of PT Muliaglass during the POI, dumping margins are estimated at US\$22.79/MT and US\$20.48/MT, or 10.03% and 8.56% of export price, for CFG of nominal thickness 10 mm and 12 mm, respectively.

Table 4: Estimated Weighted Average Adjusted Dumping Margin (Annex 5)

1 Exporter	2 Nominal Thickness (mm) (Tolerance \pm 0.2 mm)	3 Weighted Average Dumping Margin	
		US\$/MT	% of Export Price
PT Muliaglass	10	22.79	10.03
	12	20.48	8.56

Sources: import entries; domestic sales invoices of PT Muliaglass

***De Minimis* Margin of Dumping**

Article 5.8 of the Agreement provides for the immediate termination of dumping cases where the margin of dumping is *de minimis*.

“There shall be immediate termination in cases where the authorities determine that . . . the margin of dumping is de minimis. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price.

Being not less than 2% of export price, the dumping margins shown in Table 4 are clearly not *de minimis*.

5.2 DETERMINATION OF CONTINUED INJURY

Paragraph 3.1, Article 3 (Determination of Injury) of the WTO Anti-Dumping Agreement provides that:

“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.”

The WTO Anti-Dumping Agreement sets out the injury factors that must be examined by the investigating authority. These are:

1. volume of dumped imports;
2. effect of the dumped imports on prices in the domestic market for like products; and
3. consequent impact of the dumped imports on domestic producers of such products.

5.2.1 Volume of Dumped Imports

Negligible Volume of Dumped Imports

Article 5.8 of the WTO Anti-Dumping Agreement provides for the immediate termination of dumping cases where the volume of dumped imports is found to be negligible:

“There shall be immediate termination in cases where the authorities determine that . . . the volume of dumped imports, actual or potential . . . is negligible . . . The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of like product in the importing Member collectively account for more than 7 per cent of imports of like product in the importing Member.”

Imports from Indonesia of CFG (10 mm and 12 mm only) at dumped prices accounted for 42% and 10% of total Philippine CFG imports for September - December 2004 and the whole of 2005, respectively. Over the POI, volume of dumped imports amounted to almost 13% of total imports. Not being less than 3% of total imports, the volume of dumped imports is above the *de minimis* threshold.

Table 5: Volume of Dumped Imports and its Share to Domestic Consumption During the POI

1 POI	2 Domestic Sales (MT)	Imports (MT)					8 Domestic Consump- tion (MT) 2 + 7	9 % Share of Dumped Imports to Total Imports 3/7*100	10 % Share of Dumped Imports to Domestic Consump- tion 3/8*100
		From Indonesia			6 From Other Countries	7 Total 5 + 6			
		3 Dumped	4 Normal	5 Total 3 + 4					
2004	16,693	212	37	249	258	507	17,200	41.81	1.23
2005	49,409	442	384	826	3,782	4,608	54,017	9.59	0.82
Total	66,102	654	421	1,075	4,040	5,115	71,217	12.79	0.92

Sources: AGP & National Statistics Office
2004 is from September to December

Volume Effect

Article 3.2 of the WTO Anti-Dumping Agreement states:

“With regard to the volume of dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member.

Relative to total domestic consumption over the POI, dumped CFG imports from Indonesia were insignificant. (Table 5)

5.2.2 Price Effects of Dumped Imports

Article 3.2 of the WTO Anti-Dumping Agreement states:

“With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.”

Price Undercutting

Price undercutting occurs when the prices of dumped imports are significantly lower than the price of the like product.

A comparison of the average landed cost of dumped CFG from Indonesia against the average domestic selling prices of locally produced CFG shows that the former is significantly lower than the latter despite the imposition of anti-dumping duties.

In September to December 2004, the average landed cost of dumped CFG was lower than the domestic selling price by 29% and 22% for CFG with nominal thickness 10 mm and 12 mm, respectively. (Table 6)

In 2005, the price difference was 33% for 10mm CFG and 19% for 12mm CFG, thus, the existence of price undercutting during the POI.

The price undercutting was remedied for 12 mm CFG, however, by the simultaneous application of the safeguard measure which increased its landed cost. (Table 6)

Table 6: Average Domestic Selling Price vs. Average Landed Cost of Dumped Clear Float Glass During the POI

1 Nominal Thickness/ POI	2 Average Domestic Selling Prices of AGP <u>1/</u> (P/MT)	3 Average Landed Cost of Imported (With Dumping Duty) <u>2/</u> (P/MT)	Price Undercutting		6 Average Landed Cost of Imported (With Dumping & Safeguard Duty) <u>2/</u> (P/MT)
			4 (P/MT) 2 - 3	5 (%) 4/3*100	
10 mm					
2004	██████	██████	5,038	28.63	██████
2005	██████	██████	5,881	33.32	██████
Average	██████	██████	5,442	30.85	██████
12 mm					
2004	██████	██████	3,870	21.61	██████
2005	██████	██████	3,761	19.17	██████
Average	██████	██████	3,703	19.62	██████

Sources: 1/ AGP; 2/ import entries (September 2004 - December 2005)
2004 is from September to December

Price Depression

Price depression occurs when the price of the dumped imported product forces down the price of the like domestic product.

Following the simultaneous application of anti-dumping and safeguard duties during the POI, there was no evidence of price depression from dumped CFG imports. In 2004, AGP increased its prices by 40% (for 12mm CFG) and 51% (for 10mm CFG) despite reductions in production cost. (Table 7)

Table 7: Average Domestic Selling Prices, Cost to Produce and Sell and Earnings Before Interest and Taxes: 2003 -2005

1 Nominal Thickness/ Year	2 Average Domestic Selling Price		3 Average Cost to Produce and Sell		4 Earnings Before Interest and Taxes 2 - 3	
	₱ /MT	% Change	₱ /MT	% Change	₱ /MT	% Change
10 mm						
2003						
2004		51.46		(7.05)		3,862
2005		3.97		15.03		(12.94)
2003 vs. 2005		57.47		6.92		3,300
12 mm						
2003						
2004		40.12		(0.68)		2,697
2005		7.37		9.37		2.72
2003 vs. 2005		50.44		8.63		2,774

Source: AGP

2004 is from September to December

Price Suppression

Price suppression occurs when dumped imports prevent increases in the price of the like product which otherwise would have occurred.

With the simultaneous imposition of the anti-dumping duty and safeguard duty, AGP was able to increase its price. At its price level, price suppression was not evident as the domestically produced CFG was competitive vis-à-vis the imported counterpart from Indonesia. These measures permitted the domestic industry to raise its price at more than the level of the increase in its cost of production (Table 7).

5.2.3 Impact of Dumped Imports on the Domestic Industry

Article 3 (Determination of Injury), Section 3.4 of the Agreement provides:

“The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance..”

Market Share

AGP dominated the Philippine CFG market from 1996 to 2005, with market shares ranging from 90% to a high of 96%.

Table 8: Estimated Apparent Domestic Consumption and Market Share: 1996 - 2005

1 Year	2 Domestic Sales (MT)	Imports (MT)			6 Estimated Apparent Domestic Consumption (MT) 2 + 5	Market Share (%)		
		3 Indonesia	4 Other Countries	5 Total 3 + 4		7 Domestic 2/6*100	8 Indonesia 3/6*100	9 Other Countries 4/6*100
1996	51,235	1,426	665	2,091	53,326	96.08	2.67	1.25
1997	49,679	3,783	1,636	5,419	55,098	90.16	6.87	2.97
1998	41,678	5,588	3,856	9,444	51,122	81.53	10.93	7.54
1999	47,409	7,060	5,237	12,297	59,706	79.40	11.82	8.77
2000	43,573	4,492	6,126	10,618	54,191	80.41	8.29	11.30
2001	35,313	7,313	7,621	14,934	50,247	70.28	14.55	15.17
2002	37,714	2,973	15,282	18,255	55,969	67.38	5.31	27.30
2003	45,773	526	11,851	12,377	58,150	78.72	0.90	20.38
2004	50,955	943	4,357	5,300	56,255	90.58	1.68	7.75
2005	49,409	826	3,782	4,608	54,017	91.47	1.53	7.00

Sources: AGP & National Statistics Office

In the first year of the implementation of the dumping duties in 2001, domestic industry's market share shrank from 80% to 70%; lost market share was taken by imports from Indonesia and from other countries. The increase in imports from Indonesia was traced to the continued exports of PT Muliaglass and PT Tensindo of its CFG (all thicknesses). Also contributory to the rise in imports from Indonesia was the exports made by exporters not

covered by the dumping duties (i.e., PT Bali Permai Grafindo and PT Asahimas) and the significant exports made by an exporter of CFG with nominal thickness not imposed with dumping duties (i.e., PT Abdi Rakyat Bakti exported the 3 mm and 5 mm CFG instead of the 6 mm CFG, which was the one slapped with dumping duty.²

In 2002, the second year of imposition of the dumping duties, imports from Indonesia fell by 60% from the previous year's level, corresponding to a 63% decline in market share, indicative of the dumping duty's deterrent effect. The domestic industry also saw an improvement in its domestic sales.

However, said sales improvement was not sufficient for the industry to regain lost market share. The 11% increase in apparent consumption during the year was taken mainly by imports sourced from other countries (with the dumping barrier, importers had to source CFG from countries other than Indonesia).

Table 9: Sources of Imports: 1999 – 2005

Country	Year/ Volume (MT)						
	1999	2000	2001	2002	2003	2004	2005
Total	12,297	10,618	14,934	18,255	12,377	5,300	4,608
Indonesia	7,060	4,492	7,313	2,973	526	943	826
Thailand	2,078		1,683	1,685		194	
Malaysia	1,415						
Korea	788		1,186	1,353		981	
Singapore	300		1,618	4,168	1,693		
China		6,126	1,994	4,514	5,400	503	1,881
Vietnam					1,483	753	
Hongkong					738		
Pakistan							625
Taiwan							528
Japan							227

Source: NSO

It is noted that Singapore (with no CFG facility) was one of the principal suppliers of CFG during the period of imposition of dumping duty in 2001 to 2003.

AGP saw improvement in its market performance in 2003 when its share grew to 79%. Imports from Indonesia fell to less than 600 MT while imports from other countries contracted by 22%. While the final quarter of this year saw the imposition of safeguard duties on CFG imports, the negligible market share of Indonesian CFG, where only a single Indonesian exporter (PT Muliaglass) remained active in the market, is indicative of the effectiveness of the dumping duty to remove injury by allowing the domestic industry to recapture market share from dumped Indonesian CFG.

² Import entries (September 2004 – December 2005)

In 2004 and 2005, AGP's market shares breached the 90% mark, attributable to the combined impact of the dumping and safeguard duties. While there was a slight increase in the market share of imports from Indonesia during these years, said shares are much lower than that gained prior to the imposition of dumping duty and thus, indicative of the effectiveness of the anti-dumping duty in counteracting injurious dumping.

Production and Sales

Production

Production data from 2002 to 2005 are indicative of the effectiveness of the dumping duty to offset dumping and remove injury to the domestic industry. In 2002, AGP, in anticipation of higher demand brought about by the imposition of the dumping duty, expanded its production by 70% from some 46,000 MT to an all-time high of 78,738 MT.

Table 10: Production and Sales (Domestic and Export) of AGP: 1998 – 2005

1 Year	Production		Sales					
	2 (MT)	3 % Change	4 Domestic (MT)	5 % Change	6 Export (MT)	7 % Change	8 Total	9 % Change
1998	51,800	-	41,678	-	7,127	-	48,805	-
1999	60,890	17.55	47,409	13.75	8,415	18.07	55,824	14.38
2000	54,919	(9.81)	43,573	(8.09)	1,534	(81.77)	45,107	(19.20)
2001	46,279	(15.73)	35,313	(18.96)	312	(79.66)	35,625	(21.02)
2002	78,738	70.14	37,714	6.80	22,999	7,271.47	60,713	70.42
2003	71,182	(9.60)	45,773	21.37	16,500	(28.26)	62,273	2.57
2004	76,045	6.83	50,955	11.32	17,273	4.68	68,228	9.56
2005	78,364	3.05	49,409	(3.03)	3,186	(81.56)	52,595	22.91

Source: AGP

In 2003, production contracted by 10%, but volume was still way above the 1999 volume, its peak year prior to the imposition of the dumping duty. The high production volume may be attributed to the confluence of the following factors: (1) imposition of the dumping duty, which deterred dumping and allowed the industry to increase domestic sales, (2) imposition of the safeguard duties in the last quarter of the year, which had a chilling effect on all CFG imports and again, permitted higher domestic sales, and (3) the higher demand for local CFG for export. With increased production, the domestic industry was able to achieve economies of scale, making its cost of production lower and its selling prices competitive in both the domestic and export markets.

In 2004 and 2005, production continued to expand which can be attributed to the combined restrictive impact on CFG imports of the anti-dumping duty and the safeguard duty.

Domestic Sales

Domestic sales improved from 2002 to 2005, reflecting the value of the anti-dumping duty in thwarting injurious dumping of Indonesian CFG.

In 2002, when imports from Indonesia fell to 5% of the market (from the previous year's 15%) despite the marked growth in the domestic market, domestic sales rose by 7%. The following year, domestic sales grew even further by 21% when the safeguard duty (levied starting October of said year) combined with the anti-dumping duty to provide relief to the domestic industry.

In 2004 and 2005, removal of injury continued when AGP was able to surpass its highest domestic sales record prior to the imposition of the dumping duty in 2001. As safeguard duty was also levied on imports during this period, the removal of injury may not be attributable solely to the anti-dumping duty. The low market share held by Indonesian CFG from 2003 to 2005 indicates the contribution of the anti-dumping duty to the removal of injury.

Finished Goods Inventory

To achieve economies of scale, lower production costs and competitive prices, AGP produced more than the expected demand during the period. Thus, inventory levels were on the uptrend from 2001 to 2005.

Table 11: Finished Goods Inventory of AGP: 1998 - 2005

1 Year	2 Finished Goods Inventory (MT)	3 % Change
1998	7,063	-
1999	3,918	(44.53)
2000	6,741	72.05
2001	6,587	(2.28)
2002	15,345	132.96
2003	18,094	17.91
2004	19,691	8.83
2005	38,311	94.56

Source: AGP

The spike in inventory in 2005 was due to additional production in preparation for the cold repair of the CFG furnace in 2006.

Cost of Production

Costs of production during the implementation of the dumping duty were higher compared to the previous years' levels, peaking in 2001. However, in the succeeding years (2002 and 2003), reductions in costs were achieved that were traceable to the decline in the costs of all factors of production especially overhead costs resulting from increased production.

Table 12: Unit Cost of Production of Clear Float Glass (P/MT): 1998 - 2005

1 Year	2 Raw Materials	3 Direct Labor	4 Manufacturing Overhead	5 Cost to Produce 2+3+4	6 % Change
1998					
1999					(3.95)
2000					21.10
2001					41.26
2002					(13.67)
2003					(10.48)
2004					0.22
2005					5.86

Source: AGP

In 2004 and 2005, however, production costs rose slightly, due to higher raw material and labor costs brought about by rising world oil prices. Overhead costs, which could have increased also, declined instead due higher production volumes.

Employment and Labor Productivity

Declining employment during the period was the result of management's continuing effort or program to cut costs and improve operational efficiency.

Table 13: AGP's Employment and Labor Productivity: 1998 -2005

Year	Employment (Number of Manpower)	% Change	Production (MT)	% Change	Labor Productivity (MT/Employee)	% Change
1998	266	-	51,800	-	194.74	-
1999	265	(0.38)	60,890	17.55	229.77	17.99
2000	247	(6.79)	54,919	(9.81)	222.34	(3.23)
2001	231	(6.48)	46,279	(15.73)	200.34	(9.89)
2002	194	(16.02)	78,738	70.14	405.87	102.59
2003	173	(10.82)	71,182	(9.60)	409.09	0.79
2004	81	(53.18)	76,045	6.83	938.83	129.49
2005	82	1.23	78,364	3.05	955.66	1.79

Source: AGP

With the improvement in production volumes and the reduction in its labor complement, AGP improved significantly its labor productivity in the last four (4) years.

Actual Capacity Utilization

There have been improvements in the domestic industry's utilization rates from 2002 to 2005 with the imposition of the anti-dumping duty. The highest utilization level was attained in 2002 attributable to the sharp drop in imports from Indonesia and the consequent increase in production of the domestic industry.

Table 14: Rated Capacity and Actual Capacity Utilization of AGP: 1998 - 2005

Year	Rated Capacity (MT)	Actual Production (MT)	Capacity Utilization (%)	% Change
1998	109,000	51,800	47.52	
1999	109,000	60,890	55.86	17.55
2000	109,000	54,919	50.38	(9.81)
2001	109,000	46,279	42.45	(15.74)
2002	109,000	78,738	72.24	70.18
2003	109,000	71,182	65.30	(9.61)
2004	109,000	76,045	69.77	6.85
2005	109,000	78,364	71.89	3.05

Source: AGP

In 2004 and 2005, with both anti-dumping and safeguard duties in place, utilization rates were almost at par with the 2002 utilization level (when only the anti-dumping duty was being applied). The significantly higher utilization rates achieved by AGP during the POI maybe attributed to the import-deterrent effect of the anti-dumping duties and safeguard duties.

Financial Performance/Profitability

During the period of imposition of the anti-dumping duty, the domestic industry showed steady improvement in its financial operations.

Table 15: Financial Performance of AGP on Clear Float Glass Operations: 2002 – 2005 (P'000)

Year	Net Sales	Cost Of Goods Sold	Gross Profit	Operating Expenses	Income/ (Loss) from Operations	% Change	Interest and Other Charges	Net Income/ (Loss)	% Change
2002	888,780	803,236	85,544	149,499	(63,955)		(202,579)	(266,534)	
2003	871,198	747,492	123,705	131,738	(8,032)	87.44	(17,309)	(25,341)	90.49
2004	1,090,321	825,411	264,910	142,469	122,441	1,624	(121,339)	1,102	104.35
2005	1,057,640	742,569	315,071	168,951	146,120	19.34	(50,563)	95,557	8,571

Source: AGP

With the anti-dumping duty in place beginning 2001, the domestic industry was able to drastically reduce its operating losses from P64 million

in 2002 to ₱8 million in 2003. Profitability may not have been attained but the magnitude of the reduction in operating losses, by ₱56 million or 87%, was not insignificant to the industry.

As dumping and safeguard duties were simultaneously levied in 2004 and 2005, recovery was on track as the industry, suffering from previous losses, finally realized gains from operations amounting to ₱122 million in 2004 and ₱146 million in 2005.

Bottom line results of operations likewise improved with a reduction in the deficit in 2003 and incomes gained the following years.

Return on Sales

Table 16: AGP's Return on Sales (ROS): 2002-2005

Year	Net Sales (P '000)	Income/(Loss) from Operations (P '000)	Return on Sales (%)
2002	888,780	(63,955)	(7.20)
2003	871,198	(8,032)	(0.92)
2004	1,090,321	122,441	11.23
2005	1,057,640	146,120	13.82

Source: AGP

Due to its enhanced sales and profitability levels during the period of imposition of the anti-dumping duties and safeguard duties, AGP's Return on Sales improved significantly.

6. DETERMINATION OF RECURRENCE OF DUMPING AND INJURY

Article 3.7 of the Agreement states:

“A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture and remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member’s market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of products being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protection action is taken, material injury would occur.”

6.1 Excess Production Capacity in Indonesia

Indonesia currently has nine (9) float glass facilities with total annual capacity of close to 1.1 million MT. The industry's capacity is expected to grow further with the additional facility to be put up by PT Tensindo in 2007, an exporter subject to anti-dumping duties.

Table 17: Supply and Demand Balance Trends in Indonesia: (2002- 2008)

Particulars (In '000 MT)	Year						
	2002	2003	2004	2005	2006	2007	2008
Actual Capacity	1,047	1,026	980	1,047	1,047	1,191	1,162
Domestic Demand	407	415	431	457	482	504	530
Import	5	10	2	5	7	2	2
Export	552	507	525	501	510	544	546
Net Demand	954	912	953	952	985	1,046	1,074
Over Capacity	93	114	27	95	63	145	89

Source: AGP's World Flat Glass Study

The Indonesian flat glass industry is export-oriented. From 2002 to 2005, exports outstripped domestic sales. This trend is expected to continue through 2008, where exports are projected to reach 546,000 MT.

6.1.1 The Philippines as a Target Market

The Philippines is a major export market of Indonesia. In the four (4) years prior to the imposition of dumping duties in 2001, from 22% to 96% of Indonesia's annual exports of CFG went to the Philippines. In 2001 and 2002, the Philippine share in Indonesia's annual export volumes remained substantial at 19% and 14%, respectively. These exports came from parties not levied dumping duties (PT Bali Permai Grafindo and PT Asahimas). Exports were also made by a party subject to anti-dumping duties, PT Abdi Rakyat Bakti, which exported CFG with thicknesses not covered by said duties (3mm and 5mm).

Table 18: Share of Indonesia's Export to the Philippines to its Export to World: 1997-2004

1 Year	2 Share of its Export to Philippines to its World Export (%)
1997	95.88
1998	72.40
1999	86.14
2000	21.85
2001	19.08
2002	14.50
2003	2.02
2004	6.71

Source: <http://unstats.un.org/unsd/comtrade/default.aspx>

That the Philippines is targeted for exportation is plausible by its proximity to Indonesia and the resultant lower transport costs. Freight costs from Indonesia to the Philippines range from US\$400/FCL (Manila) to US\$600/FCL (Davao) whereas transport costs to other countries range from US\$450/FCL (Malaysia) to US\$1,050/FCL (India).

Table 19: Freight Costs (From Indonesia to the Philippines and Various Countries)

1 Country	2 Port	3 Amount (US\$/FCL)
Philippines	Manila	400
	Cebu	500
	Davao	600
Malaysia	Port Kelang	450
	Kota Kinabalu	850
	Kuching	900
	Miri	995
	Muara	900
Vietnam	HaiPhong	730
India	Bombay	1,050
Myanmar	Yangon	800
China	Jiu Zhou	600
Cambodia	Sihanoukville	750

Source: AGP's World Flat Glass Study

In 1996, Indonesia was already exporting CFG to the Philippines. This indicates that commercial contacts are in place and that relationships are well established between Indonesian exporters of CFG and Philippine importers. Hence, the Philippines remains an accessible market for Indonesian CFG.

6.1.2 Other Dumping Action Against Indonesia

India imposed a definitive anti-dumping duty on CFG imports effective August 2003.³ This limits the export markets available to Indonesia.

6.1.3 Price Comparison

The removal of the dumping duty would widen the price gap between the average landed cost (with safeguard duty only) and the domestic selling price which may result to significant depressing and suppressing effects on AGP's prices.

Table 20: Comparison of Domestic Selling Price and Landed Cost of Imported CFG

Nominal Thickness/ POI	Average Domestic Selling Price (P/MT)	Estimated Landed Cost (P/MT)			
		w/o VAT	w/o VAT, w/ Dumping Duty	w/o VAT, w/ Safeguard Duty	w/o VAT, w/ Dumping Duty & Safeguard Duty
10 mm					
2004		16,463	17,595	20,863	21,995
2005		16,543	17,650	20,943	22,050
Average		16,528	17,640	20,928	22,040
12 mm					
2004		16,772	17,906	21,172	22,306
2005		18,532	19,619	22,932	24,019
Average		17,768	18,875	22,168	23,275

Source: AGP; Import Entries
2004 is from September to December

³ Australian Customs Services: Customs Act 1901 – Pat XVB
Trade Measures Branch, Statement of Essential Facts No. 106 dated February 2006

7. FINAL DETERMINATION

R.A. 8752 (ANTI-DUMPING ACT OF 1999)

Section 19(a) of the Joint Administrative Order No. 01 Series of 2000, otherwise known as the Implementing Rules and Regulations Governing the Imposition of An Anti-Dumping Duty Under Republic Act 8752. The IRR provides:

“(a) As a general rule, the imposition of an anti-dumping duty shall remain in force only as long as the need exists, and to the extent necessary, to counteract dumping which is causing or threatening to cause material injury to the domestic industry or material retardation of the establishment of such an industry.”

Section 19 (b) provides:

“(b) The duration of the definitive anti-dumping duty shall not exceed five (5) years from the date of its imposition, or from the date of the most recent review if that review has covered both dumping and injury, unless the Commission has determined, in a review initiated before that date on their own or upon a duly substantiated request made by or in behalf of the domestic industry at least six (6) months prior to the termination date, that the termination of the anti-dumping duty will likely lead to the continuation or recurrence of dumping and injury. The anti-dumping duty shall remain in force pending the outcome of such an expiry review.”

7.1 CONCLUSION

The Commission concludes that:

3. there is continued dumping on CFG of thicknesses 10mm and 12mm and the likelihood of recurrence of dumping on thicknesses of 2mm, 3mm, 5mm, and 6mm due to excess production capacity of Indonesia; and
4. there is a likelihood of recurrence of injury for thicknesses 10mm and 12mm as shown in the suppressing and depressing effects on AGP's prices and for thicknesses of 2mm, 3mm, 5mm and 6mm due to excess production capacity of Indonesia.

7.2 RECOMMENDATION

In view of the foregoing conclusions, the Commission hereby orders the extension of the imposition of the definitive anti-dumping duties on the importation of Clear Float Glass from Indonesia for a period of five (5) years. The corresponding anti-dumping duties shall be imposed on the following exporters:

Exporter(s)	Nominal Thickness (mm) Tolerance ± 0.2 mm	Estimated Weighted Average Dumping Margin (US\$/MT)
PT Muliaglass	2	11.42
	3	30.36
	5	48.62
	6	76.52
	10	22.79
	12	20.48
PT Tensindo	3	34.18
	5	67.64
	6	56.59
	10	11.59
	12	3.16
PT Tunggal Majuasri	3	59.35
	5	143.05
	6	85.21
PT Abdi Rakyat Bakti	6	61.85
Other Exporters from Indonesia	2	11.42
	3	59.35
	5	143.05
	6	85.21
	10	22.79
	12	20.48

There being no exports of CFG with thicknesses of 2mm, 3mm, 5mm and 6mm which prices are needed for the computation of dumping margins, the dumping duties to be imposed are those levied in the original case as they have proven effective to remedy the material injury suffered by the domestic industry.

For other exporters, the highest dumping duties shall be imposed.

7.3 ISSUANCE OF DEPARTMENT ORDER

Paragraph (l). Section 301 of TCCP, as amended by RA 8752 provides:

“The Secretary shall, within ten (10) days from receipt of the affirmative final determination by the Commission, issue a Department Order imposing an anti-dumping duty on the imported product, commodity, or article, unless he has earlier accepted a price undertaking from the exporter or foreign producer. He shall furnish the Secretary of Finance with the copy of the Order and request the latter to direct the Commissioner of Customs to collect within three (3) days from receipt thereof of the definitive anti-dumping duty.”

Let copies of the decision be furnished the Petitioner, the Oppositors and the Embassy of Indonesia. The Secretary of the Department of Trade and Industry shall, within ten (10) days from receipt of this decision, issue a Department Order for the extension of the definitive anti-dumping duties on Clear Float Glass from Indonesia.

Let copies of the dispositive portion of the decision be published immediately in two (2) newspapers of general circulation.

SO ORDERED
26 September 2006

(Signed)
EDGARDO B. ABON
Chairman

(Signed)
EDGARDO R. MARALIT
Acting Commissioner

(Signed)
MARILOU P. MENDOZA
Acting Commissioner