

# 1. INTRODUCTION

## 1.1 The Initial Application of Definitive Safeguard Measure

On 24 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 float glass, clear and tinted, under Republic Act (RA) 8800 (otherwise known as the "Safeguard Measures Act"). Asahi alleged that clear and tinted float 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 21 May 2003.

The DTI, following the BIS' affirmative preliminary findings, issued on 01 September 2003 a Department Order directing the imposition of provisional measures in the form of cash bond amounting to ₱2,000.00/MT for clear float glass and ₱2,650.00/MT for tinted float 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 clear and tinted float glass. The Commission concluded its formal investigation and submitted its report to the DTI 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 imports of clear and tinted float glass except those originating from the developing countries whose exports of float glass to the Philippines were less than 3% of the total Philippine imports during the period of investigation. The imposition of definitive safeguard duty as 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
7005.21 20 7005.21 90	Tinted Float Glass	₱5,850/MT	₱5,560/MT	₱5,280/MT
7005.29 20 7005.29 90	Clear Float Glass	₱4,630/MT	₱4,400/MT	₱4,180/MT

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

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

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

## **1.3 The Petition for Extension of the Measure**

On 12 May 2006, Asahi filed a petition with the DTI-BIS requesting the extension of the imposition of the safeguard duty on clear and tinted float 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. THE SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION

### 2.1 RA 8800 (The Safeguard Measures Act of 2000)

RA 8800 (*An Act Protecting Local Industries By Providing Safeguard Measures To Be Undertaken In Response To Increased Imports And Providing Penalties For Violation Thereof*) was signed into law on 19 July 2000 and took effect on 09 August 2000. The Act provides for:

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

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

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

Section 19 of RA 8800 provides that:

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

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

## The Formal Investigation

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

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

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

Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive general safeguard measure. Thereafter, the Commission shall undertake the following post-formal investigation activities:

- monitoring of the domestic industry's progress and specific efforts to bring about a positive adjustment to import competition;
- conduct of investigation on the request for extension and re-application of safeguard measures;
- conduct of investigation on request for reduction, modification and termination of safeguard action; and
- after the termination of the safeguard measure, evaluation of the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition.

## Decision

Within seven (7) calendar days from receipt of the final report of the Commission, the Secretary shall make a decision, taking into consideration the general safeguard measures recommended by the Commission.

If the determination is affirmative, the Secretary shall issue, within two (2) calendar days after making his decision, a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure as determined by him.<sup>1</sup>

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<sup>1</sup> In case of a negative final determination, the definitive safeguard measure on clear and tinted float 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,<sup>2</sup> and other such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”

The Agreement provides further that: *A safeguard measure may be extended provided that the competent authorities of the importing Member have determined in conformity with the procedures set out in Articles 2, 3, 4 and 5 and that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.*

In order that a substantially equivalent level of WTO concessions and other obligations to affected WTO Members is maintained, a country imposing safeguard measures may offer “adequate means of trade compensation” to affected exporting countries. If agreement is not reached on such compensation, said exporting countries are given an opportunity to suspend “substantially equivalent” concessions or obligations under GATT 1994 after the measures have been in place three (3) years, or immediately if safeguard action is taken against imports which have not increased in absolute terms and the measure does not conform to the provisions of the Agreement on Safeguards.

Disputes arising from the application of safeguard measures are subject to WTO dispute settlement procedures.

Safeguard measures, if imposed, must be liberalized progressively. A measure extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

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. 02-2003), concluded that clear and tinted float 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 clear and tinted float glass are not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by RA 8800 and the terms and conditions of the Agreement on Safeguards.

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

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

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

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

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

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

### **3. THE COMMISSION'S FORMAL INVESTIGATION**

Section 19(2) of RA 8800 provides that:

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

Section 9 of RA 8800 further states that:

*“Within five (5) working days from receipt of the request from the Secretary, the Commission shall publish the notice of the commencement of the investigation, and public hearings which shall afford interested parties and consumers an opportunity to be present, or to present evidence, to respond to the presentation of other parties and consumers, and otherwise be heard. Evidences and positions with respect to the importation of the subject article shall be submitted to the Commission within fifteen (15) days after the initiation of the investigation by the Commission.*

#### **3.1 Notifications**

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

##### **3.1.1 Commencement of Formal Investigation**

The formal investigation commenced on 21 June 2006 upon receipt of the DTI Secretary’s endorsement of the petition. The Notice of Formal Investigation was published on 24 June 2006 both in the *Manila Standard Today* and *The Manila Times (Annexes A-1 and A-2)*. The notice indicated the date of the Preliminary Conference and the matters for discussion in the said conference.

Individual notices were sent to all identified interested parties, embassies in the Philippines of float 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* on 21 July 2006 and *Manila Standard Today* on 20 July 2006 (*Annexes B-1 and B-2*). The notice directed all concerned parties to submit to the Commission within five (5) calendar days before the scheduled consultation a list of issues they want to explore other than the issues of product comparability and volume of imports. Likewise, parties were required to submit to the Commission the affidavits of their witnesses three (3) days prior to the public hearing. All principal parties, counsels, affiants, deponents and other interested parties were required to appear before the Commission on the first day of the public consultation.

Individual notices were sent to all identified interested parties, embassies in the Philippines of float 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 concerned parties were furnished a copy of the 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. (Ghani), Guardian Industries Corporation and PKG Expert submitted a list of issues for consideration during the public hearing.

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

The marathon hearings were scheduled on 31 July, 01, 02, 03 and 04 August 2006. (*Annex D* for the List of Attendees). The public 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/ Data Verification**

An ocular inspection of Asahi's plant facilities (located in Brgy, Pinagbuhatan, Pasig City) and the verification of its accounting records were conducted on 13 July and 11 August 2006, respectively.

Verification of Comglasco's import documents was conducted 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 Plan**

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

1. Profitability improvement / 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 are 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.
- 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 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 which should rightfully be called the "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 should be brought into conformity with the WTO Agreement which includes 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**

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 are minimal and could hardly cause serious injury to the Philippine flat glass industry.

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

### **5.1 The Domestic Product**

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

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

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

### **5.2 Market Participants**

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

#### **5.2.1 Domestic Producer**

Asahi is the only manufacturer of clear and tinted float glass in the Philippines.

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

##### **5.2.1.1 Ownership Structure**

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

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

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

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

- ✓ 81% of 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 production capacity for float glass is 400 MT per day or approximately 109,000 MT per year.

#### **5.2.1.3 Distribution Channels**

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

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

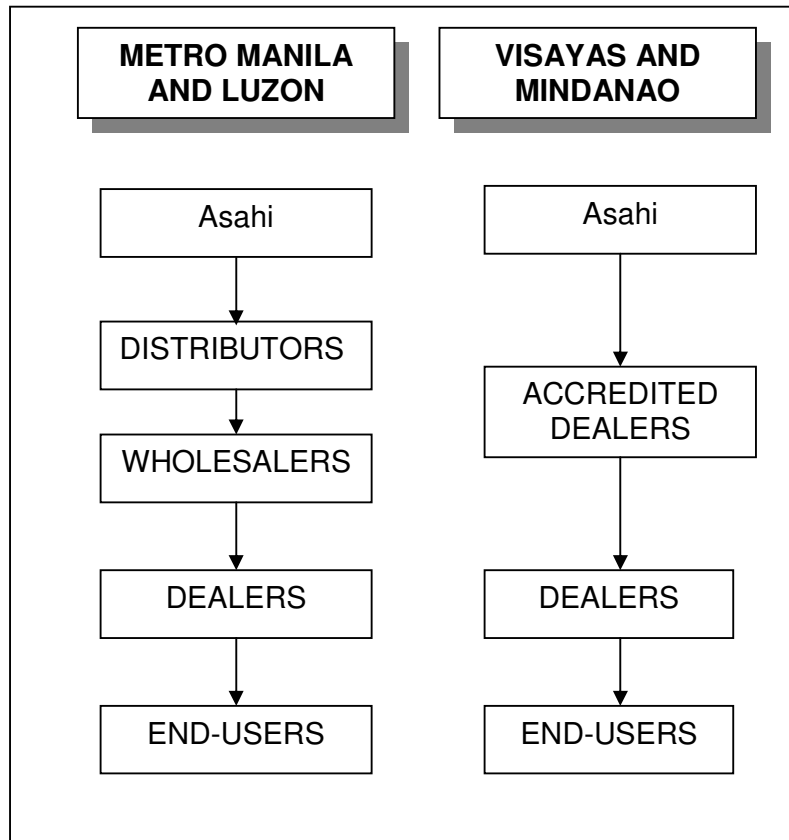
The distribution route for the Metro Manila-Luzon area is from Asahi's warehouse to a distributor, then to a wholesaler, dealer, retailer and finally, to the end-users, e.g., homeowners, developers, contractors, mirrorers, glaziers. For the Visayas and Mindanao areas, the distribution chain is shorter. The distribution and delivery of goods from Asahi's warehouse is

direct to a network of franchised/accredited dealers, who then move the glass to sub-dealers, retailers, and end-users.

Asahi’s nationwide marketing network consists of three (3) sales offices, five (5) warehouses and 108 distributors (Table 2).

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

**Figure 1. Distribution Flow of Float Glass**



Source: Asahi

**Table 2. Marketing Network of Asahi**

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

Source: Asahi

## 5.2.2 Importers

The top importers of clear float are Malabon Mirror Factory and Aluminum Supply, San Francisco Mirror Corporation, Asia Glass Palace, Comglasco Corporation and Times Glass, Inc. Imports of these companies accounted for 60%, 71% and 74% of total imports of clear float in 2003, 2004 and 2005, respectively.

**Table 3. Imports of Clear Float Glass By Company (MT)**

<b>Importer</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Total</b>
Malabon Mirror Factory and Aluminum Supply	3,774	1,997	41	5,812
San Francisco Mirror Corp.	1,273	812	1,703	3,788
S-Senses Corp	2,719	--	--	2,719
Asia Glass Palace Inc.	550	231	1,221	2,002
Comglasco Corp.	1,092	357	517	1,966
Times Glass Inc.	1,332	382	205	1,919
East Asia Aluminum Supply	550	77	401	1,028
Glass Temp Ind. Corp.	325	342	303	970
Prestige GlassCorp	558	--	--	558
Artiflex Trading	--	495	--	495
Hyatt Indl Mfg Corp	285	--	--	285
Light Track Inc.	--	--	275	275
Glasmatic Industrial Inc.	--	135	120	255
The Sun Ind. Corp. Ltd.	196	59	--	255
Dynamic Logistics Int'l	214	--	--	214
Green River Trading	--	190	--	190
Carten Intl Inc	134	--	--	134
S-Fine Mfg. And Trading Corp	130	--	--	130
Cebu MMF Glass & Alum	--	128	--	128
William Bradnam	--	79	--	79
The Shang Grand Tower	--	--	72	72
Tayuman Ent	59	--	--	59
A-1 Ind. Inc	56	--	--	56
Tangun Enterprises	--	--	54	54
DM Consunji	--	16	35	51
A Enterprises	--	40	--	40
All Plus Corp.	--	--	23	23
Joelsher International Sales	--	--	22	22
Rovet Intl Ent	21	--	--	21
Rapid Forming Corp.	--	--	20	20
Konstrak Intl Inc	20	--	--	20
<b>Total</b>	<b>13,288</b>	<b>5,339</b>	<b>5,013</b>	<b>23,640</b>

Source: Import entries

Note: excludes imports of Asahi

For tinted float glass, the major importers are Malabon Mirror Factory and Aluminum Supply, Asia Glass Palace, Rovet International Enterprises and Chain Glass Enterprises. Their combined importations accounted for 63%, 76% and 60% of total imports of tinted float in 2003, 2004 and 2005, respectively.

**Table 4. Imports of Tinted Float Glass By Company (MT)**

<b>Importer</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Total</b>
Malabon Mirror Factory and Aluminum Supply	1,651	1,214	--	2,865
Asia Glass Palace Inc.	320	887	1,077	2,284
San Francisco Mirror Corp.	463	692	258	1,413
Rovet Intl Ent.	677	370	79	1,127
Chain Glass Ent. Inc.	985	38	40	1,063
Artiflex Trading	135	399	--	534
Carten Int'l Inc	526	--	--	526
Hyatt Ind'l Mfg. Corp.	152	96	226	473
Comglasco Corp.	240	170	41	450
S-Fine Mfg. and Trading Corp.	315	--	18	333
Tai Hing Glass Sup	254	68	--	322
The Shang Grand Tower	--	145	163	307
Arlo Aluminum Co. Inc.	176	18	44	239
Glass Temp Ind	--	--	233	233
Times Glass Inc	153	37	--	190
East Asia Aluminum Supply	93	37	37	167
Cebu MMF Glass and Aluminum Supply	40	--	99	139
S-Senses Corp	111	--	--	111
Prestige Glass Corp	93	--	--	93
Glasmatic Ind'l Inc.	--	--	82	82
RAK Ceramic (Phils.)	42	--	40	82
First Global Tech	22	--	--	22
Dynamic Logistics Intl	20	--	--	20
Digee Glass and Alum	19	--	--	19
The Sun Indl Corp	19	--	--	19
R. Delos Reyes Builders	--	16	--	16
<b>Total</b>	<b>6,504</b>	<b>4,188</b>	<b>2,436</b>	<b>13,127</b>

Source: Import entries

Note: excludes imports of Asahi

### 5.2.3 Users

The major users of float glass are the residential and commercial construction industries, the furniture-making industry, the appliance industry, the automotive industry and direct purchasers at the retail level.

**6. TARIFF PROFILE**

The application of definitive safeguard duty covers imports of (1) clear float glass falling under HS subheading No. 7005.29 90 (or AHTN subheading Nos. 7005.29.20 and 7005.29.90 ) and (2) tinted float glass falling under HS subheading No. 7005.21 90 (or AHTN subheading Nos. 7005.21.20 and 7005.21.90 ).

For the period 2003 to 2006, the rates of duty for clear and tinted float glass were maintained.

**Table 5. Tariff Schedule**

AHTN Code	Product	Duty of Type	Rate of Duty (%)			
			2003	2004	2005	2006
7005.29.20; 7005.29.90	Clear float glass	MFN	15	15	15	15
		CEPT	5	5	5	5
7005.21.20; 7005.21.90	Tinted float glass	MFN	15	15	15	15
		CEPT	5	5	5	5

On 13 October 2003, definitive safeguard duties were imposed on imports of clear and tinted float glass (Table 1).

In its Order dated 20 February 2006, DTI removed Pakistan and Taiwan from the list of developing countries exempt from the imposition of definitive safeguard measure on clear float glass. In another DTI Order dated 20 August 2006, India and Malaysia were likewise removed from said list of exempt developing countries.

Importation of clear float glass from Indonesia is currently levied an anti-dumping duty. The following definitive anti-dumping duties on clear float glass (CFG) originating from Indonesia which covered a five (5) year period beginning 07 January 2001 continue to be imposed pending resolution of the petition for extension filed by Asahi:

**Table 6. Definitive Dumping Duty on Clear Float Glass**

Exporter(s)	Nominal Thickness (mm)	Weighted Average Dumping Margin	
	<i>(Tolerance <math>\pm</math> 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

## 7. IMPACT OF SAFEGUARD ACTION ON IMPORTS

### 7.1 Volume of Imports

#### 7.1.1 In Absolute Terms

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

Total imports of float glass decreased steadily during the period of relief. In 2003, imports dropped from the surge level of more than 26,000 MT in 2002 to about 20,000 MT in 2003. In 2004, imports plunged to less than 10,000 MT or a decline of more than 50% from the previous year's level. Imports continued to fall in 2005 at a rate of 22%.

**Table 7. Volume of Imports**

Year	Imports ('000 MT)	Increase/(Decrease) ('000 MT)	Growth Rate (%)
2002	26.58	--	--
2003	19.79	(6.79)	(25.55)
2004	9.53	(10.26)	(51.84)
2005	7.45	(2.08)	(21.82)

Source of basic data: Import entries

#### 7.1.2 Relative to Domestic Production

Float glass imports accounted for 29% of total domestic float glass production in 2002. The share of imports relative to local production declined to 21% in 2003. It went down further to 10% in 2004 and to 7% in 2005.

**Table 8. Share of Imports to Domestic Production**

Year	Imports ('000 MT) <sup>a</sup>	Domestic Production ('000 MT) <sup>b</sup>	Share of Imports to Total Production (%)
2002	26.58	91.81	28.95
2003	19.79	93.26	21.22
2004	9.53	98.98	9.62
2005	7.45	100.46	7.42

Sources: <sup>a</sup> Import entries

<sup>b</sup> Asahi

### 7.1.3 Country Suppliers

Imports from Indonesia garnered the biggest share of annual Philippine tinted float glass imports in 2002 with 54%, followed by India with 28% (Table 9). In 2003, India's share declined to 10% until it stopped exporting in the succeeding years. China took Indonesia's place in 2003 with a 54% import share. Indonesia's share fell to 24% in 2003 but rebounded in 2004 and 2005 with shares of 69% and 60%, respectively. China got the second highest shares of 27% in 2004 and 29% in 2005. Other importations were from the USA, Singapore, Thailand, Taiwan, Korea and Vietnam.

China, Singapore and Indonesia were the top suppliers of clear float glass in 2002 with a combined share of 72% (Table 10). In 2003, when the safeguard measure took effect, only China continued to increase its supply of clear float glass to the country. Its share was highest at 54%. Indonesia's share fell to 4% in 2003 but increased to 18% and 17% in 2004 and 2005, respectively, despite the simultaneous imposition of anti-dumping and safeguard measures on Indonesian clear float glass during these years. Importation from Singapore accounted for 5% in 2003 and stopped starting 2004. Korea and Vietnam contributed large volume of imports in 2003 and 2004 but which dropped significantly in 2005. Imports from Taiwan and Pakistan in 2004 and 2005 exceeded the 3% threshold. These countries were deleted from the list of developing countries exempt from the imposition of definitive safeguard measure on clear float glass per a DTI Order dated 29 February 2006.

**Table 9. Major Country Suppliers of Tinted Float Glass**

Country of Origin	2002 (MT)	% to Total	2003 (MT)	% to Total	2004 (MT)	% to Total	2005 (MT)	% to Total
Indonesia	4,499	54.01	1,584	24.37	2,890	69.03	1,465	60.16
India	2,361	28.34	632	9.72	--	--	--	--
China	962	11.55	3,503	53.86	1,115	26.63	707	29.05
Singapore	345	4.14	671	10.32	18	0.44	100	4.11
Thailand**	155	1.86	20	0.31	--	--	--	--
Taiwan**	8	0.10	74	1.14	--	--	--	--
Korea**	--	--	19	0.30	--	--	--	--
Vietnam**	--	--	--	--	19	0.45	--	--
USA	--	--	--	--	145	3.45	163	6.68
Total	8,330	100.00	6,503	100.00	4,187	100.00	2,435	100.00

Source of Basic Data: Import entries excluding imports of Asahi

\*\* Not covered by the imposition of definitive safeguard duty per DTI Order dated 14 April 2004.

**Table 10. Major Country Suppliers of Clear Float Glass**

Country of Origin	2002 (MT)	% to Total	2003 (MT)	% to Total	2004 (MT)	% to Total	2005 (MT)	% to Total
China	5,623	30.80	7,347	55.29	1,129	21.15	2,243	44.75
Singapore	4,611	25.26	692	5.21	--	--	--	--
Indonesia	2,973	16.29	526	3.96	943	17.65	827	16.5
Thailand	1,582	8.67	639	4.81	168	3.15	194	3.86
Korea	1,563	8.56	2,719	20.46	1,702	31.89	35	0.71
Taiwan	975	5.34	137	1.03	258	4.84	641	12.8
India	604	3.31	--	--	--	--	--	--
Hongkong	307	1.68	--	--	--	--	--	--
USA	16	0.09	--	--	--	--	72	1.44
Vietnam	--	--	1,228	9.24	1,138	21.32	229	4.56
Pakistan	--	--	--	--	--	--	771	15.37
Total	18,255	100.00	13,288	100.00	5,339	100.00	5,012	100.00

Source of Basic Data: Import entries excluding imports of Asahi

## 7.2 De Minimis Import Volume

Imports of clear float glass from developing countries were above the *de minimis* threshold during the period of review (Table 10).

For tinted float glass, imports from the following developing countries were found to be *de minimis* throughout the review period:

**Table 11. Developing Countries with De Minimis Import Volume**

Developing Country of Export	Share to Total Imports (%)		
	2003	2004	2005
Taiwan	1.13	--	--
Thailand	0.31	--	--
Korea	0.30	--	--
Vietnam	--	0.45	--

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

## 7.3 Findings

The imposition of safeguard measures proved to be effective in reducing the volume of importation of float glass. The import share relative to domestic production exhibited a downward behavior throughout the period of review.

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

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

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

Likewise, Rule 9.4.c requires the determination of the *“presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product.”*<sup>3</sup>

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

### **8.1 Domestic Industry Requirement**

Asahi is the only manufacturer of float 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**

#### **8.2.1 Market Share**

The Philippine float glass market was predominantly supplied by the local industry prior to import surge in 2002. Table 12 shows that the domestic industry enjoyed an average market share of 78% from 1998 to 2001. When imports surged in 2002, the share of the domestic industry dropped to its lowest level at 66%, increasing the share of imports to 34%.

With the imposition of safeguard measure in 2003, Asahi regained market dominance when its share rebounded to 76%. Volume of imports in 2003, on the other hand, was reduced by about 26% from its 2002 level and

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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.

decreased further in 2004 to 2005. As a consequence, Asahi continuously increased its market shares to 88% in 2004 and 90% in 2005.

**Table 12. Apparent Domestic Consumption and Market Share**

Year	Domestic Sales <sup>a</sup> (‘000 MT)	Imports <sup>b</sup> (‘000 MT)	Apparent Consumption (‘000 MT)	% Change	% Share to Apparent Consumption	
					Domestic Industry	Imports
1998	54.20	11.33	65.53	--	82.70	17.30
1999	62.31	18.19	80.50	22.84	77.40	22.60
2000	61.19	14.61	75.81	(5.83)	80.72	19.28
2001	49.77	18.43	68.20	(10.04)	72.98	27.02
2002	52.45	26.58	79.04	15.84	66.36	33.64
2003	63.78	19.79	83.57	7.97	76.32	23.68
2004	68.64	9.53	78.17	(6.68)	87.81	12.19
2005	71.33	7.45	78.78	(1.13)	90.54	9.46
2006*	28.19	9.09	37.28	--	--	--

Sources: <sup>a</sup> - Asahi  
<sup>b</sup> - Import Entries  
\* - as of June 2006

## 8.2.2 Production, Sales and Inventory

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

Asahi produces both clear and tinted float using a single furnace. The company's production forecasts are based upon domestic demand and prospects for exports. Clear float glass averaged 75% of the total float production from 2003 to 2005. On the average, Asahi used 5% to 6% of its float glass production as raw material for glass mirror.

Asahi's production output over the years, except for 2001, was increasing (Table 13). From about 84,000 MT in 1998, Asahi increased its float glass production to some 89,000 MT in 1999 and further to 91,000 MT in 2000. Production, however, contracted by 32% in 2001, the lowest level over the year. Asahi bounced back in 2002 when its output grew to about 92,000 MT, similar to its 2000 production level. It will be noted however that despite the significant market recovery during the period of import surge, domestic production lagged behind as import captured the growth in demand.

In 2003 to 2005, when safeguard duty was in place, production increased gradually by an average growth rate of 3.63%. The increased in production in 2005 was partially due to Asahi's decision to stock up inventory in line with its planned cold repair of float glass furnace in 2006.

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

Asahi sells float glass domestically and to its affiliates abroad. While the company also imports float glass for re-sale domestically, the sales figures in Table 13 refer only to the sales of its locally produced float glass.

There was no significant adverse trend in Asahi's total sales from 1998 to 2002. In 2002, when the market grew by 16%, domestic sales also increased but at a slower rate than imports.

When safeguard duty was in place in 2003, domestic sales grew by 22% and further increased in 2004 and 2005 at the expense of imports.

Export is resorted to optimize production. High export volumes for 2002 to 2004 were attributed to the support extended by Asahi's affiliates.<sup>4</sup>

**Finished Goods Inventory.** It is a business practice of Asahi of maintaining an inventory level equivalent to two to three months of domestic sales. The inventory figures shown in Table 13 refer only to inventory of Asahi's domestic production. Asahi's float glass imports are excluded. Discrepancies in ending inventories were due to breakages, sales returns, slow moving stocks thrown to cullet and physical count adjustment.

Prior to import surge (2000 and 2001), Asahi's finished good inventory at year-end were within the normal inventory level at 13,000 MT. Float glass inventory started to pile-up in 2002 when Asahi failed to dispose all its float glass production despite increase in domestic demand as imports of float glass surged.

In 2003 and 2004, despite the imposition of safeguard measure, year-end inventories continued to build-up. In 2005, in preparation for the cold repair of the float glass furnace, Asahi increased its production to stock-up inventory to 46,000 MT which is equivalent to seven (7) months of domestic sales.

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<sup>4</sup> Asahi's 2002 Audited Financial Statements - Notes to Financial Statements (Note 17) and 2003 and 2004 Audited Financial Statements - Notes to Financial Statements Note 18)

**Table 13. Production, Sales and Inventory (in '000 MT)**

Year	Production	% Change	Domestic Sales	% Change	Export Sales	% Change	Total Sales	% Change	Inventory	% Change
1998	83.59	--	54.20	--	18.35	--	72.55	--	17.21	--
1999	89.26	6.77	62.31	14.98	20.28	10.53	82.59	13.85	10.21	(40.67)
2000	91.29	2.28	61.19	(1.80)	6.89	(66.05)	68.08	(17.58)	13.75	34.65
2001	61.74	(32.36)	49.77	(18.66)	1.50	(78.23)	51.27	(24.69)	13.25	(3.65)
2002	91.81	48.70	52.45	5.39	24.68	1,546.34	77.13	50.43	17.89	35.03
2003	93.26	1.58	63.78	21.60	19.39	(21.43)	83.17	7.83	22.11	23.59
2004	98.98	7.81	68.64	7.62	19.08	(1.60)	87.72	5.47	27.16	22.84
2005	100.46	1.50	71.33	3.92	3.33	(82.55)	74.66	(14.89)	45.95	69.18
2006*	14.86	--	28.19	--	0.02	--	28.21	--	29.88	--

Source of basic data: Asahi

\*as of June 2006

### 8.2.3 Capacity Utilization

Asahi's capacity utilization in 1998 to 2000 continued to increase. Capacity utilization fell to 64% in 2001 when Asahi's furnace underwent hot repair for 35 days. Thereafter, capacity utilization returned to the 2000 rate of 84%; and continued to improve in 2003 to 2005.

**Table 14. Capacity Utilization**

Year	Rated Capacity ('000 MT)	Production ('000 MT)	Capacity Utilization (%)	% Change
1998	109	83.59	76.69	-
1999	109	89.26	81.89	5.96
2000	109	91.29	83.75	2.25
2001	97*	61.74*	63.65	(24.67)
2002	109	91.81	84.23	34.20
2003	109	93.26	85.56	1.58
2004	109	98.98	90.81	6.13
2005	109	100.46	92.17	1.50

Source of basic data: Asahi

\* Furnace underwent hot repair for 35 days in November and December 2001

### 8.2.4 Cost of Production

One of the efficiency measures committed by Asahi in its adjustment plan is to reduce the cost of production.<sup>5</sup> However, the positive impact of this measure was offset by external factors such as the increase in power and fuel prices,<sup>6</sup> and higher CIF prices<sup>7</sup> of imported raw materials. Thus, the raw materials and manufacturing overhead costs increased in 2004 and

<sup>5</sup> See Section 9.2 (Specific efforts of the Domestic Industry) of this Report.

<sup>6</sup> Table 3 & 4, Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005. See also Section 9.2 of this Report.

<sup>7</sup> Due to the sharp rise in transport cost brought about by the increase in oil prices and the China factor (massive imports by China pushed up price levels of most commodities and caused shortage of vessels).

2005 for tinted float glass and in 2005 for clear float glass. Operating expenses which comprised 9% of both clear and tinted float glass production in 2003 also increased in 2005.

The decrease in labor costs of tinted float glass in years 2004 and 2005 was attributed to the reduced number of employees (Table 16) as well as to the increased volume of production. This resulted to a reduction on the cost per unit as total cost is spread over a larger volume of production.

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

**Table 15. Cost to Produce and Sell**

Product / Cost Components	% Change		
	2003-2004	2004-2005	2003-2005
Clear Float:			
Raw Materials	6.48	24.64	32.72
Direct Labor	-	3.77	3.77
Manufacturing Overhead	(2.04)	17.12	14.74
Cost of Production	0.28	18.64	18.98
Operating Expenses	(10.08)	74.57	56.98
Cost to Produce and Sell	(0.70)	23.43	22.57
Tinted Float:			
Raw Materials	16.25	24.46	44.69
Direct Labor	(18.03)	(22.00)	(36.07)
Manufacturing Overhead	4.26	22.78	28.01
Cost of Production	6.14	21.63	29.09
Operating Expenses	(9.30)	64.96	49.61
Cost to Produce and Sell	4.76	24.97	30.92

Source: Asahi

### 8.2.5 Employment and Productivity

Asahi glass was able to downsize its operation when it outsourced several activities, e.g., loading and unloading operations, fabrication of boxes. From a high of 266 employees in 1998, the company was able to bring the number of employees down to 114 in 2005.

Except in 2001 when production was at its lowest, productivity improved yearly as it was able to reduce its number of employees.

**Table 16. Employment and Productivity**

Year	Number of Employees	% Change	Production ('000 MT)	Productivity	% Change
1998	266	-	83.59	310	-
1999	265	(0.38)	89.26	340	9.68
2000	247	(6.79)	91.29	370	8.82
2001	231	(6.48)	61.74	270	(27.02)
2002	194	(16.02)	91.81	470	74.07
2003	204	5.15	93.26	460	(2.12)
2004	129	(36.40)	98.98	770	67.39
2005	114	(11.63)	100.46	880	14.19

Source: Asahi

### 8.2.6 Profitability

Table 17 presents the financial performance of float glass operation. Float glass, based on 2005 sales revenues, accounted for 67% of the total Asahi operations.

Asahi's low income from operation in 1998 and 1999 may be attributed to dumped imports. In 2000, when anti-dumping measures were imposed against Indonesian clear float glass, dumped imports slowed down thus allowing Asahi to increase its domestic selling prices. Asahi's sales revenue increased thereby improving its income from operation.

The surge of imports in 2002 prompted Asahi to adopt import parity pricing even if the price is below cost in order to defend its market share. This led to a considerable operating loss of 122% lower than the 2001 level. However, with the imposition of a provisional safeguard measure in October 2003, volume of domestic sales increased by 22%, yielding an income from operation of 266% increase from 2002.

Asahi's income from operation tripled in 2004 brought about by 20% increase in sales revenue. Asahi showed a healthier financial performance in 2005 with an operating income increased further by 16%, the highest in the eight-year period of operation.

The huge interest expense which told on the financial performance of Asahi in years 1998 to 2001 was brought to a manageable level in 2002 with the retirement of some outstanding loans. In 2003, after pre-terminating most of its outstanding loan, interest expense decreased further by 68%. It was in this year that Asahi turned around its profitability. Building on the positive impact on its adjustment plan, Asahi continued to improve its financial performance in 2004 and 2005.

**Table 17. Financial Performance**

Particulars	% Change						
	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Sales	2.11	21.46	(9.15)	19.84	6.18	19.71	6.93
Less: Cost of Sales	4.70	(4.01)	(5.29)	48.70	(1.48)	7.80	2.06
Gross Profit	(21.98)	323.94	(19.27)	(71.60)	133.33	103.11	25.08
Less: Operating Expenses	(8.00)	27.54	(6.82)	26.83	(0.96)	-	44.66
Operating Income / (Loss)	(93.75)	21,200.00	(24.41)	(121.74)	265.71	286.21	16.07
Less: Interest Expense	(3.64)	8.81	22.54	(57.08)	(68.13)	6.90	12.90
Add / (Less): Other Income/ (Charges)	100.00	(440.00)	1,086.36	93.68	60.61	(661.54)	67.68
Net Profit / (Loss) Before Tax	-	96.82	(11,360.00)	53.40	110.86	224.14	105.32

Source: Asahi

### 8.2.7 Return on Sales

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

Except in 2002 and 2003, returns on sales for the years 2000 to 2005 ranged from 15% to 19%. This is attributed to Asahi's enhanced sales revenue and profitability.

**Table 18. Return on Sales**

Year	Return on Sales (%)
1998	1.80
1999	0.11
2000	19.10
2001	15.89
2002	(2.88)
2003	4.50
2004	14.52
2005	15.76

Source: Asahi

### **8.3 Findings**

Asahi, as the sole manufacturer of clear and tinted float glass, represents the domestic industry.

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

However, other factors, namely, rise in power, fuel and transport costs and China's massive import demand which pushed up prices of raw materials, have adversely affected the industry's cost competitiveness. Thus, the potential financial gains, from the safeguard and dumping 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 of 12.3 of IRR of RA 8800 states:

*“A determination of threat of serious injury shall be based on facts and merely on allegations, conjecture or remote possibilities. In making determination regarding the existence of a threat of serious injury, the Secretary and the Commission at their respective stages of investigation shall consider the following among others:*

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

*No one of these factors can, by itself, necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further increased imports are imminent and that, unless protective actions is taken, serious injury would occur.*

### 9.1 Foreign Industry Developments

There are about 260 float glass plants worldwide that produce around 95 percent of the world's supply of flat glass. Nippon Glass Sheet,<sup>8</sup> Saint-Gobain, Asahi and Guardian produce about 60% of the world's high quality float glass. World production grew, on average, by 4% per annum over the period 1990-2003. The global market for flat glass in 2003 was approximately 36 million MT. The world flat glass market is expected to reach 42 million MT by 2006. Over the long term, demand for float glass is expected to grow by nearly 4 per cent per annum. Global float capacity utilization has ranged between 88% and 96%.<sup>9</sup>

<sup>8</sup> The Acquisition of Pilkington by Nippon Glass Sheet was completed on 16 July 2006

<sup>9</sup> [www.Pilkington.com](http://www.Pilkington.com), Flat Glass Industry Summary

### 9.1.1 China

The flat glass Industry in China constructed about 10 new float glass production lines each year from 1995 to 1997. For the first 10 months of 2002, there are already 47 float glass lines in operation in China.<sup>10</sup>

Over-investment in lower quality lines has resulted in successive waves of overcapacity, heavily depressed market prices, industry-wide losses, closures of some of the smaller players, and a government-imposed moratorium on further line openings.<sup>11</sup> After an industrial slowdown in 2005, China's glass industry is coming to a point of consolidation by undertaking mergers and acquisitions and is now ready for a rebound.<sup>12</sup> China now ranks first in the world for both production and consumption, which in 2004 accounted for 40% of the world total, around 38 million tons per annum.<sup>13</sup>

It is expected that there will be more float glass capital investment in China than in the rest of the world, with spending of more than Y15 billion in new or upgraded capacities that will remain in place for 10 to 15 years.<sup>14</sup>

Based on 2005 trade flow statistics of UN Comtrade, large volume of subject articles were exported mainly to Korea and to countries within the region, including the Philippines.

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

### 9.1.2 Indonesia

Indonesia exports more than 50% of its flat glass production. The export price dropped drastically due to the fierce competition with Chinese-made flat glass. Further, the rupiah's appreciation against foreign currencies reduced gains of the industry.<sup>15</sup>

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 facilities being put up.<sup>16</sup>

Prior to the imposition of dumping duties in 2001, from 22% to 96% of Indonesia's annual exports of CFG went to the Philippines<sup>17</sup>. The significant shares of Indonesia's export to the Philippines of clear and tinted float glass with an average annual share of 24% and 41%, respectively from 2000-

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<sup>10</sup> <http://www.glasstec-online.com>, Float Glass Industry Review 2002

<sup>11</sup> On The Outlook For The Flat Glass Industry In China by International Finance Corp (IFC ), Booz Allen, November 2003

<sup>12</sup> <http://www.chinadaily.com.cn>

<sup>13</sup> <http://www.britglass.org.uk>, March2006.

<sup>14</sup> <http://www.ifc.org>

<sup>15</sup> JETRO Jakarta Economic Review, January 2004 Vol.2 "Special Edition"

<sup>16</sup> Tariff Commission's Report of Findings on the expiry review of the definitive anti-dumping duties on the importation of clear float glass from Indonesia

<sup>17</sup> Ibid.

2005 show that the Philippines has long been a major export market of Indonesia. In 2004, despite the imposition of the safeguard duty, Indonesia's exports to the Philippines even doubled before it dropped in 2005 by 37%. Imports from Indonesia during the entire relief period continued to be higher than its pre-surge level, i.e. prior to 2002. Given these factors, it is very likely that the termination of the safeguard action would result to resumption of cheaper float glass imports from Indonesia at high levels.

Various trade remedy cases have been filed against float glass from Indonesia: anti-dumping case filed in India in 2003, anti-dumping against clear float glass imports in the Philippines and a recent countervailing case by the United States of America.<sup>18</sup>

### **9.1.3 Other Asian Countries**

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

## **9.2. Impact of Safeguard Measure on Prices**

The increase in the landed cost of imports that resulted from the imposition of safeguard measures allowed the domestic industry to increase its domestic selling prices (Tables 19A & 19B). This pricing strategy enabled the company to sell more as evidenced by the increased volume of domestic sales from 2004 to 2005.

Removal of safeguard duty will result to much lower landed cost of imported float glass. In 2006, the landed cost is lower by 24% on the average than Asahi's domestic selling price. Asahi would have to lower its price, in the case of clear float glass, to the extent that it could not recover its cost to produce and sell (Table 19C) if it is to continue protecting its market share.

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<sup>18</sup> United States Court of International Trade, slip Op06-21

**Table 19A. Price Difference <sup>la</sup> between the Landed Cost (LC) <sup>lb</sup> and Asahi's Ex-factory Domestic Selling Price (DSP) <sup>lc</sup> on Clear Float Glass \***

Year	Without Safeguard Duty on Landed Cost	With Safeguard Duty on Landed Cost
	(%)	(%)
2003	1.78	42.84
2004	(0.62)	26.59
2005	(9.33)	6.92
2006 **	(24.68)	(4.13)

\* - Net of VAT

\*\* - As of June 2006

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

<sup>lb</sup> - weighted average- all countries; Indonesia- inclusive of dumping duty.

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

<sup>lc</sup> - Asahi

**Table 19B. Price Difference <sup>la</sup> between the Landed Cost (LC) <sup>lb</sup> and Asahi's Ex-factory Domestic Selling Price (DSP) <sup>lc</sup> on Tinted Float Glass \***

Year	Without Safeguard Duty on Landed Cost	With Safeguard Duty on Landed Cost
	(%)	(%)
2003	(9.33)	37.21
2004	(5.80)	22.97
2005	(7.90)	17.20
2006 **	(23.57)	(1.76)

\* - Net of VAT

\*\* - As of June 2006

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

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

<sup>lc</sup> - Asahi

**Table 19C. 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 (%)
Clear Float			
2003	100.00	97.26	2.74
2004	100.00	83.80	16.20
2005	100.00	85.73	14.27
2006*	100.00	85.47	14.53
Tinted Float			
2003	100.00	82.94	17.06
2004	100.00	74.67	25.33
2005	100.00	85.64	14.36
2006*	100.00	72.29	27.71

Source: Asahi

\* As of June 2006

### **9.3 Findings**

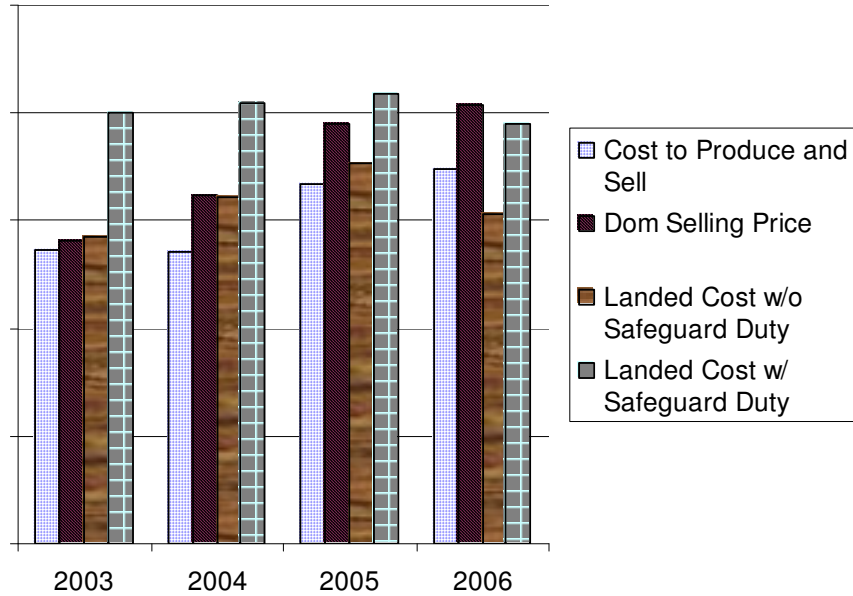
The proximity of China and Indonesia to the Philippines and their sufficient freely disposable production capacities indicate the likelihood of substantially increased exports to the Philippines if the safeguard measure is terminated.

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

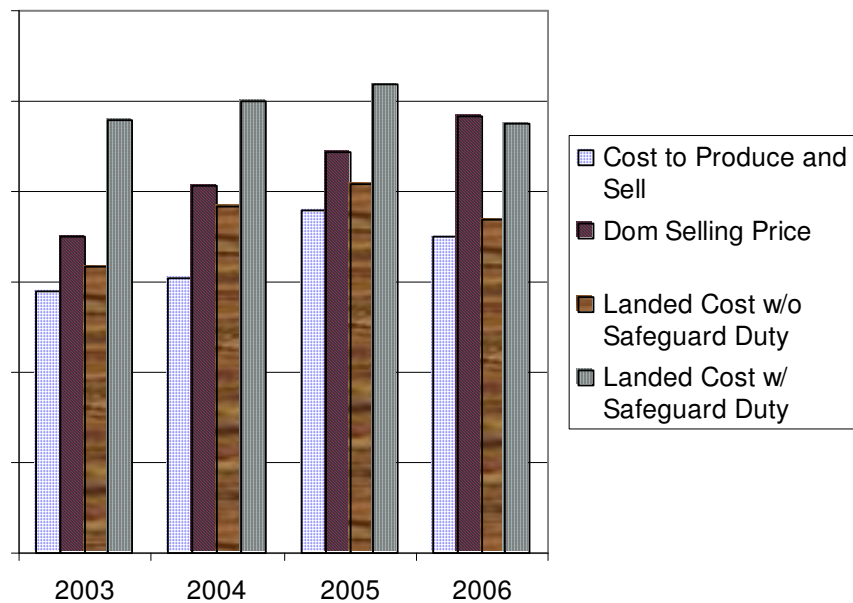
The bulk of these exports is likely to enter at relatively lower prices. Without the safeguard duty, the landed cost of imported float glass has a price advantage over the industry's domestic selling price (Figures 2 and 3). The wider the gap between landed cost and domestic selling price which worsened in 2006 to 24%, the more likely the import surge would recur. Asahi will be forced to price its float glass at par with its imported counterpart or, in the case of clear float, 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 by the domestic industry's efforts to adjust to import competition.

**Figure 2. Comparative Cost and Prices of Asahi and Imports on Clear Float Glass (Peso/MT)**



**Figure 3. Comparative Cost and Prices of Asahi and Imports on Tinted Float Glass (Peso/MT)**



## 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>19</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>20</sup>

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

### 10.2 Specific Efforts of the Domestic Industry

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

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

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

<sup>19</sup> TC Manual on Safeguards Investigation, p.11b.

<sup>20</sup> Tariff Commission's Formal Investigation Report (SG No. 02-2003), p. 14-15

in oil prices and the China factor.<sup>21</sup> Were it not for the change in 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, 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>22</sup> These circumstances negated the expected savings from this new purchase method.

Asahi cost of production might have been higher by 5% to 8% in 2004 and 2005, had they not changed their purchase method of Bunker Fuel Oil (BFO).<sup>23</sup>

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

In February this year, Asahi's float glass furnace (F5) underwent cold repair, resulting to a major improvement in its production capabilities. As of 31 July 2006, the ongoing improvement amounted to a sizeable sum.

- 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>21</sup> Massive imports by China pushed up price levels of most commodities and caused shortage of vessels

<sup>22</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>23</sup> Report on the Monitoring of the Adjustment Plan of the Flat Glass Industry, 08 December 2005.

reduced by 76% in 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 float glass industry has complied substantially with its commitments as stated in its adjustment plan.

However, factors beyond the domestic industry's control have adversely affected its cost competitiveness. These include the 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 cost savings from the efficiency measures implemented so far, has not been fully realized by the domestic industry.

Further adjustment must be made by the domestic float glass industry to alleviate the pressure exerted by external factors. The current safeguard measure provides the domestic industry with the needed relief to respond to import competition by undertaking the improvements<sup>24</sup> as contained in the adjustment plan requires more time to achieve its objective.

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<sup>24</sup> The Commission noted export sales as an area for improvement.

## 11. FINAL DETERMINATION

### 11.1 Summary of Findings

1. As the sole manufacturer of clear and tinted float 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 decreased below the pre-surge level. The domestic industry showed improvements in its production, sales, market shares, productivity, capacity utilization and profitability.
3. The proximity of China and Indonesia to the Philippines and their sufficient freely disposable production capacities indicate the likelihood of substantially increased exports to the Philippines if the safeguard measure is terminated.
4. Several anti-dumping and safeguard cases filed against China and Indonesia further support the likelihood that exports from these countries may shift to the Philippines.
5. Without the safeguard duty, domestic selling prices will fall below levels not enough to recover cost to produce and sell. There is a substantial threat of serious injury if safeguard duty is not extended.
6. Factors outside the control of Asahi negated the gains resulting from its stalled adjustment plan. Asahi needs more time to fully put it in place to effectively face import competition.
7. Non-extension of the safeguard measure will likely lead to increased imports of float glass which will cause serious injury to the domestic industry.

### 11.2 Conclusion and Recommendation

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

### **13.2 On the Domestic Industry**

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

### **13.3 User Industries and Consumer Welfare**

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

### **13.4 On Employment**

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

### **13.5 On Regional Development**

- Asahi production facility is located in Pasig City, Metro Manila. The imposition of the definitive safeguard measure will ensure continuous operation of the industry. This will bring continuing community development to the city and nearby areas where 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