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## **1 TERMS OF REFERENCE**

### **1.1 The Application for General Safeguard Measure**

The Department of Trade and Industry (DTI) officially received a properly documented application from Asahi Glass Philippines (AGP) on 08 April 2003. AGP, the sole manufacturer of figured glass in the Philippines, alleged that imported figured glass began causing injury to the domestic industry in 1999 and that the domestic industry has suffered and is suffering a significant impairment in their overall market position, seriously affecting their production, sales, capacity utilization, employment, profitability and increased inventory level.

The petition covered imported clear and tinted figured glass classified under HS Subheading Nos. 7003.12 90 and 7003.19 90.

### **1.2 The Preliminary Investigation**

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 16 April 2003 with the publication of notices of initiation in the *Philippine Star* and the *Philippine Daily Inquirer*.

The preliminary investigation established that increased imports of figured glass caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, profitability and increased inventory. Prices were found to be depressed and margins of profits declined. Landed costs of imports were lower than the ex-plant prices of the domestic product.

On 01 September 2003, DTI issued an Order directing that a provisional safeguard measure in the form of cash bond amounting to ₱1,535.00 per MT be imposed for a period not exceeding 200 days from the date of issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) on all importations of figured glass.

Excluded from the imposition of provisional measure were imports originating from developing countries covered by Rule 8.8 (*de minimis* rule) of the IRR of RA 8800. Further, all importers of figured glass, regardless of port of exportation, were required to secure a Certificate of Country of Origin (CO) issued by the authorized agency/office in the source country of manufacture as authenticated by the Philippine Embassy/Consulate there.

BOC issued CMO No. 24-2003 on 13 October 2003 directing that all importations from all countries, except those in the DTI exclusion list, of clear and tinted figured glass classified under HS Subheading Nos. 7003.12 90 and 7003.19 90, would be imposed, in addition to taxes and duties and other charges, a cash bond amounting to ₱1,535.00 per MT.

On 11 September 2003, DTI-BIS endorsed to the Tariff Commission the petition of Asahi Glass Philippines for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard duty on imports of figured glass pursuant to Section 9 of R.A. 8800 and its IRR.

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## **2 SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION**

### **2.1 The Safeguard Measures Act of 2000**

On 19 July 2000, R.A. 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 and took effect on 09 August 2000, i.e., fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Its IRR (Joint Administrative Order No. 03) took effect on 11 October 2000, i.e., seven (7) days after its publication.

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.

Under the Safeguard Measures Act, a general safeguard investigation has four (4) stages:

#### *Prima Facie* Determination

Upon acceptance of a properly documented petition, the DTI, in the case of industrial products, or the Department of Agriculture (DA), for agricultural products, has five (5) calendar days to decide whether a *prima facie* case exists to merit the initiation of a preliminary investigation. In its determination, the DTI or DA undertakes an in-depth evaluation of the data submitted or provided, together with information obtained independently.

If no *prima facie* case exists, the application is denied.

#### Preliminary Determination

Once a *prima facie* case has been established, DTI or DA initiates the preliminary determination.

Within two (2) calendar days after the decision to initiate the preliminary investigation is made, DTI or DA notifies all known interested

parties and the government of the exporting country about the initiation of the investigation and sends a pro forma respondent's questionnaire to all interested parties (e.g., importers, domestic manufacturers and exporters).

Not later than thirty (30) calendar days from receipt of the properly documented petition, the DTI or DA Secretary, on the basis of the petition, the answers of the respondents and the supporting documents or information, makes a preliminary determination that increased imports of the product under consideration are a substantial cause of, or threaten to substantially cause, serious injury to the domestic industry.

In case of preliminary affirmative findings, the DTI or DA Secretary advises, within three (3) calendar days from making a decision, the Secretary of Finance to instruct the BOC to impose the provisional safeguard measure.

Within three (3) calendar days from making its preliminary affirmative determination, DTI or DA transmits the records of the case to the Commission with a request for the conduct of a formal investigation.

If the preliminary findings are negative, the DTI or DA Secretary terminates the investigation.

#### Formal Investigation

The Commission conducts the formal investigation to determine:

- a. if the domestic product is a like product or a product directly competitive to the imported product under consideration;
- b. if the product is being imported into the Philippines in increased quantities (whether absolute or relative to domestic production);
- c. the presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product; and
- d. the existence of a causal relationship between the increased imports of the product under consideration and the serious injury or threat thereof to the affected domestic industry.

The Commission concludes its formal investigation and submits a report of its findings and conclusions to the DTI or DA Secretary within one hundred and twenty (120) calendar days from receipt of the request from the Secretary, except when the Secretary certifies the same as urgent, in which case the Commission completes the investigation and submits the report within sixty (60) calendar days.

Upon its positive determination, the Commission recommends to the Secretary an appropriate definitive general safeguard measure. Thereafter,

the Commission undertakes 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 fifteen (15) calendar days from receipt of the final report of the Commission, the DTI or DA Secretary makes a decision, taking into consideration the general safeguard measures recommended by the Commission.

If the determination is affirmative, the Secretary issues, 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.

In case of a negative final determination or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary immediately issues, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional safeguard measure within ten (10) days from the date the final decision had been made.

## **2.2 The World Trade Organization Agreement on Safeguards**

Article XIX (Emergency Action on Imports of Particular Products) of the General Agreement on Tariffs and Trade (GATT) 1994 provides that: *"If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."*

The Uruguay Round of Multilateral Trade Negotiations resulted in a new Agreement on Safeguards which interprets and elaborates Article XIX.

Article 2 of the Agreement provides that: “A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”

Safeguard measures, if imposed, must be liberalized progressively. In order that a substantially equivalent level of World Trade Organization (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.

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.

The WTO Appellate Body in *Argentina – Footwear and Korea – Certain Dairy Products* established that safeguard measures may be applied only when the prerequisites of Article XIX of GATT 1994 and the conditions of the Agreement on Safeguards (both Multilateral Trade Agreements and as such are integral parts of the WTO Agreement) are clearly demonstrated.

As a WTO Member, the Philippines is bound by Article XIX of GATT 1994 and the Safeguards Agreement. The applicant domestic industry must therefore allege and prove that unforeseen developments and the effect of obligations of the Philippines under the WTO Agreement, including tariff concessions, have led to the increase in importation as well as the presence of the resulting serious injury or threat thereof.

In relation to the current inquiry, however, the circumstances provided in Article XIX of GATT 1994 need not be demonstrated for the reason that the product under consideration (figured glass) is not the subject of any Philippine obligation or tariff concession under the WTO

Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 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:

#### *“Article 6. Emergency Measures*

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.”*
2. *x x x*
3. *Where emergency measures are taken pursuant to this Article, immediate notice of such action shall be given to the Council referred to in Article 7 of this Agreement, and such action may be the subject of consultation as provided for in Article 8 of this Agreement.”*

The Interpretative Notes to Article 6.3 states that *“where imports of particular products eligible under the CEPT cause or threaten to cause injury to sectors producing like or directly competitive products in the importing Member States, the importing Member States may suspend preferences provisionally and without discrimination, and send an immediate notice to the Council through the ASEAN Secretariat “.*

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

#### *“Article 8. Consultations*

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. *Any differences between the Member States concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably between the parties. If such differences cannot be settled amicably, it shall be submitted to the Council referred to in Article 7 of this Agreement, and if necessary, to the AEM.”*

Considering that figured glass is included in the CEPT Scheme, immediate notice of the Safeguard action shall be given to the AFTA Council and adequate opportunity for consultation shall be accorded the governments of the adversely affected ASEAN Member States.

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### **3 THE COMMISSION'S INQUIRY**

Section 9 of R.A. 8800 provides 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. Evidence 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.*

*The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) calendar days from 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.”*

#### **3.1 Notifications**

In compliance with the public notice requirements of the IRR of R.A. 8800, the Commission made the following notifications during the course of its inquiry.

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

The formal investigation of the Commission commenced with the publication of the Notice of Formal Investigation in the *Manila Times* and the *Manila Standard* on 19 September 2003 (**Annexes A-1 and A-2**). The Commission sent individual notices from 19 – 24 September 2003 to the concerned parties, i.e., AGP, importers, exporters, the governments of India, Indonesia, Korea, the People's Republic of China (PROC), Singapore, Thailand and the United States of America, through their respective embassies, constructors/builders associations, and consumer groups/non-government organizations.

##### **3.1.2 Schedule of Public Consultations**

The schedule of public consultation was published in the *Manila Times* and the *Manila Standard* (**Annexes B-1 and B-2**) on 11 November 2003. Individual were sent to concerned parties from 11 to 18 November 2003.

### **3.2 Preliminary Conference**

On 01 October 2003, the preliminary conference was held at the Tariff Commission for the purpose of discussing the schedule and procedure of public consultation; the nature of administrative and fact finding proceedings; the non-applicability of the technical rules of procedures in the Rules of Court; the submission of parties' evidence and position papers; the non-availability of confidential information; the timeframe of formal investigation; and other related matters necessary for the speedy disposition of the case.

In attendance were representatives and/or counsels of the following: AGP, Comglasco Corporation, Hankuk Glass Industries Inc. (Korea), P.T. Mulia Glass (Indonesia), Rovet International Enterprises, US-ASEAN Business Council, Ministry of Industry and Trade of Indonesia, Embassy of Indonesia , Embassy of Korea, Embassy of Thailand, Embassy of the United States of America, and Department of Trade and Industry (Philippines).

The agreements reached during the preliminary conference were the following: the timetable of the investigation including the schedule of the public consultations; entry of appearance of interested parties including names of lead/alternate/collaborating counsels; confidentiality/accessibility of documents and timelines for submission of position papers, other supplemental data, and adjustment plan. These agreements were contained in Commission Order (**Annex C**) dated 03 October 2003 and sent to the concerned parties.

### **3.3 Staff Report**

The Commission issued a Staff Report on 14 November 2003. The report contained the Commission's findings on the issues of product comparability and increased volume of imports. Also provided in the report were preliminary data to determine the presence of serious injury.

Copies of the Staff Report were sent to the concerned parties on 10–19 November 2003.

### **3.4 Public Consultations**

Public consultations were held from 24 – 25 November 2003 at the Commission.

The consultations allowed interested parties maximum public participation in the inquiry by providing parties an opportunity to be heard and to present evidence, elaborate on their submissions, and respond and seek clarifications on the presentations of the other parties.

In attendance were counsels and/or representatives of AGP; Siam Pattern Glass Co., Ltd; Guardian Industries (Thailand); Gujarat Guardian

(India); Guardian Industries; Hankuk Glass Indus.; P.T. Mulia Glass (Indonesia); Sun Int'l. Corporation; Comglasco Corporation; Alamkala (Indonesia) and Rovet International. Representatives from various parties such as embassies, government and private agencies were also present during the consultations.

Among the importers, only Comglasco Corporation attended the public consultations. The conspicuous absence of the rest of the importers, who opposed AGP's application for safeguard measure, indicated lack of interest and cooperation on their part inspite of due notice.

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

The Commission visited the manufacturing facilities of AGP in Barangay Pinagbuhatan, Pasig City on 17 October, 04 November and 05 December. On 17 December, visits were conducted of two (2) AGP distributors – Pacific Glass Corporation and Quinta Trading Company, Inc.

Among the information gathered/verified during the plant/verification visits were the following: production process, production lines, machinery/equipment, plant capacity, production levels, production cost, sales, selling prices, inventory levels and employment.

Concerned importers, who opposed AGP's application for safeguard measure, did not reply to the request of the Commission for plant visit/verification of data.

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## **4 PARTICIPANTS' VIEWS**

### **4.1 Submissions Received**

On 16 September 2003, the Commission received the endorsement of the DTI and the entire records of the safeguard application. Various manifestations and documents were submitted to the Commission by the concerned parties (Annex D).

The Embassy of People's Republic of China, Siam Pattern Glass Co., and Times Glass Incorporation, submitted position papers to the Commission opposing the application for safeguard measure.

The Commission received AGP's adjustment plan on 06 October 2003.

All non-confidential submissions, including non-confidential portions of confidential submissions, were made publicly available at the Commission.

### **4.2 The Domestic Industry's Case**

AGP made the following allegations:

- Locally produced and imported figured glass are like products. Domestic and imported figured glass are made from the same raw materials and undergo the same production processes and have the same applications and functions. Domestic and imported figured glass have the same tariff classification.
- Imports surge started in 1999 when imports of figured glass exhibited significant increases both in absolute terms and relative to production until 2002.
- Surge in imports caused significant impairment of AGP's overall market position, adversely affecting its market share, sales volumes and revenues, production, employment, profits, labor productivity, and capacity utilization. The increased import levels have also dampened creditor and shareholder support for long-term financing and brought about the postponement of major expansion and capital expenditure projects.

Parties supporting AGP's application for safeguard action, such as the Federation of Philippine Industries, Inc., the Philippine Constructors Association, Inc., and a number of glass dealers/distributors/fabricators, cited the urgent need for a level playing field, thru safety nets against foreign competition.

In view of the foregoing, AGP requested the imposition of an appropriate definitive safeguard duty against imports of figured glass that will sustain AGP's continued operation as it puts in place adjustment measures that will allow it to attain global competitiveness.

### Adjustment Plan

Rule 4.1 of the IRR of R.A. 8800 defines adjustment plan as an *“action plan 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.”*

In compliance with the Commission Order dated 03 October 2003, AGP submitted its adjustment plan on 06 October 2003.

The submission contained the following efficiency measures:

1. Profitability Improvement
  - Group-wide purchase of strategic materials
  - Benchmarking and adoption of best practices to improve operating systems and controls
  - Region-wide optimum production allocation to maximize group synergy and economies of scale
  - Reduction of power and fuel oil costs
  - Use of alternative local raw materials
  - Petition for lowering tariffs on raw materials and inputs that are not locally produced
2. Strengthened Manufacturing Capability
  - Cold repair of furnace
3. Marketing Improvements
  - Expansion of market coverage
  - Increase sales of high-value products
  - 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

6. Proposed utilization of funds derived from safeguard duties
- Development and installation of anti-pollution system to comply with the Clean Air Act
  - Prevention of circumvention of R.A. 8800 and strengthening government's anti-smuggling efforts
  - Other competitiveness-enhancing measures for local industries

### **4.3 The Opposing Case**

The oppositors to the application for safeguard measure argued that:

#### Imports

- Their importation is insignificant and most of their requirements are purchased from the domestic market.
- Only designs and colors which are not produced by AGP are being imported.

#### Product variety

- AGP does not produce colored figured glass and offers limited and traditional product designs. The company is complacent in its product design and is not pursuing research and development in order to boost sale.
- There is a new market over and above the existing traditional figured glass market which is not being addressed by AGP.

#### Quality

- Quality-wise, imported products have consistency of patterns, evenness in thickness, and lower incidence of breakage, while locally produced figured glass is brittle and has higher probability of uneven thickness.

#### Price

- AGP controls prices. Price of local figured glass fluctuated from 1998 to present.
- Figured glass with designs and colors not locally manufactured is more expensive.

### Logistics

- AGP is not capable of providing service in several parts of the country. It even closed its depots in Batangas and Pampanga.
- The loss of AGP is self-inflicted. Several Asahi dealers have cut off their ties with AGP due to unsatisfactory service and treatment.

### Employment

- Imposition of safeguard can lead to massive unemployment in the small and medium glass enterprises sector. The secondary downstream industry employs more people compared with AGP's.

### Public Interest

- Implementation of safeguard measure will create shortage because AGP's one and only furnace is long overdue for maintenance (cold repair). This may result to escalation in glass prices.

## 5 THE DOMESTIC INDUSTRY AND MARKET

### 5.1 The Domestic Product

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

### 5.2 Government Policies and Regulations

Table 1 shows that Most-Favoured-Nation (MFN) tariff rates on subject articles were 20% in 1998 and 1999, 15% in 2000 and 2001, and 10% in 2002 until November 2003. Pursuant to Executive Order (E.O.) 241 which took effect on 17 November 2003, the tariff rates on subject articles were adjusted upward to 15% effective until 2005. The Philippines did not bind the tariff rates on figured glass in the WTO.

**Table 1A. Rates of Duty on Figured Glass: 1998-2003\***

HDG.	HS CODE	DESCRIPTION	Type of Duty	RATE OF DUTY (%)					
				1998	1999	2000	2001	2002	2003*
70.03		Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.							
	7003.12 90	- - - Other (e.g., Tinted figured glass)	MFN	20	20	15	15	10	15
			CEPT	20	20	15	10	10	5
	7003.19 90	- - - Other (e.g., Clear figured glass)	MFN	20	20	15	15	10	15
			CEPT	20	20	15	10	10	5

\*Pursuant to E.O. 241 effective 17 November 2003

Source: Tariff Commission

**Table 1B. Rates of Duty on Figured Glass: 2004-2005**

AHTN Code*	Description	Type of Duty	RATE OF DUTY(%)	
			2004	2005
70.03	Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.			
7003.12.20	--- Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut)	MFN	15	15
		CEPT	5	5
7003.12.90	--- Other	MFN	15	15
		CEPT	5	5
7003.19.20	--- Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut)	MFN	15	15
		CEPT	5	5
7003.19.90	--- Other	MFN	15	15
		CEPT	5	5

\*AHTN- ASEAN Harmonized Tariff Nomenclature  
Source: Tariff Commission

ASEAN rates on figured glass under the CEPT Scheme for the AFTA were equal to the MFN tariff rates from 1998 to 2002, except in 2001 when the CEPT rates were lower by 5%. The CEPT rates are currently at 5%.

### 5.3 Market Participants

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

#### 5.3.1 Domestic Producer

AGP is the sole manufacturer of figured glass in the Philippines. Its plant is located at Brgy. Pinagbuhatan, Pasig City.

**Table 2. Imports of Asahi Glass Philippines**

Year	Imports (MT)	% Change	Production (MT)	% Share to Production
1999	6.96	-	31,030	0.02
2000	895	12,759	27,084	3.3
Total	901.96	-	-	-

Source: Import Entries

AGP imported 6.96 metric tons of figured glass from Indonesia in 1999. The following year, imports increased sharply to 895 metric tons and were sourced from South Korea.

According to AGP, the importation of 3.0 and 5.0 Mitslite was primarily done to complete its product line up since the imported products serve small demand and therefore not economical to

produce. The importation was also made to augment inventories in anticipation of scheduled repair of the figured glass furnace.

### **5.3.1.1 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, AGC and Republic Glass Holdings Corporation (RGHC), majority stake holder of RAGC, executed a Deed of Absolute Sale of Shares whereby RGHC sold, and AGC 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 AGC 81% ownership interest in RAGC.

On 6 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 submitted Statement of Stockholders' Citizenship and Equity profile of AGP (as of 20 September 2002), as well as their submitted General Information Sheet to SEC (dated 16 May 2003), showed the following:

- ✓ 81% of the common shares of AGP (totaling 1,258,599,992) is owned by AGC, out of which 98% is paid up.
- ✓ Nominal shares of subscribed and paid-up common shares of stocks of AGP are individually held by the following: Hironari Kotoda, Yutaka Ohta, Kunio Nakano, Keita Shikii, Yoshitaka Tanaka and Hiromasa Sawai.
- ✓ Filipino ownership of AGP constitute 19%, representing 300,000,000 subscribed common shares of stocks, of which 30,000,000 is paid up.

### 5.3.1.2 Production Capacity

AGP has a production capacity of 900,000 converted cases per year which is equivalent to 150 tons of figured glass per day. The plant operates on 3 shifts, 24 hours a day, 365 days a year. The figured glass furnace was commissioned and put into commercial operation in February 1997.

### 5.3.1.3 Distribution Channels

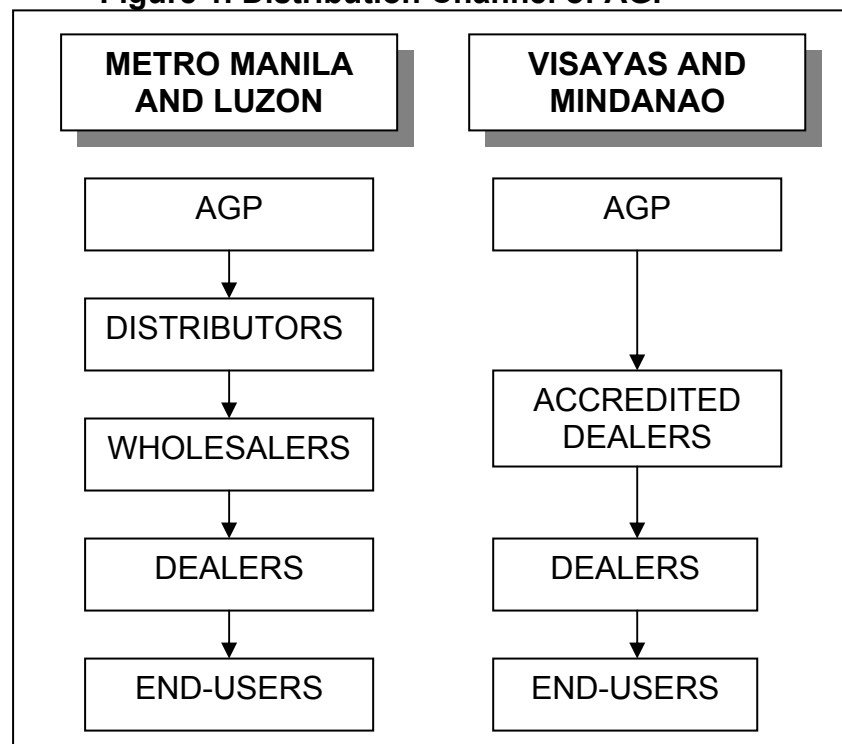
At present, AGP has two distribution channels for figured glass. The distribution route for Metro Manila and Luzon goes from the Company warehouse to a distributor, then to a wholesaler, dealer, retailer and subsequently to the end-users, who are housing owners, developers, contractors, mirrorers or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

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

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

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

**Figure 1. Distribution Channel of AGP**



Source: Asahi Glass Philippines

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

**Table 3. Marketing Network of AGP**

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

Source: Asahi Glass Philippines

In Metro Manila and Luzon, there are three (3) warehouses located in Laoag, Ilocos Norte, San Fernando, Pampanga, and Lipa, Batangas. In Mindanao, the two (2) warehouses are found in Zamboanga and Gen. Santos.

According to AGP, Metro Manila demands better quality and high value added glass, while the Visayas and Mindanao go for figured glass used in residential establishment.

### 5.3.2 Importers

During the period of investigation, the identified importers were the following:

**Table 4. Imports by Company**

Importers	Imports (MT)		
	2000	2001	2002
1. A-1 Industries	-	59	-
2. Asia Glass Palace Inc.	1,727	786	1,659
3. Cebu MMF Glass & Aluminum Supply	-	-	124
4. Chain Glass Ents., Inc.	585	466	1,680
5. Comglasco Corp.	1,975	942	2,538
6. Eternal Industries Ent., Inc.	97	-	570
7. Get Advanced Silicones	-	-	3
8. Glass Elegance	-	1	-
9. Helster Glass	448	-	-
10. ID4 Mdsg	-	-	103
11. Lawrain Int'l	1	-	-
12. Malabon Mirror Factory	1,494	2,351	1,772
13. New Colony Mktg	627	448	-
14. Nitoo	345	-	-
15. Norwich Marketing Corp.	-	-	43
16. Philexport Fao Cronylamp	-	-	37
17. Phil Exporters Confed Fao Apollo Trading	-	19	-
18. Philtech Glass Industries	536	744	1,135
19. San Francisco Mirror Corp.	199	266	19

Importers	Imports (MT)		
	2000	2001	2002
20. Spectrum Int'l	1	-	-
21. Stronghold Glass	-	-	8
22. Times Glass	58	-	83
23. Winform Ent.	-	101	-
24. Witco Int'l	-	-	23
<b>Grand Total</b>	8,093	6,183	9,795

*Source: Import Entries*

Presented in Table 4 are the importations of companies from 2000 to 2002. Malabon Mirror Factory, Comglasco Corp., and Asia Glass Palace collectively accounted for approximately 63% of the total Philippine imports of figured glass from 2000 to 2002.

Among the twenty-four (24) importers listed above, two (2) are exclusive distributors of AGP. These are A1 Industries, Inc. and Chain Glass Enterprises. AGP distributors import figured glass with designs and colors which are not manufactured by AGP.

### 5.3.3 Users

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

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## **6 DETERMINATION OF LIKE PRODUCT**

As provided under Rule 9.4.a of the R.A. 8800 IRR, the Commission shall determine *“if the domestic product is a like or directly competitive product to the imported product under consideration.”* Section 4(e) defines “directly competitive products” as *“domestically-produced substitutable products.”*

Section 4(h) of R.A. 8800 states that *“like product shall mean a domestic product which is identical, i.e., alike in all respects to the imported product under consideration, or in the absence of such product, another domestic product which, although not alike in all respects, has the characteristics closely resembling those of the imported product under consideration.”*

### **6.1 Product Under Consideration**

The application covers figured glass under AHTN Subheading Nos. 7003.12.20, 7003.12.90, 7003.19.20 and 7003.19.90.

### **6.2 Characteristics**

Figured glass is a product of the most advanced roll-out process. It is translucent and has attractive patterns on one surface. Special decorative and functional requirements are served by the transmission of various degrees of diffused light through the patterned glass.

#### **6.2.1 Material and Chemical Composition**

##### **A. Locally produced Figured Glass**

Figured glass is manufactured using imported and locally sourced mineral products such as silica sand, soda ash, dolomite, feldspar, calumite, pyrite, industrial limestone, and individual salt.

##### **B. Imported Figured Glass**

Imported figured glass is made-up of similar raw materials as the locally produced glass.

#### **6.2.2 Physical Characteristics**

##### **A. Locally produced Figured Glass**

The locally produced figured glass is common in six different patterns such as Luningning, Hasmin, Sampaguita, Checkerlite,

Karatachi, and Moran. Figured glass is available in sizes as described below:

**Table 5. Types of Locally Produced Figured Glass**

<b>Design</b>	<b>Thickness</b>	<b>Size (In mm)</b>	<b>Size (In inches)</b>
<b>Luningning</b> <b>International Name:</b> <b>Mistlite, Oceanvue</b>	3.0	1830 x 1220	72 x 48
	5.5	1830 x 1220	72 x 48
		102 x 660	4 x 26
		102 x 710	4 x 28
		102 x 760	4 x 30
		102 x 815	4 x 32
		102 x 865	4 x 34
		102 x 915	4 x 36
		102 x 965	4 x 38
		102 x 1015	4 x 40
		102 x 1065	4 x 42
		102 x 1120	4 x 44
	5.0	1220 x 1830	48 x 72
		102 x 660	4 x 26
		102 x 710	4 x 28
		102 x 760	4 x 30
		102 x 815	4 x 32
		102 x 865	4 x 34
		102 x 915	4 x 36
		102 x 965	4 x 38
		102 x 1015	4 x 40
	102 x 1065	4 x 42	
	102 x 1120	4 x 44	
	102 x 1170	4 x 46	
	102 x 1220	4 x 48	
<b>Checkerlite</b> <b>International Name:</b> <b>Wovenvue</b>	3.5	1830 x 1220	72 x1220
	5.0	1830 x 1220	72 x1220
<b>Hasmin</b> <b>International Name:</b> <b>Nashiji</b>	5.0	1830 x 1220	72 x1220
		102 x 660	4 x 26
		102 x 710	4 x 28
		102 x 760	4 x 30
		102 x 815	4 x 32
		102 x 865	4 x 34
		102 x 915	4 x 36
		102 x 965	4 x 38
		102 x 1015	4 x 40
		102 x 1065	4 x 42
		102 x 1120	4 x 44
	102 x 1170	4 x 46	

<b>Design</b>	<b>Thickness</b>	<b>Size (In mm)</b>	<b>Size (In inches)</b>
		102 x 1220	4 x 48
	5.5	1830 x 1220	72 x 48
<b>Sampaguita</b> <b>International Name:</b> <b>Flora</b>	3.5	1830 x 1220	72 x 48
<b>Karatachi</b> <b>International Name:</b> <b>Victory</b>	3.0	1830 x 1220	72 x 48
	5.0	1830 x 1220	72 x 48
<b>Moran</b>	3.0	1830 x 1220	72 x 48
	5.0	1830 x 1220	72 x 48

Source: Asahi Glass Philippines

## B. Imported Figured Glass

Based on documentary submissions of exporters/manufacturers and on import entries filed with the Commission, imported figured glass comes in Mislite design of 3mm, 5mm and 5.5 mm thickness and 48" x 42" x 1220 mm x 1839 mm in size. Other designs include Karatachi, Moran and Flora.

Imported figured glass with patterns and colors such as Hishicross, Decorvue, Cross Reeded, Richy, Aqualite, Aquavue, Frostyvue, Slendervue, and Rainyvue. They come in colors bronze, blue, green, amber, and grey are not produced by AGP.

AGP submitted though that given the economy of scale, they can produce new designs and colors required by the domestic market.

### 6.2.3 Product Standard

The product under consideration conforms to domestic (Philippine National Standard Specification and International Standards such as SIRIM (Malaysian Standard), JIS (Japanese Industrial Standard), AS (American Standard), ECE (European Standard), Asahimas Float Glass Standard and ISO 9002.

## 6.3 Manufacturing Methods and Technology

### 6.3.1 Locally Produced Figured Glass

The locally produced figured glass is the product of the most advanced roll-out method. Raw materials such as feldspar, dolomite, silica sand, salt, and coke are sampled and weighed before they are loaded into the bath silos to ensure the standard quality and reliability.

To date, there is no revolutionary innovation in the history of manufacturing figured glass.

### **6.3.2 Imported Figured Glass**

Based on information gathered, imported figured glass makes use of cullets, limestone, dolomite, sand, soda ash, salt coke, and sodium nitrate in the production of figured glass. Random quality inspection is conducted for finished figured glass (i.e. roll mark, thickness, tolerance, surface, bubble, scratch, fragmentary, binding).

## **6.4 Production Process**

### **A. Locally Produced Figured Glass**

#### *Step 1. Raw material preparation*

Raw materials are inspected according to the standard specification.

#### *Step 2. Batch preparation*

Raw materials are weighed and mixed properly.

#### *Step 3. Heating furnace*

Mixture of raw materials including the cullet are heated at a temperature of approximately 1,500 degrees Celsius.

#### *Step 4. LPG heater*

For further heating and melting

#### *Step 5. Forming of glass*

By using the casting rolls, glass is drawn from the working end at the required thickness and volume. It is in this juncture where cast roll formed the glass pattern/design or figured glass.

#### *Step 6. Annealing of glass*

Gradual cooling of glass is necessary in order to strengthen its hardness.

#### *Step 7. Cutting of glass*

Glass is cut by a transversal and crosswise cutter according to the size specifications.

### *Step 8. Quality inspection*

Glass is inspected at random to determine its quality. Substandard glass is rejected and treated as cullet for re-melting.

### *Step 9. Packing of glass*

Glass is packed and stored in the warehouse, ready for delivery to the glass dealers or customers.

## B. Imported Figured Glass

Based on submissions and available information, imported and locally produced figured glass have the same production/manufacturing process.

## **6.5 Uses**

Figured glass serves both decorative functional purposes. Imported and local figured glass are designed for use in windows, wall partitions, light screen, fluorescent fixtures of residences, offices, hotels, shops, restaurants and commercial and industrial buildings.

## **6.6 Tariff Classification**

Figured glass, whether manufactured by AGO or imported from other countries, is under AHTN subheadings 7003.12.20 and 7003.12.90 for tinted figured glass and 7003.19.20 and 7003.19.9 for clear figured glass.

## **6.7 Findings**

### **6.7.1 Material Composition**

Foreign and local figured glass manufacturing companies use similar raw materials in producing figured glass. These are cullets, silica sand, feldspar, dolomite, soda ash, and cobalt oxide.

### **6.7.2 Physical Characteristics**

Both imported and local figured glass have translucent and attractive patterns on one surface. Special decorative and functional requirements are served by the transmission of various degrees of diffused light through the patterned glass.

### **6.7.3 Manufacturing Method**

The local and foreign figured glass manufacturers adopt universal standards in production.

#### **6.7.4 End Use**

Imported and local figured glass serve similar application such as wall partitions, light screen, fluorescent fixtures of residences, offices, hotels, shops, restaurants and commercial and industrial buildings.

#### **6.8 Conclusion**

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, the figured glass produced by AGP and the imported figured glass are like products. They are both made from similar raw materials, conform to recognized product standards, fall under the same tariff classification, and have the same the end-use and function.

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## **7 DETERMINATION OF INCREASED VOLUME OF IMPORTS**

Rule 9.4(b) of the IRR of R.A. 8800 provides that the Commission shall determine “*if the product under consideration is being imported into the Philippines in increased quantities whether absolute or relative to domestic production.*”

### **7.1 Period of Investigation**

Rule 7.2(a) of the IRR of R.A. 8800 provides that import data covering the last five (5) years preceding an application for safeguard measure should be evaluated for purposes of substantiating claims of increase in imports.

For purposes of the Commission’s formal investigation, the POI was determined to be the five-year period from 1998 to 2002.

### **7.2 Increased Imports in Absolute Terms**

Import data from the Commission’s import entries and validated import data submitted by AGP were used in the investigation.

**Table 6. Imports of Figured Glass**

<b>Year</b>	<b>Imports (MT)</b>	<b>Actual Increase/ (Decrease)</b>	<b>% Change</b>
1998	4,035	-	-
1999	6,685	2,650	66
2000	8,092	1,407	21
2001	6,183	(1,909)	(24)
2002	9,795	3,612	58

Source of basic data: Import Entries

Note: Excludes imports of Asahi Glass Philippines

There was a growing trend in imports during the POI. Total imports from 1998 to 2002 amounted to 34,790 metric tons. In 1999, Imports grew by 66% and rose further by 21% in 2000.

In 2001, imports fell by 24% or 1,909 metric tons lower than the 2000 level. Imports level in 2001 though was still 50% higher than the 1998 level.

Imports reached 9,795 metric tons in 2002, a leap of almost 60% or equivalent to 3,612 metric tons more than the 2001 level. Import volume in 2002 was 21% higher than the 2000 level and was more than double of the 1998 level.

### 7.3 Increased Imports Relative to Domestic Production

**Table 7. Share of Imports to Domestic Production of Figured Glass**

Year	Imports (MT)	Domestic Production (MT)	Share of Imports to Total Production (%)
1998	4,035	34,864	12
1999	6,685	31,030	22
2000	8,092	27,084	30
2001	6,183	31,004	20
2002	9,795	29,994	33

Source: Import Entries

Note: Excludes imports of Asahi Glass Philippines

As imports grew, domestic production gradually contracted during the POI. From only 12% in 1998, imports share relative to domestic production went up (with exception of 2001 when imports represented only 20% of the total production) to approximately 33% in 2002.

### 7.4 Findings

Except for the year 2001, imports exhibited an increasing trend during the five-year POI.

Data show that the biggest growth in imports of figured glass occurred in 2002, when total imports peaked at 9,795 metric tons, or almost a 60% increase from the 2001 level and more than 100% of 1998 level.

The percentage share of imported figured glass relative to domestic production recorded its highest level in 2002 at 33% from 12% in 1998.

### 7.5 Unforeseen Developments

The construction industry was among the Philippines' top performing sectors for the years 1993-1997, growing by 8.0% in the first quarter of 1997. The remarkable performance of the industry arose from the growing demand for more commercial buildings such as offices, hotels, shopping malls, and public infrastructure.

In anticipation of that growing demand, AGP installed new facilities to increase capacity and produce high-quality glass. In February 1997 the figured glass furnace was commissioned and put into commercial operation.

However, the Asian financial crisis that struck in July 1997 impacted negatively on the construction industry.

As construction activity virtually ground to a halt and demand for construction materials contracted, glass manufacturers in the Asian region experienced excess capacities in their home markets. This excess production found their way into smaller markets such as the Philippines at low margins.

In the case of AGP, the drop in demand prevented it from operating at optimum capacity, i.e., its continuous production process requires a high threshold for production and its fixed costs are huge.

Cheap imports of figured glass from Asian sources entered the Philippines market in significant quantities starting in 1999, which surged to their highest level in 2002 at 9,795 metric tons.

The two mutually reinforcing developments, the Asian financial crisis on the one hand, and the entry of low-priced imports of figured glass from the region, on the other, were totally unforeseen.

## 7.6 Conclusion

Based on the foregoing, the Commission finds that in 2002, figured glass were imported into the Philippines in increased quantities. A result of unforeseen developments, the increase is recent, significant and sharp enough both in absolute terms and relative to domestic production.

## 7.7 *De Minimis* Import Volumes from Developing Countries

### 7.7.1 Major Country Suppliers of Imported Figured Glass

As presented in Table 8, the People's Republic of China (PROC), and Thailand were consistent major sources of figured glass. Korea was once the major supplier until 2001, when its share suddenly dropped to a bare 1% in 2002.

**Table 8. Imports by Country (MT)**

	1998	% Share	1999	% Share	2000	% Share	2001	% Share	2002	% Share
Australia	-	-	-	-	1	0.01	-	-	60	0.6
Belgium	28	1	-	-	-	-	-	-	23	0.2
PROC	503	12	1,832	27	2,747	34	2,331	38	3,436	35
Korea	1,606	40	801	12	1,928	24	1,615	26	90	0.9
Malaysia	1,227	30	1,576	24	392	5	310	5	61	0.6
Singapore	-	-	-	-	-	-	-	-	11	0.1
South Africa	-	-	-	-	-	-	19	0.3	2,816	29
Taiwan	59	1	212	3	15	0.2	118	2	-	-
Thailand	612	16	2,264	34	3,009	37	1,769	29	3,260	33
USA	-	-	-	-	1	0.01	20	0.3	37	0.4
<b>GRAND TOTAL</b>	<b>4,035</b>	<b>100</b>	<b>6,685</b>	<b>100</b>	<b>8,093</b>	<b>100</b>	<b>6,182</b>	<b>100</b>	<b>9,794</b>	<b>100</b>

Source: Import Entries

Note: Excludes imports of Asahi Glass Philippines

In 2002, China, Thailand and South Africa were the three (3) top exporters and accounted for almost 97% of the total imports. Imports from China accounted for 35% of total imports, while those from Thailand and South Africa grew by 33% and 29%, respectively.

South Africa started exporting to the Philippines in 2001. Record shows that from 19 metric tons in 2001, South Africa's exports jumped to approximately 2,816 metric tons in 2002 and became the third biggest exporter of figured glass. Despite distance and exchange rate burden, South Africa is an attractive source of figured glass with its wide range of new and unique designs and colors that meet the requirements of customers. Such types of figured glass cater mainly to the high-end market.

Based on import entries, the most common design imported from the PROC, Thailand and Korea is the Mislite, which is locally known as Luningning. These are commonly used in low cost housing as window louvers.

### 7.7.2 *De Minimis* Import Volume

Rule 13.1(d) of the IRR to RA 8800 provides that “a *general safeguard measure shall not be applied to a product originating from a developing country if its share to total Philippine imports of the said product is less than three percent (3%): Provided, however, that developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of the total Philippine imports of the product concerned.*”

The volume of imports from South Korea, Malaysia and Singapore were found to be *de minimis* (Table 9).

**Table 9. Developing Countries with *De Minimis* Import Volume**

Exporting Country	Year 2002 Import Volume (MT)	Share to Total Imports (%)	Criteria for import volume exemption
South Korea	90	0.90	<3%
Malaysia	61	0.63	
Singapore	11	0.11	
Total	162	1.65	

Source: Import Entries

Note: Excludes imports of Asahi Glass Philippines

The list of developing countries with *de minimis* import volumes will necessarily change depending on the most recent annual data available.

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## **8 DETERMINATION OF SERIOUS INJURY**

Rule 9.4.c of the IRR of R.A. 8800 states that the Commission shall determine *“the presence and extent of serious injury or the threat thereof to the domestic industry that produces like or directly competitive product.”*

Section 4 (o) of R.A. 8800 defines *serious injury* as *“a significant impairment in the position of a domestic industry after evaluation by competent authorities of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry concerned, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the levels of sales, production, productivity, capacity utilization, profit and losses, and employment.”*

### **8.1 Domestic Industry Requirement**

Asahi Glass Philippines, the sole domestic manufacturer of figured glass, accounted for 100% of domestic production from 1998 to 2002. This satisfies the requirement of Section 4 (f) of R.A. which 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 those products.”*

### **8.2 Serious Injury Factors**

#### **8.2.1 Market Share**

Domestic sales declined in 1999, resulting to a drop in AGP’s market share to 76% from 84% in 1998. In 2000, imports expanded at a faster rate than domestic sales. Despite the positive growth in the domestic sales, AGP’s share further declined to 73% while imports managed to improve its share to 27%.

Total domestic consumption of figured glass declined by approximately 8% in 2001.

When market recovered in 2002, the growth in consumption was captured by imports, whose market share reached 32% or approximately one-third of the total domestic consumption.

**Table 10. Apparent Domestic Consumption of Figured Glass and Market Shares**

Year	Domestic Sales (MT)	Imports (MT)	Total Apparent Consumption (MT)	Market Share (%)	
				Domestic Industry	Imports
1998	21,685	4,035	25,720	84	16
1999	20,889	6,685	27,574	76	24
2000	21,480	8,092	29,572	73	27
2001	20,910	6,183	27,093	77	23
2002	20,838	9,795	30,633	68	32

Source of basic data: Asahi Glass Philippines and Import Entries

Note: <sup>1</sup>Excludes imports of Asahi Glass Philippines

<sup>2</sup>AGP's data (e.g., on production, sales, capacity) are expressed in terms of Converted Cases (CCs). These were all converted to Metric Tons (MT) based on information provided by AGP that 22 CCs are equivalent to 1 MT in weight.

On the whole, while sales of domestic product remained relatively stable, imports and domestic demand of figured glass expanded throughout the five-year POI. Such movement clearly implies that imports eroded the market share of domestic industry.

### 8.2.2 Production, Sales and Ending Inventory

AGP has a separate furnace for the production of figured glass (Furnace No. 6). In the evaluation of production, the Commission considers production as constituting total output regardless of market. No distinction was made between production for the domestic market and production for export.

**Table 11. Production, Sales and Inventory Levels (in '000 MT)**

Year	Production	% change	Domestic Sales	% change	Export Sales	% change	Ending Inventory	% change
1998	34.9		21.7		8.3		7.6	
1999	31.0	(11.43)	20.9	(3.69)	7.0	(15.66)	9.0	18.42
2000	27.1	(12.90)	21.5	2.87	7.6	8.57	5.6	(37.77)
2001	31.0	14.81	20.9	(2.79)	10.1	32.89	6.5	16.07
2002	30.0	(3.23)	20.8	(0.48)	5.5	(45.54)	7.9	21.54

Source of basic data: Asahi Glass Philippines

Annual production dropped in 1999 by 11.43% from the 1998 level and further by 12.90% in 2000. The production of 27,000 MT in 2000 was the lowest level throughout during the POI. In 2001, production recovered by almost 15% and managed to regain its 1999 level. However, a 3% decline occurred in 2002.

Sales in Table 11 refers only to sales of locally produced figured glass, and excludes those that were imported.

Similar with production, sales volume declined in 1999. Despite production cut in 2000, sales increased for both domestic

and export market. The slight decrease in 2001 domestic sales was compensated by a 33% increase in exports sales which included sales of finished goods to Asahi Glass Singapore Pte. Ltd. Domestic sales declined in 2002 by 0.48%.

Inventory refers to inventory of finished goods produced locally excluding those that are imported. Discrepancies in the ending inventories were due to breakages, sales returns, slow moving stocks thrown to cullet, flood loss and physical count adjustment.

In 1999, inventory increased by 18%, resulting in the drop in production by almost 13% in 2000. AGP reduced its production to control the growing inventory. In 2002, when imports significantly increased, inventory increased by 21.54% that was lower though than the 1999 level. Hence, the Commission did not find the inventory level as an indicator to determine the injury suffered by the domestic industry.

Despite market expansion for figured glass during the POI, production and sales remained relatively stable in absolute terms. On the other hand, relative to demand, movement of sales and production indicated that increased imports adversely affected the company's market performance.

### 8.2.3 Capacity Utilization

The annual rated capacity of AGP for figured glass is 40,909 metric tons. AGP is capable of supplying the domestic demand.

Commissioned in 1997, AGP's figured glass furnace is scheduled for cold repair in July 2004.

**Table 12. Capacity Utilization (in '000 metric tons)**

Year	Rated Capacity	Actual Production	Capacity Utilization (%)	% change
1998	40.9	34.9	85.33	
1999	40.9	31.0	75.79	(12.57)
2000	40.9	27.1	66.26	(13.25)
2001	40.9	31.0	75.79	14.38
2002	40.9	30.0	73.35	(3.22)

Source : Asahi Glass Corporation

Capacity utilization decreased from 85% in 1998 to 66% in 2000, as actual production went down from 34,900 MT to 27,100 MT. The drop in utilization level was due to production decline in 2000. Capacity utilization improved to 76% in 2001. It dropped slightly to 73% in 2002.

## 8.2.4 Profitability

The Commission, in its evaluation of profitability, puts more weight to income from operations as this financial measurement is a better indicator as to the state of the financial health of the industry and its ability to propel itself into a condition of profitability.

**Table 13A. Income Statement: For Domestic Sales (in million pesos)**

Year	1998	1999	2000	2001	2002
Sales	267	262	287	311	274
Less: Cost of Sales	190	196	228	256	272
Gross Profit	77	66	59	55	2
Less: Operating Expenses	28	21	31	59	11
Operating Income (Loss)	49	45	28	(4)	(9)
Less: Interest Expense	53	47	48	18	16
Add/(Less): Other Income (Expense)	0	0	20	(40)	1
Net Profit (Loss)	(4)	(2)	(0)	(62)	(25)

Source: Asahi Glass Corporation

Table 13A shows the financial performance of figured glass operation vis-a-vis the domestic sales. From an operating income of as high as 49 million pesos in 1998, AGP lost 9 million pesos in 2002. AGP's price reduction in order to maintain its sales volume contributed to that loss. AGP was however able to retire some of its loans which in turn reduced the burden of interest expense from 53 million in 1998 to merely 16 million in 2002.

**Table 13B. Income Statement: For Domestic and Export Sales (in million pesos)**

Year	1998	1999	2000	2001	2002
Sales	373	307	345	412	331
Less: Cost of Sales	227	221	265	305	299
Gross Profit	146	86	80	107	32
Less: Operating Expenses	78	51	71	99	55
Operating Income (Loss)	68	35	9	8	(23)
Less: Interest Expense	55	47	39	45	23
Add/(Less): Other Income (Expense)	2	0	(17)	0	(9)
Net Profit (Loss)	16	(12)	(47)	(37)	(55)

Source: Asahi Glass Corporation

Table 13B shows the financial performance of figured glass operation in both domestic and export market. AGP's income from operations steadily declined during the POI. Loss from operation reached P23 million in 2002, indicating serious impairment from increased imports.

Sales in Table 13B represents both domestic and export sales. AGP's sales fluctuated during the POI. It dropped from 373

million pesos in 1998 to 307 million pesos in 1999. It recovered in 2000 and 2001, but dropped again to as low as 331 million pesos in 2002. Considering that sales volume was almost stable from 2001 to 2002, the cut in sales value in 2002 indicated that AGP had adopted import parity pricing to maintain its market notwithstanding escalating costs to produce and sell.

AGP generated a gross profit of ₱ 146 million in 1998 that went down to 86 million pesos in 1999 and 80 million pesos in 2000. There was a recovery in 2001 at 107 million pesos but a drastic drop occurred in 2002 due mainly to the decline in sales revenue.

AGP infused capital to retire some of its foreign denominated loans resulting to a considerable drop in interest expense charges and foreign currency losses. Interest expense was reduced from ₱55 million in 1998 to ₱23 million in 2002.

The bottomline results of operations were unfavorable from 1999 to 2002 as net deficits were incurred at ₱ 12 million, ₱ 47 million, ₱ 37 million and ₱ 55 million, respectively. These losses were mainly attributed to plummeting operating income, drop in sales due to sharp cut in selling price in 2002, and other expenses (loss on retirement of property, plant and equipment).

### **Return on Sales**

Return on sales, which measures the percentage of operating income out of sales revenue, was derived by dividing income from operation by sales revenue. To evaluate industry sales performance, the income from operations was 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.

**Table 14. Return on Sales (in million pesos)**

<b>Year</b>	<b>Income from Operations</b>	<b>Sales Revenue</b>	<b>Return on Sales (%)</b>
<b>1998</b>	68	373	18.23
<b>1999</b>	35	307	11.40
<b>2000</b>	9	345	2.61
<b>2001</b>	8	412	1.94
<b>2002</b>	(23)	331	(6.95)

Source: Asahi Glass Philippines

AGP experienced steady decline in its return on sales during the POI as shown in Table 14. From as high as 18% in 1998, return on sales drastically dropped to negative 7% in 2002, an indication of the poor performance of the domestic industry at the height of import growth.

## Price Trends

**Table 15. Landed Cost of Imports vis-à-vis Domestic Selling Price  
(PhP/metric ton)**

Year	Landed Cost of Figured Glass <sup>1/</sup>							Domestic Selling Price <sup>3/</sup>
	China	Korea	Malaysia	Taiwan	Thailand	South Africa	Weighted Average <sup>2/</sup>	
1998	12,073	12,490	10,208	20,446	13,146	-	12,540	Confidential
1999	11,260	10,688	9,371	12,083	9,703	-	10,245	Confidential
2000	11,531	12,451	10,711	18,926	12,042	-	11,947	Confidential
2001	13,437	13,487	13,337	12,833	12,104	27,786	13,428	Confidential
2002	11,617	12,978	11,253	-	11,621	12,429	12,195	Confidential

<sup>1/</sup> refers to weighted average landed cost ; Source: Import Entries

<sup>2/</sup> refers to the weighted average price from all sources; Source: Import Entries

<sup>3/</sup> refers to ex-plant average selling price; Source: AGP

AGP's constant price escalation from 1998 to 2001 was cut by approximately 12% in 2002. Its price went down to a level which was even lower than its 2000 domestic selling price. In 2002, AGP attempted to keep its market by reducing its price. However, average landed cost in 2002 was almost as low as the 1998 domestic price level.

While its price was above AGP selling prices and imports' landed cost in 2001, South Africa's price dropped to almost half in 2002. PROC and Malaysia's prices were consistently lower than the local price. Lower landed cost attracted importers since it gave them bigger profit margin.

### 8.2.5 Employment

**Table 16. Employment**

Year	Number of Employees	% Increase/ (Decrease)	Imports (MT)	Production (‘000 MT)
1998	44		4,035	34.9
1999	54	23	6,685	31.0
2000	57	5	8,092	27.1
2001	60	5	6,183	31.0
2002	57	(5)	9,795	30.0

Source: Asahi Glass Corporation

Despite constant increase in imports in years 1999 and 2000, and demand contraction in 2001, manpower for figured glass operation increased steadily from 1998 to 2001. When imports increased significantly in 2002, employment declined by 5% or three (3) workers.

## 8.2.6 Productivity

Labor productivity is the ratio between production and number of employees. It is derived by dividing the annual production volume of glass by the number of employees directly involved in production.

**Table 17. Productivity**

Year	Actual Production ('000 MT)	Number of Employees	Productivity (No. of metric tons/ employee)	% Increase/ (Decrease)
1998	34.9	44	793	-
1999	31.0	54	574	(27.62)
2000	27.1	57	475	(17.25)
2001	31.0	60	516	8.63
2002	30.0	57	526	1.94

Source: Asahi Glass Corporation

In 1999, labor productivity declined by 28% or from 793 metric tons per employee to 574 metric tons per employee. Productivity further dropped to 475 metric tons per employee in 2000 due to the fall in production. However, employment improved. Productivity increased to 516 and 526 in 2001 and 2002, respectively, because of the slight movement in production and employment.

## 8.3 Findings

### 8.3.1 Market Share

The domestic industry did not benefit from the growth of the domestic market during the POI. Imports eroded AGP's competitive position. Reduction in AGP's market share from 84% in 1998 to only 68% in 2002 indicates impairment in its overall market position.

### 8.3.2 Production, Sales and Inventory

Despite market expansion for figured glass during the POI, production and sales remained relatively stable in absolute terms. On the other hand, relative to demand, sales and production did not improve due to the increase in imports.

The Commission did not find the inventory level as an indicator to determine the injury suffered by the domestic industry.

### 8.3.3 Capacity Utilization

Capacity utilization dropped by approximately 13% when imports started to come in 1999. Except for 2000 when AGP cut down on production to manage the growing inventory. Capacity

utilization level remained relatively stable from 1999 to 2002. Hence, capacity utilization was not significantly impaired when increased importation occurred in 2002.

#### **8.3.4 Profitability**

Income from operation dropped drastically during the POI. Significant increase in imports in 2002 forced AGP to cut its price by almost 12%, i.e., sold below cost in order to maintain its market. As a result, AGP incurred significant loss from operation in 2002.

#### **8.3.5 Employment**

Despite rise in imports in 1999 and 2000 and demand contraction in 2001, manpower for figured glass operation increased steadily from 1998 to 2001. When imports increased significantly in 2002, employment declined by mere 5% or three (3) workers. Hence, imports did not impair the condition of the industry in terms of employment.

#### **8.3.6 Productivity**

The drop in production vis-à-vis the increase in employment from 1998 to 2000 resulted in the decline in productivity. Productivity improved in 2001 and 2002 due to slight movement in production and employment. The Commission did not find the productivity as an indicator to determine the injury suffered by the domestic industry.

### **8.4 Conclusion**

The Commission finds that the industry has suffered and is suffering a significant impairment in its overall market position, production, sales and profitability.

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## **9 CAUSATION**

Rule 12.5 of the IRR of R.A. 8800 states that the Commission shall demonstrate *“on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury and threat thereof to the domestic industry. Any known factors, other than the increased importation of the products under consideration, which at the same time injures the domestic industry, shall also be examined and the injuries caused by these factors must not be attributed to the increased importation of the product under consideration.”*

### **9.1 Serious Injury Factors**

#### **9.1.1 Market Share**

AGP dominated the market with a share of 84% during the first year of the POI. When imports started to grow, AGP's market share dropped to a mere 68% in 2002. The decline in market share of the domestic industry and the erosion of its competitive position are directly attributable to the significant increase in imports in 2002.

#### **9.1.2 Production, Sales and Inventory**

In absolute terms, production and sales remained stable. However, relative to domestic consumption, the movement of sales and production indicate impairment in the company's operation in 2002 when imports peaked at 9,795 metric tons. Imports constrained production and sales from benefiting from the market growth.

#### **9.1.3 Profitability**

The continuous increase in imports at a cheaper price forced AGP to adopt import parity pricing i.e., sell below cost. The price reduction below costs resulted in huge operating loss of ₱23 million in 2002, the year when imports soared to their highest level during the POI.

### **9.2 Other Factors**

#### **9.2.1 Interest Expense/Foreign Currency Losses**

Interest expense and foreign currency loss in 2002 contributed to AGP's net deficit. Though still high, interest expense went down with the retirement of foreign denominated loans. While contributory to the overall impairment in profitability of the domestic industry, interest expense and foreign exchange losses were however not related to increased imports.

### **9.2.2 High Cost of Production**

AGP's cost of producing figured glass was relatively higher than that of its imported counterpart. The company imported silica sand (which consists 60% of the total raw material requirement) from Australia. Continued depreciation of the peso against the US dollar put the company at a cost disadvantage. China and Thailand on the other hand had a comparative advantage over AGP with their sufficient local supply of silica sand.

### **9.2.3 Consumer Preference**

While imported figured glass with patterns not locally produced had only minimal share of the total figured glass importation, it affected the competitive position of AGP. AGP has the capacity to produce patterns other than what it currently manufactures.

### **9.3 Conclusion**

While there might be other factors which contributed to the overall impairment in the position of the domestic industry, the Commission, in accordance with R.A. 8800, finds that low-priced imports in increased quantities were the dominant cause of serious injury to the domestic figured glass industry.

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## **10 CONCLUSION**

The Commission concludes that, in accordance with R.A. 8800 and the WTO Agreement:

1. AGP is the sole domestic manufacturer of tinted and clear figured glass in the Philippines.
2. Locally produced figured glass is “like” to imported figured glass.
3. Figured glass is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, in 2002.
4. The industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; inability to increase production and sales volume despite increase in demand; and substantial financial losses in operations.
5. While there are other factors which contributed to the overall impairment in the position of the domestic industry, cheap imports in increased quantities were the major cause of serious injury to the domestic figured glass industry.

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## **11 DEFINITIVE SAFEGUARD MEASURE**

Section 13 of R.A. 8800 provides that *“upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure, in the form of:*

- (a) An increase in, or imposition of, any duty on the imported product;*
- (b) A decrease in or the imposition of a tariff-rate quota (MAV) on the product;*
- (c) A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;*
- (d) One or more appropriate adjustment measures, including the provision of trade adjustment assistance;*
- (e) Any combination of actions described in subparagraphs (a) to (d)”.*

Rule 13.1.c of the IRR to R.A. 8800 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. Provided, however, that when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.”*

Section 15 (3) of R.A. 8800 provides further that *“an action described in Section 13(a), (b), or (c) that has an effective period of more than one (1) year shall be phased down at regular intervals within the period in which the action is in effect”.*

The existence of a causal link between the increased imports of the product under consideration and serious injury to the domestic industry having been established, the Commission hereby recommends the appropriate definitive general safeguard measure to be imposed on imports of figured glass. The measure shall be effective for three (3) years starting 13 October 2003, i.e., the date the provisional measure was in effect.

### **11.1 Recommended Definitive Safeguard Measure: Tariff Rate Quota**

The Commission recommends the use of a tariff-rate quota as the form of definitive safeguard measure. With this form of definitive measure, in-quota importations will be levied the regular tariff duty while out-quota importations will be levied the regular tariffs plus the definitive safeguard duty.

### 11.1.1 Quota Allocation

For purposes of import quota allocations by country, the Commission determined that the three-year period preceding the import surge, i.e., 1999 to 2001, serves as a desirable base period for computing the beginning in-quota volume.

Based on AGP's market growth forecast of 2.5% for 2005 and 2006, which is consistent with the average annual growth of domestic consumption of 2.03% during the base period, allocation of in-quota volumes for the succeeding years is proportionately increased by such rate (2.5%) as presented in Table 18.

**Table 18. Quota Allocation**

Country	Import Volume (in MT)			In-Quota Allocation per Country of Origin (in MT)		
	1999	2000	2001	2004	2005	2006
Australia	-	1	-	0.33	0.34	0.35
PROC	1,832	2,747	2,331	2,303.33	2,360.92	2,419.94
South Africa			19	6.33	6.49	6.65
Thailand	2,264	3,009	1,769	2,347.33	2,406.02	2,466.17
USA		1	20	7.00	7.18	7.35
<b>TOTAL</b>	<b>4,096</b>	<b>5,758</b>	<b>4,139</b>	<b>4,664.33</b>	<b>4,781.34</b>	<b>4,900.35</b>

*Rule 13.1(c) of the IRR to R.A. 8800 provides that "The Secretary shall set up a transparent mechanism for the implementation of the above quota allocation under the IRR".*

### 11.1.2 Specific Duty on Out-Quota Imports

For imports exceeding the in-quota allocations, an additional specific duty of **₱ 689.00** per MT shall be imposed. The specific duty was computed by comparing the weighted average ex-warehouse selling price in 2002 vis-à-vis the weighted average cost to produce and sell (ex-plant) of AGP for the same year. The weighted average landed cost was adjusted (except those coming from ASEAN member-countries) for the increase in tariff rate on figured glass to 15% effective November 2003 (from the previous rate of 10%).

For new exporting countries, except the developing countries covered by the *de minimis* rule, their exports shall automatically be levied the specific duty.

### 11.1.3 Ad Valorem Equivalent of the Specific Duty

The recommended specific duty of **₱689.00** per MT shall be applied equally on all imports, regardless of source. The equivalent ad valorem rate will however vary depending on the value of each shipment.

The specific duty on cheaper imported figured glass will have a higher ad valorem equivalent than that for higher-priced figured glass (Table 19). Thus, the impact on the landed cost of definitive measure will be greater for lower-priced imported figured glass.

**Table 19. Equivalent Ad Valorem Duty of Definitive Measure Imposed on Imports from Major Suppliers**

Country	CIF/Dutiable Value Per Country	Definitive Duty on Out-Quota Volume	
		Specific Duty (₱/MT)	Ad Valorem Equivalent (%)
Australia	20,332	689	3.39
PROC	10,328	689	6.67
South Africa	11,063	689	6.23
Thailand	9,785	689	7.04
USA	96,965	689	0.71
Wtd. Ave.		689	7.00

#### 11.1.4 Requirement of Certificate of Country of Origin

All importers of figured glass, regardless of port of exportation, are required to secure a Certificate of Country of Origin (CO) issued by the authorized agency/office in the source country of manufacture as authenticated by the Philippine Embassy/Consulate thereat.

#### 11.1.5 Application of *De Minimis* Rule

The definitive safeguard measure shall not be applied to imports of figured glass originating from Malaysia, Singapore, and South Korea, whose volume of imports are found to be *de minimis*.

In the event that imports of figured glass originating from the above three (3) developing countries collectively account for more than nine percent (9%) of the total Philippine Imports of figured glass, the definitive safeguard measure shall be applied on such imports.

The DTI Secretary shall draw up a list of the developing countries exempt from the definitive safeguard measure on figured glass for 2004. He shall conduct an annual review of the imports of figured glass from developing countries and draw up the appropriate exemption lists for 2005 and 2006.

#### 11.1.6 Notification to the WTO

Rule 17 of the IRR of R.A. 8800 provides that "The Secretary shall notify the Committee on Safeguards of the World Trade Organization when:

- (a) initiating an action relating to serious injury or threat thereof and the reasons for it;

- (b) adopting a provisional general safeguard measure following a positive preliminary determination; and
- (c) applying or extending a definitive general safeguard measure following a positive final determination”.

#### **11.1.7 Articles 6 and 8 of the ASEAN-CEPT Agreement**

Considering that figured glass is covered by the ASEAN-CEPT Agreement, the Philippines is required to notify the Ministerial Level Council pursuant to Article 6 of the Agreement and as provided under Article 8 to initiate and provide adequate opportunity for consultation with the government of the ASEAN country concerned, i.e., Thailand, which may be affected by the application of the definitive safeguard measure on imports.

#### **11.2 Review of the Definitive Measure**

Rule 15.6 of the IRR to R.A. 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 R.A. 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.”*

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## **12 EFFECTS OF THE AFFIRMATIVE RECOMMENDATION**

Section 14 of R.A. 8800 provides that: *“The report (of the Commission) shall also 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:

### **12.1 On the Domestic Figured Glass Industry**

- Significantly increased importations will be arrested and imports will be restored to normal levels.
- The industry will be provided sufficient time to put in place efficiency measures that will allow it to positively adjust to import competition and ultimately achieve global competitiveness.
- Reasonable margins will be generated reducing operating losses.
- Lost market share will be recovered enabling the industry to benefit from the growth of the market.
- The attainment of economies of scale will be facilitated.

### **12.2 On Consumers and Industrial Users**

- Consumers and industrial users retain the option to choose between local and imported figured glass.
- Since the tariff rate quota will allow the entry of significant volumes of figured glass without additional duty, is temporary, and will be progressively liberalized, the degree of competition between the domestic industry and imports will remain high such that unreasonable price increases are unlikely
- With the continued existence of a viable domestic industry, consumers are assured of on-time delivery of volume orders as well as replacements in cases of breakages/defects.
- Since figured glass accounts for only a small proportion of the total cost of commercial and household construction as well as furniture-making, the construction and furniture export industries will not be adversely affected.

### **12.3 On Employment**

- The expected increases in output and sales would generate additional employment not only in manufacturing activity but also in the related sales and distribution services.

### **12.4 On Regional Development**

- The imposition of definitive safeguard measure will ensure continuous operation of the domestic industry that, in turn, will contribute to sustainable community development.

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.

March 2004

**EDGARDO B. ABON**  
Chairman

**GEORGE N. MANZANO**

Commissioner

Commissioner