

FORMAL INVESTIGATION REPORT

FLOAT GLASS INDUSTRY: SAFEGUARD ACTION AGAINST IMPORTS (SG INVESTIGATION No. 02 - 2003)

(PUBLIC VERSION)

March 2004

1 TERMS OF REFERENCE

1.1 The Application for General Safeguard Measure

On 24 April 2003, the Department of Trade and Industry (DTI) accepted a properly documented application from the Philippine float glass industry, represented by Asahi Glass Philippines, Inc. (AGP), alleging that float glass, clear and tinted, being imported into the Philippines in increased quantities have caused a significant impairment in its overall market position, adversely affecting its production, sales, capacity utilization, employment and profitability. AGP also alleged that these float glass imports have depressed local prices and the definitive anti-dumping duties on imports of clear float glass from Indonesia and Malaysia are being circumvented.

Due to the foregoing, the application sought the imposition of provisional and definitive safeguard measures on imports of float glass pursuant to Republic Act (R.A.) 8800, otherwise known as the "Safeguard Measures Act".

The imported product covered by the AGP application is float glass, clear and tinted, falling under Harmonized System (HS) subheading Nos. 7005.29 90 and 7005.21 90, respectively.

1.2 The Preliminary Investigation

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 21 May 2003 with the publication of notices of initiation in the *Philippine Star* and the *Philippine Daily Inquirer*.

The investigation determined that increased imports of float glass have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, employment, profitability, productivity, and profit margins as well as increased inventories and depressed prices. Further, in view of the continuous increase in the volume of imports of float glass, the imposition of a provisional safeguard measure was justified to prevent further injury to the local industry that would be difficult to repair.

Recognizing the concerns raised by various sectors about the impact on the interest of the general public of the imposition of a provisional safeguard measure on float glass, provisional measures in the form of cash bonds amounting to ₱2,000 per metric ton (MT) for clear float glass and ₱2,650 per MT for tinted float glass was deemed sufficient by DTI to remedy the serious injury arising from increased imports.

In its Order dated 1 September 2003, DTI further provided that said provisional measures should be imposed on all importations of float glass, except those originating from developing countries covered by Rule 8.8 of the Implementing Rules and Regulations (IRRs) of R.A. 8800, for a period not exceeding 200 days from the date of issuance by the Bureau of Customs (BOC) of the implementing Customs Memorandum Order (CMO). The Order also required all importers, regardless of port of exportation, to secure a Certificate of Country of Origin issued by the appropriate authority in the source country of manufacture as authenticated by the Philippine Embassy/Consulate thereat.

BOC issued CMO No. 24 – 2003 on 13 October 2003 directing the implementation of DTI's Order (of 1 September) for the imposition of provisional safeguard measures on every importation of clear and tinted float glass (classified under HS Codes 7005.29 90 and 7005.21 90, respectively) except those originating from the developing countries listed in said Order.

On 11 September 2003, the Tariff Commission (Commission or TC) received the request from DTI for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure on imports of float glass, clear and tinted, pursuant to Section 9 of R.A. 8800 and its IRRs.

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 9 August 2000, i.e., fifteen (15) days following complete publication in two (2) newspapers of general circulation.

Its IRRs (Joint Administrative Order No. 3) took effect on 11 October 2000, i.e., seven (7) days after 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-BIS, 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-BIS 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-BIS or DA initiates the preliminary determination.

Within two (2) calendar days after the decision to initiate the preliminary investigation is made, DTI-BIS 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, 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, the DTI-BIS or DA transmits the records of the case to the Tariff Commission with the 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 (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 that the same is urgent, in which case the Commission completes its investigation and submit its 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 requests for extension and re-application of safeguard measures;
- conduct of investigation on requests 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 was 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.” A major feature of the Safeguards Agreement is its proscription of a range of negotiated trade-restricting arrangements, including voluntary export restraints.

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 (float 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 Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area

The members of the Association of South East Asian Nations (ASEAN) signed the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) on 28 January 1992 in Singapore. Article 6 of this Agreement provides for emergency measures as follows:

“Article 6: Emergency Measures

1. *If, as a result of the implementation of this Agreement, imports of a particular product eligible under the CEPT Scheme are 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 the 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 state 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 of the same Agreement states:

“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 consultation.*
2. *Member States, which consider that any other Member State has not carried out its obligations under this Agreement, resulting in the nullifications or impairment of any benefit accruing to them, may, with a view to achieving satisfactory adjustment of the matter, 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 float glass is included in the CEPT Scheme, immediate notice of the safeguard action should be given to the AFTA Council and adequate opportunity for consultation should be accorded the governments of the adversely affected ASEAN Member States.

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 IRRs of R.A. 8800, the Commission made the following notifications during the course of its inquiry.

3.1.1 Commencement of Formal Investigation

The Commission published a notice of commencement of formal investigation in the *Manila Times* and the *Manila Standard* on 19 September 2003 (*Annexes A-1 and A-2*). Individual notices were likewise sent to 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, from 19 – 24 September 2003.

Aside from serving notice of the Commission's commencement of formal investigation, the individual notifications informed the recipients of a preliminary conference to be held on 1 October 2003 at the Commission.

3.1.2 Schedule of Public Consultations

On 11 November 2003, the Commission published a notice of public consultation in the *Manila Times* and the *Manila Standard (Annexes B-1 and B-2)*. Individual notices were likewise sent to concerned parties from 11 – 18 November 2003.

3.2 Preliminary Conference

On 1 October 2003, a preliminary conference was held at the Commission for the purpose of discussing the schedule and procedure of the public consultations; the nature of administrative and fact-find proceedings; the non-applicability of the technical rules of procedures in the Rules of Court; the submission of parties' evidence and position papers; the confidentiality of information; the timeframe of the 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).

Among 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 an Order issued by the Commission on 3 October 2003 and provided the concerned parties (*Annex C*).

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 the Commission's preliminary data to determine the presence of serious injury.

Copies of the Staff Report were sent to the concerned parties on 14 – 20 November 2003.

3.4 Public Consultations

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

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

In attendance were representatives and/or counsels of the following: AGP; Alankaca (Indonesia); Comglasco Corporation; Gujarat Guardian Limited India; Guardian Industries Corporation Thailand; Guardian Industries; Hankuk Glass Industries Inc. (Korea); Pricewaterhousecoopers; P.T. Mulia Glass (Indonesia); Rovet International Enterprises; Siam Pattern Glass Company Limited; Siam Plate Glass Industries Limited; The Sun Guardian Industrial Corporation; US – ASEAN Business Council; Embassy of Indonesia; Embassy of Korea; Embassy of Thailand; Department of Trade and Industry (Philippines); and Ways and Means Committee, House of Representatives (Philippines).

Among the importers, only Comglasco Corporation, Rovet International Enterprises, and The Sun Guardian Industrial 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

In order to verify submissions, the Commission visited the manufacturing facilities of AGP (located in Barangay Pinagbuhatan, Pasig City) on these dates: 17 October, 4 November, 5 December 2003 and 15 January 2004.

Visits were also made to the following AGP distributors: Pacific Glass Corporation (on 17 December 2003); Quinta Trading Company, Inc. (also on 17 December 2003); and Chain Glass Enterprises Inc. (on 12 January 2004).

Among the information gathered/verified during the plant/verification visits were the following: production process, production lines, business strategy, 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 a plant visit/verification of data.

4 PARTICIPANTS' VIEWS

4.1 Submissions Received

The DTI endorsed the entire records of the safeguard measure application to the Commission on 11 September 2003. Interested parties were given fifteen (15) days from receipt of Notice of Formal Investigation to submit their respective preliminary/supplemental position papers, affidavits of witnesses, documentary evidence and other information in support of their position (*Annex D*).

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

With respect to the criteria required for safeguard action, AGP made the following claims:

- Locally produced and imported clear and tinted float glass are like products because both have the same applications and functions, are made from the same raw materials, use similar production processes, fall under the same tariff classification, and conform with international product standards.
- Imports of clear and tinted float glass have increased significantly in volume both on an absolute basis and relative to domestic production beginning 1998.
- The increased import volumes caused a 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. These 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.
- There are no other material causes of injury since 1998 other than increased imports.
- Surplus production levels/plant capacities for float glass in Asia, especially in China, combined with relatively low Philippine tariff rates threaten further serious injury.

AGP further submitted that:

- The definitive anti-dumping duties on imports of clear float glass from Indonesia and Malaysia have no deterrent effect since these are being circumvented (through the use of transshipment ports and fictitious representations on rules of origin, among others.)
- The imposition of a safeguard measure would not jeopardize the “public interest” based on the following: (1) the construction and furniture export industries would not be adversely affected as glass accounts for only a small portion of the total cost of a low-cost housing unit and less than 1% of the total raw materials/components for furniture exports; (2) AGP is committed to providing its customers with products of the best quality; (3) upon attaining economies of scale, AGP would be able to offer stable/affordable prices; (4) consumers still have the option to choose between local and imported glass; and (5) there will be no supply shortage.
- On the other hand, the non-imposition of a safeguard measure would undermine AGP’s long-term viability and possibly lead to a shutdown of its manufacturing operations. Such shutdown would put to waste the glassmaking technology acquired through the years, imperil the livelihood of numerous workers dependent on AGP and allied industries, and place consumers at the mercy of foreign suppliers/importers.

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 to level the playing field, send the correct signals to investors, and provide safety nets to industries that require such interventions to acquire international competitiveness.

In view of the foregoing, AGP requested the imposition of an appropriate definitive safeguard duty against imports of float 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 IRRs 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.*”

On 6 October 2003, AGP, pursuant to the directive contained in the Commission Order dated 3 October 2003, submitted its adjustment plan which listed the following priority measures that it will adopt to facilitate its positive adjustment to import competition:

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 of tariffs on raw materials and inputs that are not locally produced
2. Strengthening of 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. Propose to the government that, as provided under R.A. 8800, funds derived from safeguard duties be used for the following:
 - ✓ Development and installation of anti-pollution system to comply with the Clean Air Act
 - ✓ Logistical support to prevent circumvention of R.A. 8800 and to strengthen government's anti-smuggling efforts
 - ✓ Other competitiveness-enhancing measures for local industries

4.3 The Opposing Case

Protestees to the application for safeguard action, which included float glass importers and exporters, the Philippine Chamber of Glass and Aluminum Industries whose members are composed of glass dealers/distributors/fabricators, the US – ASEAN Business Council, and the governments of Indonesia, Korea, and the People’s Republic of China, alleged that the criteria required for imposition of safeguard action had not been met in the instant case and safeguard action was therefore not warranted. Their principal arguments for opposing AGP’s claims were the following:

- Locally produced and imported float glass are neither like nor directly competitive products due to the latter’s superior quality, i.e., imported float are clearer, more transparent, more durable, distortion-free, are of dimensions and colors that are not produced by AGP, and cater to a different segment of the market.
- Increased imports were due to the following: the demand/preference for higher-quality glass at reasonable prices; the demand/preference for glass products with sizes, thicknesses, and colors not produced by AGP; the shortfall in local production due to the hot repair of AGP’s furnace; and market penetration (i.e., to provide float glass to geographical areas not normally reached by AGP’s distribution network).
- The impairment in AGP’s overall market position was not caused by imports but rather by the following factors: a single aging furnace that compromises product quality and leads to production inefficiencies and higher costs; increasing raw material costs; foreign exchange losses/interest expenses incurred from substantial foreign-denominated loans; management inefficiencies; and depressed market demand due to the global economic slowdown. Moreover, the increase in imports was not sudden enough as to cause serious injury and AGP’s capacity utilization rate is reasonable.

The oppositors further contended that non-imposition of definitive general safeguard measures is in the “public interest” based on the following:

- In a market characterized by a single manufacturer, imports serve to regulate prices, avert supply shortages, enhance consumer choice, and prevent abuse of market power.
- Further protection to AGP will unfairly penalize numerous small and medium enterprises in the secondary glass processing sector, which existed prior to AGP’s establishment and pay as much taxes to government as AGP, as well those in the furniture export sector.

- The number of jobs in the independent glass fabricating industry equals or even exceeds the jobs in the AGP network.

It was also suggested that if a decision is taken to impose a definitive safeguard measure, ASEAN Member States be excluded. It was argued that such exclusion is provided in the Agreement on the CEPT Scheme for the AFTA (specifically under Article 6(1) of said Agreement) and permitted in the WTO Agreement on Safeguards (i.e., the Agreement allows a Member to exclude its Free Trade Area partners from safeguard measures).

It was further submitted that an import surge from countries other than ASEAN Member States could be addressed through several WTO-consistent legal mechanisms, to wit: raising Philippine MFN tariff rates; making a separate injury finding for non-ASEAN imports; or imposing a selective safeguard measure against imports of Chinese glass as provided in China's WTO Accession Protocol.

5 THE DOMESTIC INDUSTRY AND MARKET

Float glass is a monolithic, highly transparent glass that brings a combination of function and beauty to both architectural applications and specialty uses. Its precise flatness gives the glass a high degree of transparency and its smooth surface permits natural light to flow in. Its inherent advantages spring from the unique manufacturing process of floating molten glass on molten tin.

Subject article is used to enhance the aesthetic appearance of structures and serve as a barrier against hot and cold weather. Float glass is also used for exterior and interior windows, doors, curtain walls, furniture, and safety glass for automobiles, among others.

5.1 The Domestic Product

AGP manufactures clear and tinted float glass. The company's clear float glass have standard nominal thicknesses ranging from 2 mm to 19 mm with sizes of 1,220 x 915 mm to 10,160 mm x 3,050 mm. AGP's tinted float glass, on the other hand, have 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.

5.2 Government Tariff Policy

Imports of float glass have been imposed relatively high tariff rates.

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 (*Table 1A*). Pursuant to Executive Order (E.O.) 241 which took effect on 17 November 2003, the tariff rates on subject articles were reverted to 15% until 2005 (*Table 1B*).

Table 1A. Rates of Duty on Float Glass: 1998 - 2003

HS CODE	DESCRIPTION	Type of Duty	Rate of Duty (%)					
			1998	1999	2000	2001	2002	2003
70.05	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.							
7005.21	-- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:							
7005.21 90	--- Other	MFN	20	20	15	15	10	15 *
		CEPT	20	20	15	10	10	5
7005.29	-- Other:							
7005.29 90	--- Other	MFN	20	20	15	15	10	15 *
		CEPT	20	20	15	10	10	5

*until 2005 pursuant to E.O. 241

Source: TC

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

AHTN* CODE	DESCRIPTION	Type of Duty	Rate of Duty (%)	
			2004	2005
70.05	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.			
	- Other non-wired glass:			
7005.21	-- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:			
7005.21.20	--- Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut)	MFN	15	15
		CEPT	5	5
7005.21.90	--- Other	MFN	15	15
		CEPT	5	5
7005.29	-- Other:			
7005.29.20	--- Other, in squares or rectangular shape (including 1 or 2 or 3 or 4 corners cut)	MFN	15	15
		CEPT	5	5
7005.29.90	--- Other	MFN	15	15
		CEPT	5	5

* AHTN – ASEAN Harmonized Tariff Nomenclature

Source: TC

The Philippines did not bind the tariff rates on float glass under the WTO.

As for the tariffs on float glass under the CEPT Scheme for the AFTA, these were equal to the MFN tariff rates from 1998 through 2002, except in 2001 when the CEPT rates were lower by 5%. The CEPT rates on subject articles are currently 5%, pursuant to the agreement reached by the ASEAN Leaders (during the 6th ASEAN Summit held in Hanoi in December 1998) that by 2002, the six (6) original ASEAN Member States¹ would impose CEPT rates of 0% - 5% on 100% of the products in their individual Inclusion Lists, with some flexibility.

5.3 Market Participants

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

5.3.1 Domestic Producer

AGP is the lone flat glass manufacturer in the Philippines. It is the sole manufacturer of clear and tinted float glass in the Philippines and as such, accounts for 100% of total domestic production of subject articles.

AGP imports float glass also. To complete its product portfolio, AGP imports those float glass products that are not economical to produce locally because of low demand. AGP's imports in 2001 were also undertaken to augment its inventories because its furnace underwent hot repair for 35 days over November and December of said year.

Table 2 shows the quantities of imports of AGP from 1998 to 2002. Volumes were highest in 2000, but have since tapered off, falling to 844 metric tons (MT) in 2002.

¹ The original ASEAN Member States are Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

Table 2. Imports of Float Glass by AGP

Year	Imports of Clear Float Glass		Imports of Tinted Float Glass	
	Volume (MT)	Size (mm)	Volume (MT)	Color / Size (mm)
1998	-	-	19	dark blue – 6
1999	167	3, 5, 6	428	bronze – 6, 10 dark gray – 5
2000	3,994	3, 5, 6, 10, 12	4,506	blue green – 6 bronze – 6, 10 gray – 5, 6 dark gray – 5 dark blue – 6
2001	1,914	3, 5, 6, 10, 12	2,685	dark blue – 6, 8, 12 dark gray – 3, 5, 6 blue green – 6
2002	202	10,12	642	dark blue – 6, 8, 10, 12 dark gray – 5, 6 blue – 6 Euro grey – 6, 12

Source of basic data: AGP

Note: AGP's import data, expressed in converted cases (CCs), were converted to MT using the following AGP-supplied formula: 22 CCs = 1 MT in weight.

Relative to its clear float annual production levels, AGP's imports of subject article represented 7%, 4% and less than 1% in 2000, 2001 and 2002, respectively. As for tinted float, AGP's imports represented 12%, 17% and 5% of its tinted float production in 2000, 2001 and 2002, respectively.

Compared to its domestic sales volumes, AGP's imports of clear float accounted for 9%, 5% and less than 1% during the 2000 – 2002 period. For tinted float, the equivalent shares are 26%, 19% and 4%.

Based on import entries, AGP imports from India, Indonesia, PROC and the United States.

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

- ✓ 81% of the common shares of AGP (totaling 1,258,599,992) are 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: Messrs. Hironari Kotoda, Yutaka Ohta, Kunio Nakano, Keita Shikii, Yoshitaka Tanaka and Hiromasa Sawai.
- ✓ Filipino ownership of AGP constitutes 19%, representing 300,000,000 subscribed common shares of stocks, of which 30,000,000 is paid up.

5.3.1.2 Production Capacity

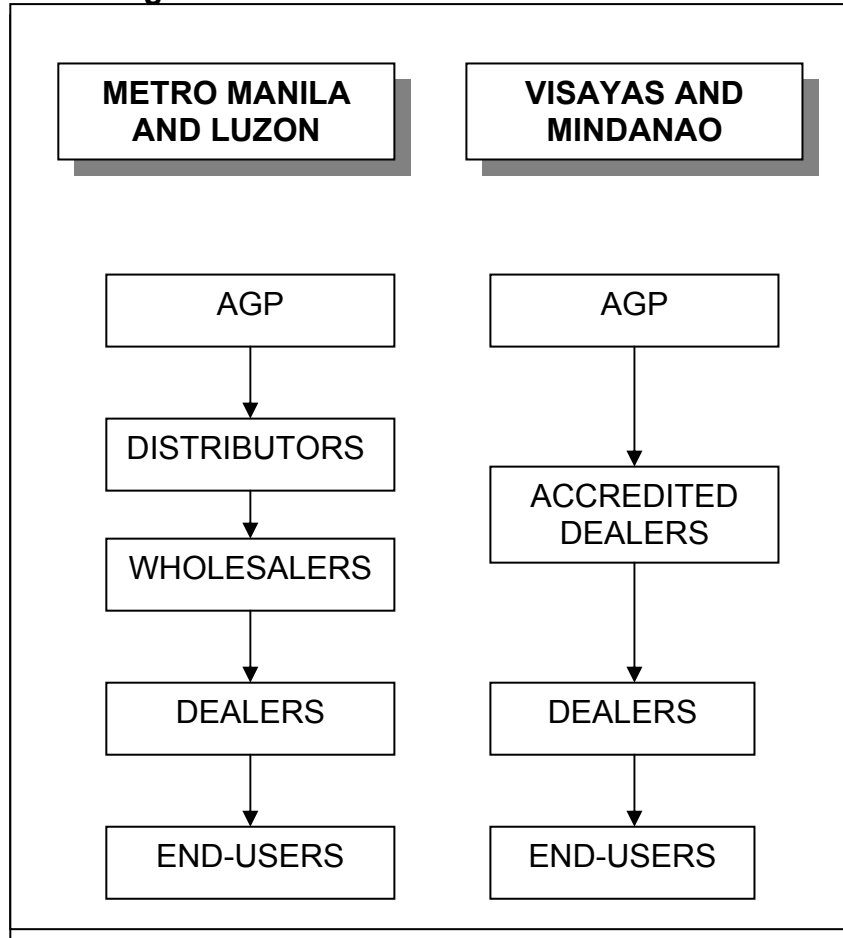
AGP's production capacity for float glass is 400 MT per day or approximately 109,000 MT per year.

5.3.1.3 Distribution Channels

Because of its use in a range of products, demand for float glass varies in terms of the required size, thickness and tint. Hence, AGP does not sell directly to end-users. Instead, the float glass supplied by AGP is further cut, processed, assembled and installed at the distribution stage, then sold according to the specified demand.

AGP'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*).

Figure 1. Distribution Flow of Float Glass



Source: AGP

The distribution route for Metro Manila – Luzon is from AGP’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 Visayas and Mindanao, the distribution chain is shorter. The distribution and delivery of goods from AGP’s warehouse are direct to a network of franchised/accredited dealers, who then move the glass to sub-dealers, retailers, and end-users.

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

Table 3. Marketing Network of AGP

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

Source: AGP

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

5.3.2 Importers

Various companies import float glass.

The top importers of clear float are: Malabon Mirror Factory and Aluminum; Comglasco Corporation; San Francisco Mirror Corporation; Asia Glass Palace; and Times Glass, Inc. (*Table 4A*). Except for Times Glass, Inc., imports of these companies were increasing in 2001 and 2002. These importers accounted for 83%, 78% and 80% of total imports of clear float in 2000, 2001 and 2002, respectively.

Table 4A. Imports of Clear Float Glass By Company

Importer	Import Volume (MT)			
	2000	2001	2002	Total
A Enterprises	-	-	59	59
AA Aluminum Supply Inc.	-	257	18	275
Asia Glass Palace	875	1,539	2,030	4,444
B.Grimm – MBM Philippines Inc.	42	-	-	42
Chain Glass Enterprises Inc. *	101	-	39	140
Comglasco Corporation	2,354	3,001	3,777	9,132
DM Consunji	-	-	18	18
Dynamic Logistics International	-	-	836	836
East Asia Aluminum Supply	-	-	34	34
EVT Empire Trading Corporation	-	-	7	7
Far East Furniture Marketing Corporation	nil	-	-	nil
Glass World Inc.	-	-	19	19
Glasstemp Ind. Corporation	381	896	636	1,913
Helster Glass Supply	402	-	-	402
Hyat Industrial Manufacturing Corporation	-	-	76	76
ID4 General Merchandising	-	-	307	307
Jebsen International Trading Corporation	-	-	68	68
Kinetics Realty Inc.	27	-	-	27
Kraut Ent. Inc. / Kraut Art Glass	6	-	1	7
Malabon Mirror Factory and Aluminum	1,360	3,515	4,659	9,534
Manu Trading International Corporation	-	33	230	263
Nitoo Enterprises Inc.	116	-	-	116
Norwich Marketing Corporation	-	-	74	74
Philtech Glass Ind. Corporation	230	636	21	887
RAK Ceramics	-	-	74	74
Rovet International Enterprises	-	-	665	665
San Francisco Mirror Corporation	2,565	2,716	2,835	8,116

Importer	Import Volume (MT)			
	2000	2001	2002	Total
Stainless Steel Ind. Inc.	-	-	164	164
Tayuman Enterprises	-	-	60	60
The Sun Guardian Industrial Corporation	171	836	273	1,280
Times Glass Inc.	1,610	842	1,276	3,728
Vittrade Enterprises Co.	-	572	-	572
Winform Enterprises Inc.	380	90	-	470
Total	10,618	14,934	18,255	43,807

Source: Import entries (Annexes F - J)

Note: excludes imports of AGP

* AGP distributor

For tinted float glass, the principal importers are: Malabon Mirror Factory and Aluminum; Comglasco Corporation; San Francisco Mirror Corporation; and Asia Glass Palace (Table 4B). Except for Asia Glass Palace, imports of said companies, which are also the top traders for clear float, expanded in 2001 and 2002. Their combined importations accounted for 72%, 79% and 69% of total imports of tinted float in 2000, 2001 and 2002, respectively.

Table 4B. Imports of Tinted Float Glass By Company

Importer	Import Volume (MT)			
	2000	2001	2002	Total
Asia Glass Palace Inc.	503	920	772	2,195
Builders Federal Philippines Inc.	-	3	-	3
Cebu MMF & Aluminum Supply	-	-	40	40
Chain Glass Enterprises Inc. *	152	81	311	544
Comglasco Corporation	1,073	942	948	2,963
East Asia Glass India	-	-	44	44
EVT Empire Trading Corporation	-	-	35	35
First Global Tech	-	-	617	617
Get Advanced Silicones Inc.	-	-	153	153
Glass World Inc.	-	-	40	40
Glasstemp Ind Corporation	-	-	168	168
Grotrade Inc.	-	13	-	13
Hanjin Heavy Ind. Const. Company	-	24	-	24
Helster Glass Supply	585	-	-	585
Hooven Philippines	-	-	5	5
Jeycy Trading	-	4	.9	5
Lexington Furniture Manufacturing	-	40	-	40
Malabon Mirror Factory and Aluminum	629	420	2,228	3,277
Meridien Dev. Grp. Inc.	13	-	-	13
Philtech Glass Ind. Corporation	-	359	-	359
RAK Ceramics	-	-	215	215
San Francisco Mirror Corporation	666	482	1,772	2,920
S-Senses Corporation	-	-	550	550

Importer	Import Volume (MT)			
	2000	2001	2002	Total
Tai Hing Glass Supply & General Merchandise	76	118	278	472
The Sun Guardian Industrial Corporation	-	59	39	98
Times Glass Inc.	121	34	116	271
Winform Enterprises Inc.	179	-	-	179
Total	3,995	3,498	8,330	15,823

Source: Import entries (Annexes K - O)

Note: excludes imports of AGP

* AGP distributor

5.3.3 Users

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

6 DETERMINATION OF LIKE PRODUCT

Rule 9.4(a) of the IRRs of R.A. 8800 requires the Commission to determine *“if the domestic product is a like or directly competitive product to the imported product under consideration.”*

Section 4(h) of the same IRR defines “like product” as a *“domestic product which is identical, i.e., alike in all respects to the imported product under consideration, or in the absence of such a product, another domestic product which, although not alike in all respects, has characteristics closely resembling those of the imported product under consideration.”* Section 4(e) defines “directly competitive products” as *“domestically-produced substitutable products.”*

6.1 Products Under Consideration

The products under consideration, as identified in the application for safeguard measure, are: (1) clear float glass falling under HS subheading No. 7005.29 90 (now ASEAN Harmonized Tariff Nomenclature or AHTN subheading Nos. 7005.29.20 and 7005.29.90) and (2) tinted float glass falling under HS subheading No. 7005.21 90 (now AHTN subheading Nos. 7005.21.20 and 7005.21.90).

6.2 Characteristics

Float glass is a hard, brittle and transparent substance, made by melting together feldspar, dolomite, silica sand, salt coke and other materials.

6.2.1 Material Composition

A. Locally Produced Float Glass

The raw materials for the manufacture of float glass are dolomite (which is sourced from Cebu), feldspar (which is obtained from the Ilocos region), soda ash, salt coke, calumite, cobalt oxide, blue dust, sodium selenite, sodium nitrate (all locally sourced), silica sand (imported from Australia), and nickel sulfate (sourced from Japan).

B. Imported Float Glass

The raw materials of imported float glass are similar to that of locally produced float, i.e., dolomite, feldspar, silica sand, soda ash, salt coke, calumite, cobalt oxide, blue dust, sodium selenite, sodium nitrate and nickel sulfate.

6.2.2 Physical Characteristics

A. Locally Produced Float Glass

Clear float glass manufactured by AGP is distortion-free, has precise surface flatness, and provides excellent through-vision images. It is produced by floating molten glass on top of a molten tin bath, forming a continuous ribbon pulled and cooled at controlled temperatures to strengthen the quality of the glass. Table 5A shows the standard nominal thicknesses and sizes of AGP's clear float glass.

Table 5A. Dimensions of Locally Produced Clear Float Glass

Standard Nominal Thickness (mm)	Maximum size		Weight (kg./sq. m.)
	Millimeters	Inches	
2.0	1220 x 915	48 x 36	5
3.0	1830 x 1220	72 x 48	7
5.0	2440 x 1830	96 x 72	12
6.0	3050 x 2440	120 x 96	15
8.0	3050 x 2440	120 x 96	20
10.0	3050 x 2440	120 x 96	25
12.0	3050 x 2440	120 x 96	30
15.0	3050 x 2440	120 x 96	37
19.0	10160x3050	400 x 120	47

Source: AGP

Tinted float glass produced by AGP is transparent glass that is colored by the addition of traces of such metals as cobalt, iron and selenium to the raw materials of ordinary glass. Depending on tint and thickness, the glass absorbs a high percentage of solar radiation heat, thus reducing the quantity of heat flowing into a building, lessening the cooling load, and bringing about energy savings. The sizes and standard nominal thicknesses of AGP's tinted float glass are shown in Table 5B.

Table 5B. Dimensions of Locally Produced Tinted Float Glass

Tint	Standard Nominal Thickness (mm)	Maximum Size		Weight (kg./sq. m.)
		Millimeters	Inches	
Dark Blue	5.0	2440 x 1830	96 x 72	12
	6.0	3050 x 2440	120 x 96	15
Light Blue	5.0	2440 x 1830	96 x 72	12
	6.0	3050 x 2440	120 x 96	15
	10.0	3050 x 2440	120 x 96	25
	12.0	3050 x 2440	120 x 96	30
Bronze	3.0	1830 x 1220	72 x 48	7
	5.0	1830 x 1220	72 x 48	12
	6.0	3050 x 2135	120 x 84	15
Dark Gray	5.0	2440 x 1830	96 x 72	12
	6.0	3050 x 2135	120 x 84	15
Light Gray	5.0	2440 x 1830	96 x 72	12
	6.0	3050 x 2135	120 x 84	15

Source: AGP

B. Imported Float Glass

Imported clear float has a special quality that allows the maximum amount of light to transmit through the glass. Table 5C shows the standard nominal thicknesses and sizes of imported clear float.

Table 5C. Dimensions of Imported Clear Float Glass

Standard Nominal Thickness (mm)	Maximum size		Weight (kg./sq. m.)
	Millimeters	Inches	
2.0	762 x 1270	30 x 50	5
3.0	1067x 1829	42 x 72	7
4.0	1219 x 1829	48 x 72	10
5.0	2438 x 3048	96 x 120	12
6.0	2438 x 3048	96 x 120	15
8.0	2438 x 3048	96 x 120	20
10.0	2438 x 3048	96 x 120	25
12.0	3048 x 6197	120 x 244	30
15.0	3048 x 6197	120 x 244	37

Source: Guardian Industries Nong Khae Co., Ltd.

Imported tinted float glass is produced by the float glass process in which raw materials and metallic oxidants such as cobalts and nickel are blended together. The standard sizes and thicknesses of subject article are in Table 5D.

Table 5D. Dimensions of Imported Tinted Float Glass

Tint	Standard Nominal Thickness (mm)	Maximum Size		Weight (kg./sq. m.)
		Millimeters	Inches	
Green	5	2438 x 3048	96 x 120	12
	6	2438 x 3048	96 x 120	15
	8	2438 x 3048	96 x 120	20
	10	2438 x 3048	96 x 120	25
	12	2438 x 3048	96 x 120	30
Dark Gray	3	1219 x 1524	48 x 60	7
	5	2134 x 3048	84 x 120	12
	6	2134 x 3048	84 x 120	15
Light Gray	5	2438 x 3048	96 x 120	12
	6	2438 x 3048	96 x 120	15
	8	2438 x 3048	96 x 120	20
	10	2438 x 3048	96 x 120	25
	12	2438 x 3048	96 x 120	30
Euro Grey	5	2438 x 3048	96 x 120	12
	6	2438 x 3048	96 x 120	15

Source: Guardian Industries Nong Khae Co., Ltd.

6.2.3 Product Standards on Float Glass

Locally produced and imported float glass conform to both domestic standards, i.e., Philippine National Standards, and international standards, i.e., SIRIM (Malaysian Standards), JIS (Japanese Industrial Standards), AS (American Standards), ECE (European Standards), and Asahimas Float Glass Standards.

6.3 Manufacturing Methods and Technology

The term "float" glass derives from the production method invented by Sir Alastair Pilkington in the 1950s.²

The float glass process has been adopted as the universal method for the manufacture of high quality flat glass. In the float process, a continuous ribbon of glass moves out of the melting furnace and then floats across the surface of an enclosed bath of molten tin. The semi-molten ribbon is held in a chemically controlled atmosphere at a high temperature for a long enough time for the irregularities to flow out and for the surfaces to be flat and parallel. Since the surface of the molten tin is dead flat, the glass also becomes flat. The ribbon is then cooled down while still advancing across the molten tin until the surfaces are hard enough to be taken out of the bath without the rollers marking the bottom surface; so a ribbon is produced with a uniform thickness and bright polished surfaces without the need for further processing.

The float process differs from the old way of making glass known as the Drawn Sheet method. In the drawn sheet process, sheets are literally drawn out of a vat of molten glass. The result is an inferior glass that is optically impure.

6.4 Production Process

A. Locally Produced Float Glass

Float glass is manufactured through a continuous process. AGP's float plant operates 24 hours a day, 365 days a year.

To ensure that quality standards are met, raw materials are sampled and weighed before loading into the bath silos. Finished products are checked on-line with the aid of computers and, depending on the thickness of the glass, random sampling is conducted every hour or two hours.

² Source: www.glassonweb.com

The float glass production process consists of the following steps:

✓ Batch preparation

The raw materials, mixed with cullet, are conveyed to the silo tanks, ready for feeding into the furnace.

✓ Melting and refining

At a temperature of 500° to 1600°C and using bunker fuel oil, the raw materials are fused into molten glass.

✓ Glass forming

At a temperature ranging from 110° to 1150°C, the molten glass is formed over a molten tin bath, producing a distortion-free and fire-polished glass with thicknesses ranging from 2.0 mm to 19.0 mm.

✓ Annealing

The molten float glass is passed through the Lehr chamber to remove undesired strains and improve its strength.

✓ Cutting and packaging

Float glass are cut and packed, ready for delivery to the warehouse.

B. Imported Float Glass

Imported float glass is manufactured using the same production process as that for locally produced float, i.e., batching; melting; forming; annealing; and packaging.

6.5 Uses

A. Locally Produced Float Glass

AGP's clear float 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);
- ✓ furniture applications (tabletops, dressers, etc.); and
- ✓ basic glass for mirrors, heat-treated safety glass, laminated glass, and ballistic glass.

Locally produced tinted float is used for the following:

- ✓ curtain walls;
- ✓ exterior and interior window and door openings;
- ✓ decorative applications;
- ✓ scenic openings;
- ✓ furniture applications (tabletops, cabinets, shelves, dressers, etc.);
- ✓ interior room partitions; and
- ✓ basic glass for tinted mirrors, automotive tempered glass, building tempered and heat-strengthened safety glass, and ballistic glass.

B. Imported Float Glass

Clear imported float glass is used for the following applications:

- ✓ windows and doors;
- ✓ greenhouses and tabletops;
- ✓ furniture applications;
- ✓ display cases and shelves; and
- ✓ picture frames and handrails.

Imported tinted float is used for the following:

- ✓ exterior and interior windows for houses, shops and buildings;
- ✓ screens and openings for high-rise buildings;
- ✓ glass furniture, indoor partitions, countertops, and tabletops;
- ✓ windows of automobiles, trains and ships; and
- ✓ protection from discoloration for curtains, carpets and other household equipment.

6.6 Tariff Classification

Float glass, whether manufactured by AGP or imported from other countries, are classified under the same AHTN subheadings: AHTN Codes 7005.29.20 and 7005.29.90 for clear float glass and AHTN Codes 7005.21.20 and 7005.21.90 for tinted float glass.

6.7 Findings

6.7.1 Material Composition

Local and foreign glass manufacturing companies use similar raw materials in producing float glass, i.e., feldspar, dolomite, silica sand, soda ash, salt coke, calumite, cobalt oxide, and nickel sulfate, among others.

6.7.2 Physical Characteristics

The physical appearance of local and imported float glass is naturally fire-finished and exudes a sparkling and brilliant luster compared to sheet glass or polished glass. Float glass is resistant to scratches, dust and dirt and is easier to clean.

The thicknesses and sizes of locally produced clear and tinted float glass are more or less similar to the imported counterpart. The more common sizes are 3,050 mm x 2,440 mm for local float glass and 2,438 mm x 3,048 mm for the imported float.

Locally produced and imported float glass conform to both domestic and international standards.

6.7.3 Manufacturing Method

Local and imported float glass are produced using the universal method for the manufacture of high-quality flat glass, i.e., the float process.

6.7.4 End Use

Local and imported float glass have similar applications, e.g., windows and doors, indoor partitions, furniture.

6.8 Conclusion

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, locally produced clear and tinted float glass are like products to imported clear and tinted float glass. Locally produced and imported clear and tinted float glass are made from similar raw materials, use similar manufacturing technology, conform to recognized product standards, fall under the same tariff classification, and have the same end-uses.

7 DETERMINATION OF INCREASED VOLUME OF IMPORTS

Rule 9.4(b) of the IRRs 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 IRRs 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 a surge in imports.

AGP having filed its application for safeguard measure with DTI in April 2003, for purposes of the Commission’s formal investigation, the POI was determined to be the five – year period 1998 to 2002.

7.2 Increase in Volume of Imports in Absolute Terms

Import data on float glass were based on import entries submitted by AGP and the Commission’s own copies of import entries. Data were culled from all import entries specifically indicating HS Codes 7005.21 90 and 7005.29 90 and referring to subject articles. Excluded were imports of AGP.

Imports of float glass, whether clear or tinted, amounted to more than 11,000 MT in 1998 (*Table 6*). This amount swelled to some 18,000 MT the following year, but then fell back to approximately 14,600 MT in 2000. Subsequently, imports increased progressively, peaking in 2002 at more than 26,000 MT, which amount is more than double the 1998 level.

Table 6. Imports of Float Glass

Year	Imports (MT)	Actual Increase/ Decrease (MT)	Growth Rate (%)
1998	11,334	-	-
1999	18,191	6,857	60.50
2000	14,614	(3,577)	(19.66)
2001	18,432	3,818	26.12
2002	26,585	8,153	44.23

Source of basic data: Import entries (Annexes F - O)

Note: excludes imports of AGP

7.3 Increase in Volume of Imports Relative to Domestic Production

Imports of float glass represented about 14% of total domestic float glass production in 1998 (*Table 7*). This share increased to 20% in 1999, then dipped to 16% in 2000. In 2001 – 2002, imports represented an average 29% of AGP's total domestic production.

Table 7. Share of Imports to Domestic Production of Float Glass

Year	Imports (MT)	Domestic Production (MT)	Share of Imports to Domestic Production (%)
1998	11,334	83,594	13.56
1999	18,191	89,256	20.38
2000	14,614	91,289	16.01
2001	18,432	61,744	29.85
2002	26,585	91,812	28.96

Source of basic data: AGP and import entries

Notes:

- excludes imports of AGP
- AGP's production data, expressed in converted cases (CCs), were converted to MT using the following AGP-supplied formula: 22 CCs = 1 MT in weight.

7.4 Findings

Based on the annual levels of imports from 1998 to 2002, a significant increase in imports of float glass occurred in 2002 when imports expanded by 44% compared to the previous year's volume. The 2002 import level was the highest over the POI and was more than double the initial import volume. Imports were not considered to have increased significantly in 2001 because the import level for said year (some 18,000 MT) was already reached in 1999.

The movements in the shares of imports relative to domestic production over the POI confirm a surge in imports of float glass in 2002. While imports may have already represented some 30% of total domestic production in 2001, this was due as much to the decrease in production (by 32%) as to the growth of imports (by 26%). In 2002, when production had largely recovered its 2000 level, imports represented 29%, which is significantly higher than the import share in 2000 of 16%.

7.5 Unforeseen Developments Resulting in Increased Importation

The construction industry was among the Philippines' top performing sectors for the years 1993 – 1997, growing by 8% 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 and shopping malls, and public infrastructure.

In anticipation of that growing demand, AGP installed new facilities to increase capacity and produce high-quality glass. A second float plant facility was planned in 1997 and registered with the Board of Investments in the same year. A large tract of land as site for the expansion project was also purchased at Bauan, Batangas.

However, the Asian financial crisis that struck in July 1997 impacted negatively on the construction industry and caused the indefinite deferment of the implementation of AGP's expansion project.

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 float glass from Asian sources entered the Philippine market in significant quantities starting in 1999, which surged to their highest level in 2002 at more than 26,000 MT.

These two (2) mutually reinforcing developments, the Asian financial crisis, on the one hand, and the entry of low-priced imports of float glass from the Asian region, on the other, were totally unforeseen.

7.6 Conclusion

Based on the foregoing, the Commission finds that, in accordance with R.A. 8800, clear and tinted float glass were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the POI (1998 – 2002). A result of unforeseen developments, the increase in volume of imports is recent (i.e., 5th year of the POI), sharp and significant.

7.7 De Minimis Import Volumes from Developing Countries

7.7.1 Major Country Suppliers of Imported Float Glass

In the last three (3) years of the POI, the major source countries of float glass were Indonesia (with an average share of 36%), PROC (22%), Thailand (15%), and Singapore (9%) (*Table 8A*).

Table 8A. Imports of Float Glass By Country of Origin

Country of Origin	2000		2001		2002	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
Hong Kong	38	0.26	-	-	307	1.15
India	285	1.95	937	5.08	2,965	11.15
Indonesia	5,306	36.31	8,036	43.60	7,472	28.11
Korea	1,056	7.23	1,200	6.51	1,563	5.88
Malaysia	-	-	702	3.81	-	-
PROC	4,401	30.12	2,206	11.97	6,585	24.77
Singapore	30	0.21	1,584	8.59	4,956	18.64
South Africa	80	0.55	-	-	-	-
Taiwan	80	0.55	145	0.79	984	3.70
Thailand	2,792	19.11	3,572	19.38	1,737	6.53
USA	82	0.56	50	0.27	16	0.06
Vietnam	463	3.17	-	-	-	-
TOTAL	14,613	100.00	18,432	100.00	26,585	100.00

Source of basic data: Import entries (Annexes F - O)

Note: excludes imports of AGP

A. Clear Float Glass

The biggest suppliers of clear float glass in 2002 were PROC and Singapore, which together accounted for more than half of total imports (*Table 8B*). Indonesia and Thailand were the other main suppliers during the 2000 – 2002 period, although their shares to total imports declined significantly in 2002. Korea, on the other hand, emerged as a significant supplier in 2001 and 2002, from no recorded importations from said country in 2000.

Table 8B. Imports of Clear Float Glass By Country of Origin

Country of Origin	2000		2001		2002	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
Hong Kong	38	0.36	-	-	307	1.68
India	-	-	-	-	604	3.31
Indonesia	4,492	42.31	7,313	48.97	2,973	16.29
Korea	-	-	1,200	8.04	1,563	8.56
PROC	3,220	30.33	2,000	13.39	5,623	30.80
Singapore	30	0.28	1,179	7.90	4,611	25.26
South Africa	80	0.75	-	-	-	-
Taiwan	60	0.56	145	0.97	976	5.34
Thailand	2,172	20.46	3,065	20.52	1,582	8.67
USA	63	0.59	32	0.21	16	0.09
Vietnam	463	4.36	-	-	-	-
TOTAL	10,618	100.00	14,934	100.00	18,255	100.00

Source of basic data: Import entries (Annexes F - J)

Note: excludes imports of AGP

In May 1999, RAGC filed an anti-dumping case against clear and tinted float glass from Indonesia and clear float glass from Malaysia. DTI-BIS' preliminary investigation having established a prima facie case of dumping against Indonesia and Malaysia, provisional cash bonds were imposed for four (4) months starting 1 December 1999. The Commission's subsequent formal investigations resulted in positive findings on clear float glass from Indonesia and Malaysia and definitive anti-dumping duties were imposed starting 13 December 2000. The anti-dumping case against tinted float glass from Indonesia was dismissed, however, due to the absence of material injury.

It is noted that there were no imports of clear float glass from Malaysia from 2000 to 2002, likely due to the provisional cash bond imposed in December 1999 and the definitive anti-dumping duties in December 2000. Imports from Malaysia in 1998 and 1999 amounted to 900 MT and 1,324 MT, respectively.

With respect to Indonesia, the provisional cash bond resulted in a 36% decrease in 2000 imports from the 1999 level of 7,060 MT. The definitive anti-dumping duties did not have any apparent effect in 2001, however, with imports increasing by 63% and Indonesia remaining the biggest supplier. In 2002, however, Indonesia was displaced as the top supplier by PROC and Singapore due to a 59% decline in imports.

B. Tinted Float Glass

In 2002, tinted float glass were imported mainly from India and Indonesia, with the latter accounting for more than half of total imports (*Table 8C*). Prior to 2002, substantial imports of subject article were also sourced from PROC, Korea, Malaysia and Thailand.

Table 8C. Imports of Tinted Float Glass By Country of Origin

Country of Origin	2000		2001		2002	
	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total	Imports (MT)	% Share to Total
India	285	7.13	937	26.79	2,361	28.34
Indonesia	814	20.38	723	20.67	4,499	54.01
Korea	1,056	26.43	-	-	-	-
Malaysia	-	-	702	20.07	-	-
PROC	1,181	29.56	206	5.89	962	11.55
Singapore	-	-	405	11.58	345	4.14
Taiwan	20	0.50	-	-	8	0.10
Thailand	620	15.52	507	14.49	155	1.86
USA	19	0.48	18	0.51	-	-
TOTAL	3,995	100.00	3,498	100.00	8,330	100.00

Source of basic data: Import entries (Annexes K - O)

Note: excludes imports of AGP

It is noted that a provisional cash bond was imposed for four (4) months starting 1 December 1999 on tinted float glass from Indonesia. Said cash bond likely contributed to the considerable 71% decline in 2000 imports relative to the 1999 volume of 2,830 MT.

7.7.2 *De Minimis* Import Volume

Rule 13.1.d of the IRRs to R.A. 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.*”

Based on 2002 import volumes, the ending year of the POI, the volume of imports of three (3) developing countries, namely, Hong Kong, Taiwan and Thailand, 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 (%)
Clear Float Glass		
Hong Kong	307	1.68
TOTAL	307	1.68
Tinted Float Glass		
Taiwan	8	0.10
Thailand	155	1.86
TOTAL	163	1.96

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

8 DETERMINATION OF SERIOUS INJURY

Rule 9.4(c) of the IRRs 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 levels of sales, production, productivity, capacity utilization, profit and losses, and employment.”*

8.1 Domestic Industry Requirement

As the only manufacturer of clear and tinted float glass in the Philippines, AGP accounted for 100% of total domestic production of subject articles during the POI (1998 to 2002). This complies with Article 4 of the WTO Agreement on Safeguards which, for purposes of determining injury and threat thereof, defines “domestic industry” as *“the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the 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

Total apparent domestic consumption of float glass amounted to approximately 65,000 MT at the beginning year of the POI (*Table 10*).³ It peaked the following year, increasing to more than 80,000 MT. Annual apparent consumption then contracted by 6% and 10% in 2000 and 2001, respectively. In 2002, demand for float glass improved, growing by 16% over the previous year’s level and nearly equaling the volume consumed in 1999.

³ AGP’s data (e.g., on production, sales, capacity) are expressed in terms of converted cases (CCs). These were all converted to MT based on information provided by AGP that 22 CCs are equivalent to 1 MT in weight.

Table 10. Market Shares: Float Glass

Year	Domestic Sales (MT)	Imports (MT)	Total Apparent Consumption (MT)	% Change	Market Shares (%)	
					Domestic Industry	Imports
1998	54,196	11,334	65,530	-	82.70	17.30
1999	62,313	18,191	80,504	22.85	77.40	22.60
2000	61,193	14,614	75,807	(5.83)	80.72	19.28
2001	49,772	18,432	68,204	(10.03)	72.98	27.02
2002	52,453	26,585	79,038	15.88	66.36	33.64

Source of basic data: AGP and import entries (Annexes F - O)

Note: excludes imports of AGP

Mirroring the changes in market size, domestic sales of AGP also reached its peak (roughly 62,000 MT) in 1999 then declined subsequently. In 2002, domestic sales rose slightly (by 5%) to some 52,000 MT, the second-lowest sales volume over the period.

In contrast, annual imports of float glass contracted only in 2000 and the 2002 level of more than 26,000 MT is the highest over the POI.

The contrasting movements in domestic sales and imports of float glass in 2001 resulted in a decline in the market share of AGP from an average of 80% in 1998 - 2000 to 73% in 2001. AGP's market share contracted further to 66% in 2002 due to a 44% growth in imports even though annual consumption increased by only 16%.

8.2.2 Production, Sales and Inventory

Production

The Commission considers production as constituting total output regardless of color and market. Thus, in the evaluation of AGP's production levels, the Commission did not distinguish between production by color, production for the domestic market, and production for export sales.

AGP produces both clear and tinted float using a single furnace (Furnace No. 5). The company's production forecasts are based upon domestic demand and prospects for exports.

Over the POI, portions of AGP's float output were used as raw materials for other AGP products, mainly mirrored glass, tempered glass, and other processed glass. From 1998 to 2002, 16%, 14%, 21%, 17% and 10% of AGP's yearly float production went to the manufacture of the aforementioned products.

From under 84,000 MT in 1998, AGP increased its production of float to some 91,000 MT mid-point of the POI (*Table 11*). Production contracted by 32% in 2001, however, falling to less than 62,000 MT, the lowest level

over the POI. It was during the last two (2) months of this year that Furnace No. 5 underwent hot repair for 35 days. In 2002, production bounced back to its 2000 level.

Table 11. Production, Sales and Inventory: Float Glass

Year	Production (MT)	% Change	Domestic Sales (MT)	% Change	Export Sales (MT)	% Change	Total Sales (MT)	% Change	Inventory (MT)	% Change
1998	83,594	-	54,196	-	18,351	-	72,547	-	17,214	-
1999	89,256	6.77	62,313	14.98	20,284	10.53	82,597	13.85	10,213	(40.67)
2000	91,289	2.28	61,193	(1.80)	6,886	(66.05)	68,078	(17.58)	13,751	34.65
2001	61,744	(32.36)	49,772	(18.66)	1,499	(78.23)	51,271	(24.69)	13,249	(3.65)
2002	91,812	48.70	52,453	5.39	24,676	1,546.34	77,129	50.43	17,890	35.03

Source of basic data: AGP

Sales

In the evaluation of AGP's sales volumes, the Commission considered both domestic and export sales.

AGP sells float glass domestically as well as abroad (to its affiliates). While the company also imports float for re-sale domestically, the sales figures shown in Table 11 refer only to the sales of its own production of float.

During the POI, AGP's sales in the domestic market were erratic. In 1999, domestic sales grew by 15% to more than 62,000 MT, the highest for the POI. Sales then declined by 2% and 19% in 2000 and 2001, respectively. In 2002, domestic sales increased, but only by 5%, to a little over 52,000 MT. This is 16% less than the 1999 sales volume and the second-lowest for the period.

AGP's export performance followed the pattern of its domestic sales: improvement in 1999, worsening in 2000 and 2001, then recovery in 2002. Export sales were substantial in 1998 and 1999, accounting for approximately 25% of total sales for each year. Exports were greatest in 2002, however, exceeding 24,000 MT and contributing 32% to AGP's total sales. This surge in exports was made possible because of the support given AGP by its affiliates.⁴

In terms of total sales, an increase of 14% in 1999 was followed by declines of 18% and 25% in 2000 and 2001, respectively. Total sales were lowest in 2001 at some 51,000 MT. In 2002, due to strong exports, sales picked up, growing by 50% over the previous year's level. However, 2002 total sales were still 7% lower compared to the peak 1999 level.

⁴ Source: AGP's 2002 Audited Financial Statements (Notes to Financial Statements [Note 17])

Inventory

It is a business practice of AGP to maintain an inventory level equivalent to two (2) to three (3) months of domestic sales. The inventory figures shown in Table 11 refer to AGP's finished goods inventory of its own production only (i.e., AGP's imports of float are excluded).

Despite the effort of AGP to reduce its inventory after accumulating 20,186 MT in 1997 as a result of the Asian financial crisis, the inventory level in 1998 was still quite high, being equivalent to about 3½ months of 1998 domestic sales. Thus the following year, production growth was controlled to 7% despite a 15% rise in domestic sales. Inventory consequently fell to about 10,000 MT.

The following year, though inventory increased by 35%, this was still within the normal inventory level, corresponding to 2½ months of domestic sales of that year. In 2001, a production cutback due to lower sales kept the inventory level manageable at 13,000 MT.

Anticipating the market contraction in 2001 to be temporary and foreseeing better export opportunities through the support of its affiliates, production in 2002 was raised to the 2000 level. Unfortunately, while AGP's projections about market size and export growth proved accurate, the increase in domestic demand was captured by imports. Thus, while its export sales boomed, its domestic sales rose by only 5% (compared to a 44% growth in imports and a 16% rise in demand).

At year-end 2002, there was an inventory pile-up equivalent to four (4) months of domestic sales for that year and which was the highest level over the POI.

8.2.3 Capacity Utilization

AGP operates two (2) basic glass furnaces – one for float glass (Furnace No. 5) and another for figured glass (Furnace No. 6).

The float glass tank has an annual rated capacity of 109,000 MT of glass (*Table 12*). This capacity fell in 2001 when AGP's furnace underwent hot repair for 35 days. Having been in operation since 1990, AGP's furnace is scheduled to undergo cold repair in 2006.

Table 12. Capacity Utilization: Float Glass

Year	Rated Capacity (MT)	Production (MT)	Capacity Utilization (%)	% Change
1998	109,000	83,594	76.69	-
1999	109,000	89,256	81.89	5.96
2000	109,000	91,289	83.75	2.25
2001	97,000 *	61,744 *	63.65	(24.67)
2002	109,000	91,812	84.23	34.20

Source of basic data: AGP

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

AGP's capacity utilization increased in the first three (3) years of the POI, from 77% to 84%. It sank to its lowest point, 64%, in 2001. Thereafter, utilization returned to the 2000 rate of 84% owing to production regaining its 2000 level.

In the flat glass industry, an 80% utilization rate is considered an acceptable performance standard. It is noted, however, that for product quality reasons, AGP carefully maintains the level of the molten glass in the furnace tank, making its capacity utilization rate more or less constant.

As previously discussed, AGP resorted to exports in order to maintain its utilization rate in a difficult domestic market environment.

8.2.4 Financial Performance / Profitability

Table 13 is an income statement on AGP's domestic operations for float glass from 1998 to 2002. Table 14, on the other hand, shows AGP's whole float glass operations, i.e., export sales and the corresponding costs and expenses are included. Both statements were extracted from AGP's 1998 – 2002 audited financial statements.

Float Glass Domestic Operation

For purposes of determining the direct effect of increased import quantities on AGP's profitability, the Commission deemed necessary an evaluation of AGP's domestic operations during the POI.

Despite a 2% decline in sales volume in 2000, sales revenues increased by 33% to ₱1,032 million, from ₱778 million in 1999 (*Tables 11 and 13*). This resulted from a rise in AGP's selling price by 34% in 2000 (*Table 16*).

**Table 13. Income Statement: Float Glass Domestic Operation
(in million pesos)**

	1998	1999	2000	2001	2002
Sales	757	778	1,032	992	927
Less: Cost of Sales	686	654	757	799	932
Gross Profit	71	124	275	193	(5)
Less: Operating Expenses	70	72	89	79	20
Operating Income / (Loss)	1	52	186	114	(25)
Less: Interest Expense	61	158	181	215	66
Add / (Less): Other Income/ (Charges)	-	1	26	(451)	17
Net Profit / (Loss) Before Tax	(60)	(104)	31	(552)	(74)

Source: Audited financial statements of AGP

In 2001, a significant reduction in sales volume led to lower sales revenue of ₱992 million. In 2002, sales revenues further contracted, shrinking by 7% despite a growth in sales volume of 5%. This is attributed to a decrease in selling price by 12%.

It was a price strategy of AGP to adopt import parity pricing to maintain its market share and capacity utilization. In the presence of low-priced imports, AGP could not increase its domestic prices as it would lose market share and incur more losses. In line with its import parity pricing strategy, AGP reduced its selling price in 2002 in an (unsuccessful) attempt to defend its market share. The consequence of this decrease in selling prices – depressed sales revenues – was a direct result of low-priced imports entering the Philippines in significantly increased quantities in 2002.

Cost of sales is a function of volume sold and the relevant cost in a given year. In a reversal of the downtrend in sales volume during the last three (3) years of the POI, AGP's cost of sales was rising. This was clearly caused by escalating costs of production.

Gross profit is derived by deducting cost of sales from sales revenue, while gross profit margin is gross profit over sales. AGP posted positive gross profit margins of 9%, 16%, 27% and 19% from 1998 to 2001. Gross profit realized in 2000, the highest over the POI, was a direct result of the growth in sales revenues that was due, in turn, to higher selling prices during this year.

In 2002, the contrasting movements in sales revenues and cost of sales led to a negative gross profit margin of 0.5% (representing a 102% decline from the 2001 figure). This was because of the injurious consequence of low-priced imports, i.e., AGP had to reduce its selling price (to such an extent that it could no longer recover all of its costs) in order to sell more.

In its evaluation of profitability, the Commission puts more weight on income from operation (as against net income), considering this financial measurement as a better indicator of the state of financial health of an industry and its ability to both attain and sustain a condition of profitability.

In 1998, AGP's minimal income from operation (of ₱1 million) may be attributed to dumped imports. In 1999, when RAGC filed its anti-dumping case against clear and tinted float glass from Indonesia and clear float glass from Malaysia, putting pressure on said countries, the company was able to increase its sales volume. Thus, AGP realized income from operation of ₱52 million.

AGP's favorable financial condition continued in 2000 when a provisional bond was slapped on dumped imports. Imports from Indonesia and Malaysia were arrested, allowing AGP to further adjust its prices upward. Income from operation grew by 358% during this year.

When imports started to rise in 2001 (mostly from PROC, Singapore and even from Indonesia), income from operation shrank by 39%. With the arrival of imports of low-priced float glass in 2002 in significantly increased quantities, AGP's response was to reduce its prices, even beyond its costs and expenses, in order to maintain its sales volume. A loss from operation of ₱25 million was thus incurred, the only loss for the period under review.

Over the POI, the bottomline results of AGP's domestic operation were unfavorable, except in 2000 when AGP earned ₱31 million net income before income tax. Substantial yet declining interest expense, foreign exchange losses, and other expenses (loss on retirement of property, plant and equipment) incurred during the POI caused the low net income in 2000 and the net deficits in the other years.

Float Glass Whole Operation

To get a complete picture of the profitability of AGP's float glass operation, the Commission also evaluated the whole float operation (which includes export sales and its costs and expenses). AGP's export sales comprised 40% of total sales volume in 2002 (*Table 11*).

Based on 2002 sales revenues, the whole float glass operation accounted for 60% of AGP's total operation. The company's other operations include mirror glass, figured glass, and fabricated/tempered or processed glass.

Except for a 9% decrease in 2001, AGP's sales revenues displayed a generally increasing trend during the period under review (*Table 14*).

**Table 14. Income Statement: Float Glass Whole Operation
(in million pesos)**

	1998	1999	2000	2001	2002
Sales	899	918	1,115	1,013	1,214
Less: Cost of Sales	809	847	813	770	1,145
Gross Profit	91	71	301	243	69
Less: Operating Expenses	75	69	88	82	104
Operating Income / (Loss)	16	1	213	161	(35)

Source: Audited financial statements of AGP

The growth in sales revenues by 21% in 2000 was due to the increase in AGP's average selling price (domestic and export) by 45% in that year, though sales volume decreased by 18%.

In 2002, due to an upsurge in exports, sales revenues increased by another 20%. This 20% increase is low, however, when compared with the 50% expansion of sales volume. This disproportionate change in sales revenue resulted from: (a) the fall of domestic selling prices in 2002 by an average of 12%, in response to the upsurge of cheaper imports in the domestic market (as discussed earlier); and (b) the decrease in export prices by 26%. During the POI, exportation was the means by which AGP increased its dollar reserves to finance its importations, but its export prices were only just enough to recover its export costs.

With respect to AGP's cost of sales during the POI, this was erratic. In 2000, when the sales volume declined by 18%, cost of sales declined by 4% to ₱813 million, from ₱847 million in 1999.

In 2002, cost of sales increased to ₱1,145 million, which is a 49% increase from the 2001 level and a 41% change from the 2000 level. It is noted that total volume sold in 2002 was 50% and 13% higher compared with the 2001 and 2000 sales volumes, respectively (*Table 11*). Thus, while the increase in cost of sales in 2002 vis-à-vis 2001 can be clearly attributed to the growth in volume of sales, the difference between 2002 and 2000 cost of sales was obviously due to increasing costs of production.

During the POI, AGP realized positive gross profit margins of 10%, 8%, 27%, 24% and 7% in 1998 - 2002. The high margin of gross profit in 2000 was due to higher sales revenues combined with lower cost of sales.

In 2002, when imports increased sharply, gross profit declined, by 71% from the 2001 level and 72% from the 2000 level, to ₱69 million. It is noted that export sales aided the company in realizing positive gross profit margin in 2002, in contrast to the negative gross profit return indicated in *Table 13*.

Generally, income from whole float glass operation was reflective of AGP's domestic operation. In 2002, despite increased exports that led to increased total sales, AGP suffered a loss of ₱35 million (a 121% decline from 2001). This is attributed to the upsurge in low-priced imports that forced the depression in AGP's domestic selling prices to such an extent that the amount of costs and expenses in producing and selling float glass was unrecoverable. AGP exported only to maintain capacity utilization at its optimum level.

Return on Sales

Return on sales, which measures the percentage of operating income out of the sales revenue, was derived by dividing income from operation by sales revenue. To evaluate industry sales performance, the Commission adopted income from operations in favor of net income so as to exclude interest expenses, foreign exchange losses and other expenses which do not form part of the operating costs.

Return on sales in 1998 was minimal (*Table 15*). In 1999, the rate of return increased to 7%. Operating incomes of ₱186 million and ₱114 million in 2000 and 2001, respectively, resulted in returns on sales of 18% and 11%, respectively. This means that for every peso sale of float glass, AGP earned 7 centavos and 18 centavos, in that order.

Table 15. Return on Sales: Float Glass Domestic Operation

Year	Income From Operations (million pesos)	Sales Revenue (million pesos)	Return on Sales (%)
1998	1	757	0.13
1999	52	778	6.68
2000	186	1,032	18.02
2001	114	992	11.49
2002	(25)	927	(2.30)

Source of basic data: AGP (see Table 13)

During the year of the upsurge in imports, a negative return of 2% was registered, i.e., a 2-centavos loss was incurred for every peso sale.

Price Trends

Except in 1999, the average landed costs of imports from all sources were below AGP's average domestic selling prices (ex-plant) during the investigation period (*Table 16*).

**Table 16. Landed Cost of Imports Vis-à-Vis Domestic Selling Price:
Float Glass**

Year	Landed Cost of Imported Float Glass ^{1/} (Peso / MT)						Domestic Selling Price ^{3/} (Peso/MT)
	PROC	India	Indonesia	Singapore	Thailand	Weighted Average ^{2/}	
1998	12,361	14,117	12,174	-	12,513	12,099	Confidential
1999	14,826	12,342	11,977	-	12,025	12,305	Confidential
2000	15,698	20,543	11,658	176,132	15,244	15,157	Confidential
2001	17,526	20,122	15,727	11,336	16,987	16,835	Confidential
2002	15,495	16,904	15,649	14,047	15,376	15,440	Confidential

^{1/} refers to weighted average landed cost (Annexes H – Q); Source of basic data: Import entries

^{2/} refers to weighted average price from all sources (Annexes H – Q); Source of basic data: Import entries

^{3/} refers to ex-plant average selling price (net of freight & hauling cost); Source of basic data: AGP

As discussed previously, AGP's prices were substantially influenced by the prices of the top five (5) source countries of imported float, namely, PROC, India, Indonesia, Singapore and Thailand.

8.2.5 Employment

With one (1) furnace/production line for float glass manufacturing, a single group of workers is involved in AGP's production of clear and tinted float. There are three (3) shifts per day and the plant operates 24 hours a day, 365 days a year.

The number of workers in AGP's float glass operations steadily declined over the POI, from 266 workers in 1998 to 194 workers in 2002 (Table 17).

Table 17. Employment: Float Glass

Year	Number of Employees	% Change
1998	266	-
1999	265	(0.38)
2000	247	(6.79)
2001	231	(6.48)
2002	194	(16.02)

Source of basic data: AGP

The 16% rate of decline in employment in 2002 is the largest over the period under review.

8.2.6 Labor Productivity

In 1999 and 2000, labor productivity progressively increased, with annual output per employee rising to 370 MT (*Table 18*). The next year saw a marked drop in the labor productivity ratio (to 1:267), however, due to the larger rate of decline in production vis-à-vis employment.

Table 18. Labor Productivity: Float Glass

Year	Actual Production (MT)	Number of Employees	Productivity (MT/ Number of Employees)	% Change
1998	83,594	266	314	-
1999	89,256	265	337	7.32
2000	91,288	247	370	9.79
2001	61,744	231	267	(27.84)
2002	91,812	194	473	77.15

Source of basic data: AGP

In 2002, the productivity level per employee improved by 77%, the highest over the POI, due to contrasting movements in production and employment levels.

8.3 Findings

8.3.1 Market Share

The magnitude of the decline in the domestic market share of the domestic float glass industry, from an average of 78% in 1998 – 2001 to 66% in 2002, despite significant market recovery, and the consequent erosion of its competitive position constitute serious impairment of its overall market position.

8.3.2 Production, Sales and Inventory

There was no significant adverse trend in AGP's production volume as to constitute serious impairment of the company's overall condition

There was also no significant adverse trend in AGP's total sales. For its domestic sales, however, the rate of growth attained in 2002, when imports increased significantly, lagged considerably behind the rate of growth of demand. Indicative of the company's inability to share in the appreciable rise in demand, AGP's weak domestic sales growth in 2002 thus constitutes serious impairment of its overall condition.

AGP's above-normal inventory level in 2002, which is a direct consequence of the company's inability to generate more sales in a bigger market, indicates serious impairment of AGP's overall condition.

8.3.3 Capacity Utilization

Based on the capacity utilization rates of AGP over the POI, there was no reduction in production capacity utilization that seriously impaired AGP's overall condition. This is consistent with AGP's generally stable production figures.

8.3.4 Financial Performance / Profitability

From 1998 to 2001, AGP realized positive returns on sales on its domestic operation of less than 1%, 7%, 18% and 11%.

In 2002, when imports increased considerably, AGP realized a loss from operation of ₱25 million, equivalent to a 122% decline from the 2001 level. Such loss constitutes serious impairment of AGP's overall financial condition.

8.3.5 Employment

Compared to the movement in annual employment levels over the POI, the extent of the decline in AGP's employment in 2002 constitutes serious impairment of its overall condition.

8.3.6 Labor Productivity

The improvement in labor productivity in 2002 relative to the levels attained from 1998 to 2000 (2001 may be considered an abnormal year owing to the furnace hot repair) was due to a sizeable reduction in employment combined with stable production (rather than to increases in output and constant employee numbers). This supports the finding of serious impairment in AGP's employment during the year of the upsurge in imports.

8.4 Conclusion

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, the domestic float glass industry suffered significant impairment of its overall market position, sales and inventory, profitability and employment during the final year of the POI (2002). The improvement in labor productivity is indicative of serious impairment in industry employment.

9 CAUSATION

Rule 12.5 of the IRRs 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 or threat thereof to the domestic industry. Any known factors, other than the increased importation of the products under consideration, which at the same time injure 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

Prior to the increase in imports of float glass in 2002, AGP’s domestic market share for float glass averaged 78%. In 2002, this share declined to 66%.

Since the remainder of market demand is supplied by imports, it is clear that the contraction in the market share of AGP and the weakening of its competitive position in 2002 were directly caused by the increased imports of float glass in said year.

9.1.2 Production, Sales and Inventory

AGP’s domestic sales in 2002 grew by a mere 5% over the previous year’s level although demand increased by 16%. This weak sales growth, indicative of serious impairment of the industry’s ability to generate more sales in an expanding domestic market and which caused AGP’s inventory level to shoot up, is directly attributable to imports of float glass, which surged by 44% during the year.

There was no significant adverse trend in AGP’s production volume during the period under review.

9.1.3 Capacity Utilization

In 2002, when imports increased in significant quantities, there was no impairment in AGP’s production capacity utilization.

9.1.4 Financial Performance / Profitability

During the POI, AGP adopted import parity pricing to maintain its domestic sales volume. Low-priced imports in significantly increased quantities in 2002 put considerable pressure on AGP to reduce its prices, at the expense of cost recovery.

Unable to recover all costs, AGP thus suffered a loss from operation of ₱25 million in 2002, which represents a 122% decline from 2001. This is serious impairment of AGP's overall financial condition that is directly attributable to the upsurge of imports in 2002.

9.1.5 Employment

The number of employees working directly on AGP's float glass production line shrank successively over the POI.

An analysis of AGP's employment and production levels showed no clear relationship between these two. Moreover, AGP began outsourcing several activities in 2000 (e.g., sub-contracting of loading and unloading operations, fabrication of boxes) and a priority measure in AGP's adjustment plan is the streamlining of the organization. It is therefore concluded that the annual reductions in employment during the period under review are attributable to AGP's continuing effort to reduce costs.

9.1.6 Productivity

Since there is no causal link between the sizeable reduction in AGP employment in 2002 and increased imports, there is necessarily no link between labor productivity and said increased float glass imports.

9.2 Other Factors

The Commission also looked at factors other than the increased importation of float glass that may have also caused serious injury to the domestic industry.

9.2.1 Interest Expense / Foreign Currency Losses

The amount of interest expense and foreign exchange losses shown in the float glass income statement in Table 13 was prorated based on the share of AGP's float glass operation to its total operation. It is more appropriate to discuss interest expense and foreign exchange loss in the context of AGP's overall operation, i.e., those disclosed in the audited financial statements.

AGP's audited financial statements showed that substantial interest expenses and foreign exchange losses in 2001 and 2002 contributed to the net deficits suffered by AGP during these years.

It is noted that in 2002, interest expense already decreased by 47% (from ₱291 million in 2001 to ₱153 million in 2002). This was due to the huge ₱1.1 billion payment of long-term debts, which included long-term debt of ₱291.7 million owed by AGP to two (2) local banks that was pre-terminated.⁵ The payment of this huge amount in 2002 was made possible after the capital infusion by partner AGC on 15 August 2001 in the amount of ₱1.8 billion, of which ₱1.6 billion was in the form of cash.⁶ Therefore, in 2003, a much lower interest expense is expected.

Due to the significant depreciation of the peso (*Annex E*), AGP incurred foreign exchange losses from its dollar-denominated loans (which amounted to US\$22 million in 2001 and US\$17 million in 2002). These foreign exchange losses totaled ₱154 million and ₱55 million in 2001 and 2002, respectively.

AGP pre-terminated a US\$4 million unsecured loan on 2 and 16 January 2003 and a US\$12.8 million secured loan on 1 April 2003.⁵ Therefore, despite the depreciation of the peso from ₱51 to a US dollar in 2002 to ₱54 to a US dollar in 2003, a smaller foreign exchange loss is expected in 2003.

The reductions in AGP's interest expenses and foreign exchange losses in 2002 were due to the company's continuing effort to trim down its expenses.

9.2.2 High Cost of Production

AGP's production costs are higher compared to those of foreign manufacturers. This is because the company imports its main raw material component, silica sand, which accounts for 55% of its total raw material requirements. The increasing cost of imported silica sand (presently sourced from Australia) due to the continuing depreciation of the peso puts AGP at a significant cost disadvantage.

In contrast, float manufacturers in PROC, Indonesia, and Thailand (the major float exporters to the Philippines during the POI) enjoy comparative advantage over AGP since their requirements of silica sand are procured within their territories.

⁵ Source: AGP's 2002 Audited Financial Statements (Notes to Financial Statements [Note 11])

⁶ Source: AGP's 2002 Audited Financial Statements (Notes to Financial Statements [Note 1])

Despite the continuing effort of AGP to minimize its costs (e.g., sourcing its imported raw materials at competitive prices and quality; reducing its labor complement; selling its transport vehicles and resorting to subcontracting to eliminate high maintenance costs), such uncontrollable expenses as the increasing costs of energy⁷ (bunker fuel and lubricant which are imported, and electricity) plus the rapid depreciation of the peso remain significant sources of difficulty.

9.3 Conclusion

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

⁷ Source: Department of Energy website - www.doe.gov.ph

10 CONCLUSION

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

1. As the sole manufacturer of clear and tinted float glass in the Philippines, petitioner AGP accounted for the entire domestic production of subject articles during the POI.
2. Locally produced clear and tinted float glass are like products to imported clear and tinted float glass.
3. Clear and tinted float glass were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the final year of the POI.
4. The domestic float glass industry suffered significant overall impairment in its condition in terms of loss of market share, inability to increase domestic sales proportionate to the growth in domestic demand, and substantial losses in operations during the ending year of the POI.
5. While there are other factors that contributed to the overall impairment of the condition of the domestic industry, imports in increased quantities were the dominant cause of aforesaid serious injury to the domestic float glass industry.

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 IRRs 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 casual 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 float glass. The measure shall be effective for three (3) years starting 13 October 2003, i.e., the date the provisional measure took effect.

11.1 Recommended Definitive Safeguard Measure: Tariff-Rate Quota

The Commission recommends a tariff rate quota as the form of the definitive safeguard measure. With this form of definitive measure, in-quota importations will be levied the regular tariff rate while out-quota importations will be levied the regular tariff 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 2.33% 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 19.

Table 19. Quota Allocations By Country

Country	Import Volume			In-Quota Allocation		
	(metric ton)			(metric ton)		
	1999	2000	2001	2004	2005	2006
Clear Float Glass (AHN Codes 7005.29.20 and 7005.29.90)						
TOTAL	10,846	10,094	14,789	11,910	12,208	12,513
PROC	175	3,220	2,000	1,798	1,843	1,889
Hong Kong	1	38	-	13	13	14
India	40	-	-	13	14	14
Indonesia	7,060	4,492	7,313	6,288	6,445	6,607
South Korea	586	-	1,200	595	610	625
Saudi Arabia	21	-	-	7	7	8
Singapore	-	30	1,179	403	413	423
South Africa	-	80	-	27	27	28
Thailand	2,964	2,172	3,065	2,734	2,802	2,872
USA	-	63	32	32	32	33
Tinted Float Glass (AHN Codes 7005.21.20 and 7005.21.90)						
TOTAL	5,681	2,940	2,796	3,806	3,901	3,998
PROC	172	1,181	206	520	533	546
India	1,302	285	937	841	863	884
Indonesia	2,830	814	723	1,456	1,492	1,530
Singapore	-	-	405	135	138	142
Taiwan	62	20	-	27	28	29
Thailand	1,297	620	507	808	828	849
USA	18	19	18	18	19	19

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

11.1.2 Specific Duties on Out-Quota Imports

In determining the amount of the definitive safeguard measure, the Commission made a distinction between clear and tinted float glass. This is because float glass imports vary by color and by country of origin and, in terms of prices, tinted float is more expensive than clear float.

Specific duties are calculated by comparing the weighted average landed cost of imports in 2002 against the weighted average domestic selling prices (ex-plant) of AGP for the same year. However, AGP's clear float glass domestic selling prices in 2002 were depressed due to low-priced imports and thereby considered as not in the ordinary course of trade. Thus, in computing for the specific duty, the Commission opted to compare the export price (FOB value) of clear float imports in 2002 vis-à-vis AGP's cost of production also in 2002. The Commission adjusted the export price of imports from non-ASEAN Member States to reflect the increase in the MFN tariff rate of clear float to 15% pursuant to E.O. 241.

On the other hand, as these were in the normal course of trade, AGP's average domestic selling prices for tinted float glass were used, with a 19% mark-up. These domestic prices were then compared with the 2002 landed costs of imported tinted float glass which were adjusted, except for those imports coming from ASEAN Member States, for the increase in the MFN tariff rate on tinted float to 15%.

For imports exceeding the in-quota allocations, the definitive safeguard measure shall be specific duties of ₱1,583/MT for clear float glass and ₱2,780/MT for tinted float glass.

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

11.1.3 Ad Valorem Equivalents of the Specific Duties

Although the proposed specific duties of ₱1,583/MT for clear float glass and ₱2,780/MT for tinted float glass shall be applied equally on all imports, regardless of source, the equivalent *ad valorem* rates will vary depending on the value of the shipment.

The specific duties on cheaper imported float glass will have higher *ad valorem* equivalents than that for higher-priced float glass (*Table 21*). Thus, the impact of the definitive safeguard measure on landed cost will be greater for lower-priced float glass imports.

Table 20. Ad Valorem Equivalents of the Specific Duties

Country	CIF/Dutiable Value Per Country* (Peso/MT)	Definitive Duty on Out-Quota Volume	
		Specific Duty (Peso/MT)	Ad Valorem Equivalent (%)
Clear Float Glass (AHTN Codes 7005.29.20 and 7005.29.90)			
PROC	14,212	1,583	11%
India	18,807	1,583	8%
Indonesia	11,281	1,583	14%
Singapore	12,615	1,583	13%
Thailand	13,646	1,583	12%
Weighted Average	13,396	1,583	12%
Tinted Float Glass (AHTN Codes 7005.21.20 and 7005.21.90)			
PROC	11,508	2,780	24%
India	14,155	2,780	20%
Indonesia	15,693	2,780	18%
Singapore	11,761	2,780	24%
Thailand	13,676	2,780	20%
Weighted Average	14,630	2,780	19%

* Annexes L & Q

11.1.4 Requirement of Certificate of Origin

All importers of float glass, regardless of port of exportation, are required to secure a Certificate of Country of Origin 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 the *De Minimis* Rule

The definitive safeguard measure shall not be applied to imports of clear float glass originating from Hong Kong, a developing country, whose volume of imports is found to be *de minimis*. In the event that imports of clear float glass originating from Hong Kong reach the 3% threshold, the definitive safeguard measure shall be applied on such imports.

The definitive safeguard measure shall not be applied to imports of tinted float glass originating from Taiwan and Thailand, developing countries, whose volumes of imports are found to be *de minimis*. In the event that imports of tinted float glass originating from Taiwan and Thailand collectively account for more than nine percent (9%) of total Philippine imports of tinted float 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 float glass for 2004. He shall conduct an annual review of the imports of float glass from developing countries and draw up the appropriate exemption lists for 2005 and 2006.

11.1.6 Notification to the WTO Committee on Safeguards

Rule 17 of the IRRs 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 Agreement on the CEPT Scheme for AFTA

Considering that float glass is covered under the CEPT Scheme, the Philippines is required to notify the AFTA Council pursuant to Article 6 of the Agreement and, as provided under Article 8, to initiate and provide adequate opportunity for consultation with the governments of the ASEAN Member States concerned, i.e., Indonesia, Singapore and Thailand, which may be affected by the application of the definitive safeguard measure on imports of float glass.

11.2 Review of the Definitive Safeguard Measure

Rule 15.6 of the IRRs to R.A. 8800 provides that: "*The decision imposing a 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.*"

On the other hand, Rule 16.1 of the same IRRs 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.”*

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 Float 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 clear and tinted float glass.
- Since the tariff-rate quota will allow the entry of significant volumes of float 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 float 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 a 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

Commissioner

GEORGE N. MANZANO
Commissioner