
1 TERMS OF REFERENCE

1.1 The Application for General Safeguard Measure

On 08 April 2003, the Department of Trade and Industry (DTI) accepted a properly documented application from Asahi Glass Philippines, Inc. (AGP) alleging that glass mirrors were being imported into the Philippines in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry within the meaning of Republic Act (R.A.) 8800, otherwise known as the "Safeguard Measures Act". The application sought the imposition of provisional and definitive safeguard measures on imports of glass mirrors.

1.2 The Preliminary Investigation

The Bureau of Import Services (BIS) of DTI initiated the preliminary investigation on 14 April 2003 with the publication of notices of initiation in the *Philippine Star* and the *Philippine Daily Inquirer* on 16 April 2003.

The preliminary investigation established that increased imports of glass mirrors 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 depressed prices. In view of the continuous increase in the volume of imports of glass mirrors, the imposition of a provisional safeguard measure was considered justifiable to prevent further injury to the local industry that would be difficult to repair.

In its Order dated 01 September 2003, DTI provided that a provisional safeguard measure in the form of a cash bond amounting to ₱3,560.00 per metric ton (MT) should be imposed on all importations of glass mirrors 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).

BOC issued CMO No. 24-2003, dated 13 October 2003, directing the implementation of the imposition of provisional safeguard measures on importation of glass mirrors (classified under HS Code 7009.91 00 and 7009.92 00, respectively) except on those originating from the developing countries covered by Rule 8.8 (*de minimis* rule) of the Implementing Rules and Regulations (IRR) of R.A. 8800.

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

2 SAFEGUARD ACTION AND THE ROLE OF THE COMMISSION

2.1 The Safeguard Measures Act of 2000

On 19 July 2000, R.A. 8800 (An Act Protecting Local Industries By Providing Safeguard Measures to be Undertaken In Response to Increased Imports and Providing Penalties for Violation Thereof) was signed into law and took effect on 09 August 2000, i.e., fifteen (15) days following its complete publication into two (2) newspapers of general circulation.

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

The Act provides for:

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

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

Prima Facie Determination

Upon acceptance of a properly documented petition, the DTI-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 (importers, domestic manufacturers, exporters, etc.).

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

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

Within three (3) calendar days from making its preliminary affirmative determination, DTI-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 Tariff 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 the same is urgent, in which case the Commission completes the investigation and submits the report within sixty (60) calendar days.

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

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

Decision

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

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

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

2.2 The World Trade Organization Agreement on Safeguards

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

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

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

“Article 6: Emergency Measures

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

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 glass mirror 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 IRR of R.A. 8800, the Commission made the following notifications during the course of its inquiry.

3.1.1 Commencement of Formal Investigation

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

3.1.2 Schedule of Public Consultations

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

3.2 Preliminary Conference

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

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

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

3.3 Staff Report

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

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

3.4 Public Consultations

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

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

In attendance were 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 Industrial Corporation; US-ASEAN Business Council; Embassy of Indonesia; Embassy of Korea; Embassy of Thailand; Department of Trade and Industry; and Ways and Means Committee, House of Representatives.

Among the importers, only Comglasco Corporation and Sun 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 in the formal investigation inspite of due notice.

3.5 Plant Visits/Verification of Data

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

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

Concerned importers did not reply to the request of the Commission for a plant visit/verification of data.

4 PARTICIPANT'S VIEWS

4.1 Submissions Received

The DTI endorsed the entire records of the safeguard measure application to the Commission. Interested parties were given fifteen (15) working 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 for the list of submissions).

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

4.2 The Domestic Industry's Case

AGP made the following allegations:

- Locally produced and imported glass mirrors 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 glass mirrors 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.
- There are no other material causes of injury since 1998 other than increased imports.

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 glass mirror that will sustain AGP's continued operation as it puts in place adjustment measures that will allow it to attain global competitiveness.

Adjustment Plan

Rule 4.1 of the IRR of R.A. 8800 defines adjustment plan as an *“action plan which a domestic industry is required to submit, that describes a set of quantified goals, specific plans, and timetables that a concerned industry commits to undertake in order to facilitate positive adjustment of the industry to import competition.”*

On 06 October 2003, AGP, pursuant to the directive contained in the Commission Order dated 03 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. Strengthened Manufacturing Capability
 - ✓ Cold repair of furnace
 - ✓ Implement line improvements and modernization of glass mirroring plant
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
 - ✓ Re-engineering of basic process
 - ✓ Re-training of work force
 - ✓ Culture change

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

4.3 The Opposing Case

Oppositors to the application for safeguard action, including glass mirror importers and exporters, and the governments of Indonesia, Korea, and the People's Republic of China, alleged that the criteria required for the imposition of safeguard action had not been met in the instant case and safeguard action was therefore not warranted. Their principal arguments in opposing AGP's petition were the following:

- Imported and local glass mirrors have different production process. Imported mirrors are double coated (reflective silver with tin coating and double coat of lacquer for anti-corrosion effects and protection against factors of mechanical stress) while the local mirrors are single coated (chemically treated with silver and copper). Single coated mirrors are susceptible to backing corrosions.

- Locally produced glass mirrors are chemically treated with silver and copper while imported mirrors are manufactured by a process that eliminates copper. Guardian Industries Corp. alleged that the imported mirrors are not "like or directly competitive products" to the local glass mirror products.

- Locally produced glass mirrors have generally poor quality, tend to develop black spots over time, have poor backing and easily corrode while imported mirrors from Thailand use the copper free manufacturing process and do not develop black spots. Imported

mirrors have double coat and are less prone to scratches and damage during handling, processing and fabrication; and cater to the high and furniture market and medium to high cost architectural installations.

- The quality of locally produced glass mirrors cannot withstand environmental hazards compared to its imported counterparts.

Guardian Industries Corp. submitted that, if a decision is taken to impose a definitive safeguard measure, ASEAN Member States be excluded from the imposition. It argued that such exclusion is provided under Article 6(1) of the Agreement on the CEPT Scheme for the AFTA and the WTO Agreement on Safeguards. It was further interposed 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

Glass mirrors are made from top-of-the-line float glass chemically treated with silver through automatic sprayers to ensure evenness of reflection. It is copper-coated to prevent peeling, and backed by double paint coatings oven-cured to maintain durability through the years.

Mirrors exude brilliant, distortion-free reflections. They are protectively sealed to prevent corrosion resulting from cyclic moisture and temperature changes.

5.1 The Domestic Product

AGP manufactures clear and colored glass mirrors. The clear glass mirrors have standard nominal thicknesses ranging from 2 mm to 6 mm with sizes of 1,220 x 915 mm to 3,050 mm x 2,440 mm. The colored glass mirrors, on the other hand, have several colors (bronze, gray and blue) with standard nominal thicknesses of 3 mm, 5 mm and 6 mm and sizes from 1,830 mm x 1,220 mm to 3,050 mm x 2,440 mm.

5.2 Government Tariff Policy

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

Table 1. Tariff Schedule

HDG.	AHTN subheading No.	DESCRIPTION	RATE OF DUTY (%)						
				1998	1999	2000	2001	2002	2003
70.09		Glass mirrors, whether or not framed, including rear-view mirrors.							
	7009.91. 00	-- Unframed	MFN	20	20	15	15	10	15 *
			CEPT	20	20	15	10	10	5
	7009.92. 00	-- Framed	MFN	20	20	15	15	10	15 *
			CEPT	20	20	15	10	10	5

Source of basic data: *Tariff Commission*

** per E.O. 241 effective 17 November 2003*

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

5.3 Market Participants

5.3.1 Domestic Producer

AGP is the sole manufacturer of glass mirror in the Philippines that accounts for 100% of total domestic production of the subject article.

AGP also imports glass mirrors. In 2001, the company undertook importation in order to augment its inventories because its furnace underwent hot repair for 35 days.

Table 2 shows the quantities of imports of AGP in 2001 and 2002.

Table 2. Imports of Glass Mirrors by AGP

YEAR	IMPORTS (MT)	% CHANGE	PRODUCTION (MT)	% SHARE OF IMPORTS TO PRODUCTION
2001	1,357.51		3,571.82	38.01
2002	761.42	(43.94)	3,379	22.53

Source of basic data: *Import Entries*

Relative to its glass mirrors production, AGP's imports of subject article represented 38% and 23% in 2001 and 2002, respectively. AGP's imports were 68% of total imports in 2001 and 22% in 2002.

Based on import entries, AGP imports were sourced from Indonesia and Japan.

5.3.1.1 Ownership Structure

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

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

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

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

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

5.3.1.2 Production Capacity

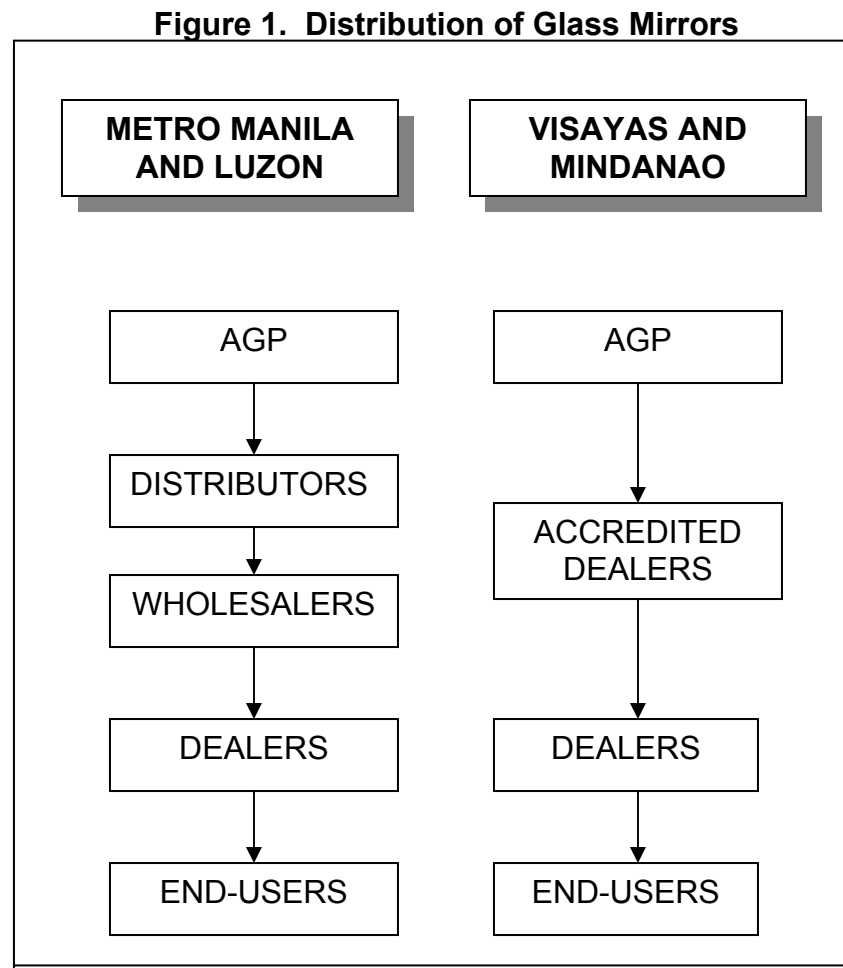
AGP's production capacity for glass mirrors is 8,182 MT per year. The plant operates on three (3) shifts, 24 hours a day.

The mirroring plant undergoes a 1-shift preventive maintenance every week to prevent machine trouble/abnormalities.

5.3.1.3 Distribution Channels

Demand for glass mirror varies in terms of the required size and thickness. Hence, AGP does not sell directly to end-users. Instead, the glass mirrors supplied by AGP is further cut, processed, assembled and installed at the distribution stage, then sold according to the specified demand.

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



The distribution route for the Metro Manila-Luzon area is from 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 the Visayas and Mindanao areas, the distribution chain is shorter. The distribution and delivery of goods from AGP's warehouse is 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	Distributors
Metro Manila and Luzon	2	3	8
Visayas	-	-	49
Mindanao	1	2	51
Total	3	5	108

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

5.3.2 Importers

Various companies import glass mirrors.

The top importers of glass mirrors are: San Francisco Mirror Corp, Malabon Mirror Factory, Comglasco, Eternal Industries Enterprises, Inc., Asia Glass and Times Glass, Inc. (Table 4). These importers accounted for 30%, 18%, 14%, and 7% of total imports of glass mirrors in 2000, 2001 and 2002, respectively.

Table 4. Imports of Glass Mirrors By Company

IMPORTERS	Import Volume (MT)			
	2000	2001	2002	TOTAL
A & F Glass Service	38.16	108.64	-	146.80
A A Aluminum Supply Inc.	54.91	19.25	57.37	131.53
Asia Glass Palace	254.40	115.76	160.87	531.03
Ayala Land Corp.	-	0.07	-	0.07
Bongga Villa	-	-	13.09	13.09
Co Ban Kiat Hardware, Inc.	0.02	-	-	0.02
Comglasco	276.79	307.23	449.84	1,033.86
Continuous Promotion	-	-	25.79	25.79
Demague Trading Corp.	0.12	-	-	0.12
Dimarco Ent.	16.9	-	-	16.9
DSG Sons Group	-	-	1.51	1.51
Dynamic Logistics Int'l. Corp.	-	-	115.89	115.89
E-Sy Corp.	10.78	-	9.48	20.26
Eternal Inds. Ent. Inc.	209.11	75.43	249.49	534.04
Focus Global, Inc.	-	0.10	0.03	0.13
G.D. Edison Lab	4.79	9.82	7.64	22.25
Hanjin Heavy Inds.	-	-	1.08	1.08
Hansxina Marketing	8.71	10.10	-	18.81
Hebron Int'l. Sales Corp.	9.77	-	-	9.77
Homeflair Products	3.2			3.2
Jicko Stanley Inc.	1.27	2.3	-	3.57
Kuri Ent.	9.36	-	-	9.36
Lexington Furniture Mfg.	9.99	-	-	9.99
Malabon Mirror Factory	114.75	375.30	873.85	1,363.90
Mary Kay	1.52	-	-	1.52
Manu Trading Int'l. Corp.	-	19.37	38.43	57.80
Modern General Merch.	1.43	-	0.63	2.06
Moondrops Gen. Mdsg.	-	10.89	-	10.89
Moon House Mktg.	10.90	21.30	24.39	56.59
Makati Shangrila	-	1.13	-	1.13
Norwich Mktg. Corp.	-	-	39.00	39.00
Peak Option Mktg.	-	6.86	-	6.86
Perfect Commercial	69.48	113.87	123.43	306.78
Philtech Glass Inds. Corp.	20.00	-	-	20.00
Powerfield Mktg. Corp.	23.59	-	-	23.59
San Francisco Mirror Corp.	741.62	706.14	868.20	2,315.96
Sen Wha Trading	6.00	-	-	6.00

IMPORTERS	2000	2001	2002	TOTAL
Silver Parts Commercial	-	-	7.96	7.96
Subways Marketing		0.03	-	0.03
Summit Toys & Sundries	0.81	-	-	0.81
S-Senses Corp.	-	-	61.87	61.87
Suyen Corp.	-	0.26	-	0.26
Tan sons Ent. Inc.	4.32	2.30	-	6.62
The Librans Premium Venture		26.00	-	26.00
Times Glass Inc.	117.42	188.81	224.64	530.87
Traders Furniture Mart	-	0.2	-	0.2
Trilux Lighting Inc.	-	0.02	-	0.02
Tucay Ent.	54.68	-	-	54.68
Unicare Trading	-	.007	0.003	0.01
Uniwide Sales Warehouse	-	-	43.01	43.01
Victori Mktg.	0.03	-	-	0.03
Vidasha Trading	-	-	2.05	2.05
Vision Asia Mktg.	-	-	0.45	0.45
TOTAL	2,075	2,121	3,400	7,596

Source of basic data: Import Entries

Note: excludes imports of AGP

Refer to Annexes H-J

5.3.3 Users

The principal users of glass mirrors are construction companies engaged in both private and public housing and building projects, the furniture-making industry, the appliance industry, the automotive industry as well as direct purchasers at the retail level.

6 DETERMINATION OF LIKE/DIRECTLY COMPETITIVE PRODUCT

Rule 9.4.(a) of the IRR 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 (e) defines “directly competitive products” as “*domestically-produced substitutable products.*”

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.*”

6.1 Product Under Consideration

The product under consideration, as identified in the application for safeguard measure, is glass mirrors (unframed and framed) falling under AHTN subheading Nos. 7009.91 00 and 7009 92 00, respectively.

6.2 Characteristics

6.2.1 Material Composition

A. Locally Produced Glass Mirrors

Local glass mirrors are made from top-of-the-line float glass chemically treated with silver through automatic sprayers to ensure evenness of reflection. These are copper-coated to prevent peeling, backed with double paint-coating oven cured to maintain durability through the years. Similar to the manufacturing process of producing float glass, the raw materials composition are silica sand, soda ash, dolomite, salt cake, feldspar, calumite, cobalt oxide, blue dust, sodium selente, sodium nitrate and nickel sulfate.

B. Imported Glass Mirrors

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

6.2.2 Physical Characteristics

A. Locally Produced Glass Mirrors

These are available in different thickness as described below:

Table 5A. Types and Specification of Local Glass Mirrors

Type	Standard Thickness	Maximum sizes		Average Weight	
		mm	inch	Kg/m 2	Lbs./100m2
Clear Glass Mirrors	2	1220 x 915	48 x 36	5	103
	3	1830 x 1220	72 x 48	7	144
	4	3050 x 2135	120 x 84	10	205
	5	3050 x 2135	120 x 84	12	246
	6	3050 x 2440	120 x 96	15	308
Glass Mirrors, Bronze, Gray and, Blue	3	1830 x 1220	72 x 48	7	144
	5	3050 x 2135	120 x 84	12	246
	6	3050 x 2440	120 x 96	15	308

Source of basic data: AGP

B. Imported Glass Mirrors

Based on the brochures submitted by Guardian Industries Nong Khae Co., Ltd., Thailand, Guardian mirrors undergo a “diamond back” two-coat mirror treatment that protects the glass mirrors against corrosion and chemical reactions.

Table 5B. Types and Specification of Imported Glass Mirrors

Type	Standard Thickness	Standard Sizes		Unit Weight
	mm	mm	Inches	(Kg/mm)
Ultra Mirror	4	2000 x 3210	78 x 126	10
	5	1219 x 1524		12
		1219 x 1828	48 x 72	
		1524 x 2133	60 x 84	
		1828 x 2133	72 x 84	
		1828 x 2428	72 x 96	
		2150 x 3210	84.6 x 126	
	6	2133 x 3048	84 x 120	15

Source of basic data: Guardian Industries Nong Khae Co., Ltd.

6.2.3 Product Standards on Glass Mirrors

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

6.3 Manufacturing Methods and Technology

There are different methods of producing glass mirrors. In the silvering method, a dilute solution of silver nitrate (mixed with a reducing solution) is used. The solution is poured evenly on to the surface of the glass after it has been properly cleaned. The reduction of the silver salts forms a durable and brilliant deposit of metallic silver. In the platinum deposition method, a compound of platinum chloride is brushed on to the glass and is then heated to give a very adherent coating of metal. The metal coating is given protective coatings, sometimes consisting of one or more coatings of varnish or an electrolytic deposit of copper.

6.4 Production Process

A. Locally Produced Glass Mirrors

Mirroring uses float glass of varying sizes and thickness as the basic material.

The glass mirror production process consists of the following steps:

✓ Glass preparation

The float glass is laid manually from a movable rack or glass crate to a tilting table where it is pushed into a conveyor, which transports it to the scrubbing and washing sections.

✓ Coat application

The glass is moved on to the silvering section where several chemical solutions are sprayed on one surface. Then copper is sprayed on top of the silver coating to protect the silver chemical.

✓ Paint application

Once the silver and copper coats are dried after going through the drying section, paint is applied using a paint coater, passing through an oven cure, the paint applied. Then the glass is conveyed to the cooling and final washing sections. To complete the process, the finished product is again unloaded from the main production line to the movable racks ready for rebutting or packing.

The mirror may go through either the beveling, etching, engraving or framing process after cutting to final sizes and shapes depending on the market requirements.

B. Imported Glass Mirrors

Imported glass mirror is produced from clear float glass. It is coated with a copper film and a silver film. Then, two layers of waterproof paint are evenly applied on the back of the flat glass to prevent early deterioration and discoloration. A well-produced glass mirror gives brilliant and perfect reflections that contribute greatly to the illusion of space and enclosure or rooms.

6.5 Uses

A. Locally Produced Glass Mirror

AGP's glass mirror is used for the following applications:

- ✓ Wall paneling for space extension/illusion
- ✓ Mirror tiles
- ✓ Decorative and aesthetic interior designs
- ✓ Full/half-body, facial looking glass
- ✓ Furniture applications

B. Imported Glass Mirror

Imported glass mirrors is used for the following applications:

- ✓ Covering for partitions
- ✓ Furniture
- ✓ Sliding door for cupboards
- ✓ Wall coverings
- ✓ Display case
- ✓ Bathrooms

6.6 Tariff Classification

Glass mirror, whether manufactured by AGP or imported from other countries, is classified under AHTN subheading No. 7009.91.00 for unframed mirrors and AHTN subheading No. Code 7009.92.00 for framed mirror.

The pertinent Harmonized System (HS) Explanatory Notes state that the heading includes mirror in sheets, whether or not further worked. It also covers shaped mirror of any size, for example, mirror for furniture, for interior decoration, for railway carriages, etc; toilet mirror (including hand or hanging mirror); pocket mirror. The mirror may be backed (with paperboard, fabric, etc.) or framed (with metal, wood, plastic, etc.) and the frame itself may be trimmed with other materials (fabrics, shells, mother of pearl, tortoise-shell, etc.). Mirror designed for placing on the floor or ground (e.g., cheval-glasses or swing-mirrors of the type used in tailors' fitting rooms or in footwear shops).

Mirror bearing printed illustration on one surface is also included provided it retains the essential character of mirror. However, once the printing is such as to preclude use as a mirror, this article is classifiable under heading 70.13 as decorative article of glass.

It should be noted, however, that mirror converted into part of furniture of Chapter 94 (e.g., wardrobe doors) is classified as an article of furniture.

The heading excludes, among others, optically worked glass mirror (Chapter 90), mirror combined with other elements and constituting toys, games or hunting or shooting requisites (e.g., lark mirrors under Chapter 95). Mirror of an age exceeding 100 years falls under AHTN subheading No. 97.06.

6.7 Findings

6.7.1 Material Composition

Local and foreign glass mirrors manufacturing companies use similar raw materials in processing glass mirrors, i.e., silica sand, soda ash, dolomite, salt cake, feldspar, calumite, cobalt oxide, blue dust, sodium selente, sodium nitrate and nickel sulfate.

6.7.2 Physical Characteristics

The physical appearance of local and imported glass mirrors exude brilliant, distortion-free reflections and is protectively sealed to guard against moisture and corrosion to withstand cyclic moisture and temperature changes.

The thicknesses and sizes of locally produced glass mirror are more or less similar to the imported counterpart. The more common sizes are 1,220 x 915 mm for local glass mirror and 2,000 x 3,210 mm for the imported glass mirror.

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

6.7.3 Manufacturing Method

Locally produced and imported glass mirrors adopt the universal method for the manufacture of high-quality glass mirror.

6.7.4 End Use

Local and imported glass mirrors have similar applications, e.g., wardrobe door mirror, bathroom mirror, furniture application, projection screen, display case, decorative wall and ceiling/pillar cover.

6.8 Conclusion

In view of the foregoing, the Commission finds that, in accordance with R.A. 8800, locally produced unframed glass mirror is a like product to imported unframed glass mirror. The locally produced and imported glass mirrors are made from the same raw materials, use similar manufacturing technology, conform to recognized product standards, fall under the same tariff classification, and have the same end-use/application.

On the other hand, the imported framed glass mirror is directly competitive with the locally produced unframed mirror since, except for the framing, they are made from the same raw materials, use similar manufacturing technology, conform to recognized product standards, and have the same end-use and function.

7 DETERMINATION OF INCREASED VOLUME OF IMPORTS

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

7.1 Period of Investigation

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

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

7.2 Increased Imports in Absolute Terms

Import data on glass mirrors were gathered from import entries submitted by AGP and the Commission’s own copies of import entries. Import volumes indicated in the import entries were in metric tons (MT). Data were culled from all import entries that specifically referred to the subject articles under AHTN subheading Nos. 7009.91.00 and 7009.92.00. Excluded were imports of AGP.

Table 6. Imports : Glass Mirrors

Year	Imports (MT)	Actual Increase/ (Decrease)	Growth Rate (%)
1998	1,040	-	-
1999	2,001	961	92.40
2000	2,075	74	3.70
2001	2,121	46	2.22
2002	3,400	1,279	60.30

Source of basic data: Import Entries

Note: Excludes imports of AGP

Imports of glass mirrors during the POI increased continuously from 1,040 MT in 1998 to 3,400 MT in 2002 (*Table 6*).

Imports significantly increased to 2,001 MT from 1998 to 1999 by 92% and continuously increased by 4% (2,075 MT) and by 2% (2,121 MT) in 2000 and 2001, respectively.

In 2002, imports ballooned and exceeded the previous year's level by 60% i.e., from 2,121 MT to 3,400 MT.

The 2002 import level was the highest over the POI and was more than double the initial import volume in 1998.

The major sources of imports were Indonesia, Thailand, China and Australia. Indonesia accounted for 45% of total imports during the POI.

7.3 Increase in Volume of Imports Relative to Domestic Production

Imports of glass mirrors represented 24% of total domestic glass mirror production in 1998 (Table 7). Share of imports continuously increased to 37% in 1999, 39% in 2000, and 59% in 2001. Share of imports in 2002 was already at an alarming rate of 102% vis-à-vis domestic production.

Table 7. Share of Imports to Domestic Production: Glass Mirrors

Year	Imports (MT) ¹	Growth Rates (%)	Domestic Production (MT) ²	Growth Rates (%)	% Share of Imports to Total Production
1998	1,040	-	4,267	-	24.37
1999	2,001	92.40	5,347	25.31	37.42
2000	2,075	3.70	5,330	(0.32)	38.93
2001	2,121	2.22	3,572	(32.98)	59.38
2002	3,400	60.30	3,330	(6.77)	102.10

Source of basic data: ¹ Import Entries

Note: Excludes imports of AGP

² AGP

Although imports increased in 1999 by 92%, the Commission considers that the significant increase in imports commenced in 2002 reaching to 3,400 MT from the previous year, which amount is more than half the 1998 level.

7.4 Findings

Based on the annual levels of imports from 1998 to 2002, a significant increase in imports of glass mirrors occurred in 2002 when imports expanded by 60.30% 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.

The movements in the shares of imports relative to domestic production over the POI confirmed a sharp increase in imports of glass mirrors in 2002. Starting 1999, the share of imports increased by 53.55%. Share of imports continuously grew in 2000 and 2001. It was in 2002 that the share of imports was already at an alarming rate of 102% vis-à-vis domestic production.

7.5 Unforeseen Developments Resulting in Increased Importation

The construction industry was among the Philippine's 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.

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 glass mirror from Asian sources entered the Philippine market in significant quantities starting in 1999, which surged to their highest level in 2002 at more than 3,000 MT.

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

7.6 Conclusion

Based on the foregoing, the Commission finds that, in accordance with R.A. 8800, glass mirrors 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 (2002), sharp and significant.

7.7 *De Minimis* Import Volumes from Developing Countries

7.7.1 Major Country Suppliers of Imported Glass Mirrors

Based on import entries supplied by AGP and the Commission's own copies of import entries, the major source countries of glass mirrors were Indonesia, PROC and Thailand in the last three (3) years (*Table 8*).

Indonesia accounted for the highest percentage share of imported glass mirrors during the POI.

PROC was a steady source of imported glass mirrors during the last 3 years of the POI. From 2000 to 2002, the share of imported glass mirrors from PROC increased consistently to 16%, 25%, and 43%, respectively.

Thailand's share to total Philippine imports increased from 0.97% in 2000 to 4% in 2001 and further to 7% in 2002.

Table 8 : Percentage Share of Imports by Country

	2000		2001		2002	
	Imports (MT)	% Share	Imports (MT)	% Share	Imports (MT)	% Share
Australia	21	1.01	.007	0.001	0.003	0.001
France	-	-	0.4243	0.02	-	-
Hongkong	31	1.49	39	1.84	23	0.68
Indonesia	783	37.73	511	24.09	1,376	40.47
Italy	-	-	-	-	-	-
Korea	54	2.60	126	5.94	-	-
Malaysia	4	0.19	2	0.047	-	-
PROC	312	15.04	562	26.50	1,421	41.79
Singapore	0.0238	0.001				
S. Africa	430	20.72	-	-	-	-
Spain	0.027	0.001	20	0.94	-	-
Taiwan	416	20.05	772	36.40	322	9.47
Thailand	19	0.93	88	4.15	256	7.53
USA	5	0.24	0.2026	-	1	0.03
Total Imports	2,075	100	2,121	100	3,400	100

Source of basic data: Import Entries

Note: Excludes imports of AGP

7.7.2 De Minimis Import Volume

Rule 13.1(d) of the IRR 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.”

The volume of imports from Hongkong, a developing country, was found to be *de minimis* (Table 9).

Table 9. Developing Country with De Minimis Import Volume

Exporting Country	Year 2002 Import Volume (MT)	Share to Total Imports	Criteria for import volume Exemption
Hongkong	23	0.68	< 3%
Grand Total	3,400		

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

8 DETERMINATION OF SERIOUS INJURY

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

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

8.1 Domestic Industry Requirement

As the only manufacturer of glass mirror in the Philippines, AGP accounted for 100% of total domestic production of the subject article from 1998 to 2002. This satisfies Section 4(f) of RA 8800 which, for purposes of determining injury and threat thereof, defines “domestic industry” as *“the domestic producers as a whole, of like or directly competitive products manufactured or produced in the Philippines, or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products.”*

8.2 Serious Injury factors

8.2.1 Market Share

Total apparent consumption of glass mirror amounted to 5,324 MT in 1998. It rose to 6,821 MT in 1999 and went up further to 7,206 MT in 2000. In 2001, apparent consumption fell by 21% from the previous year's level. It however bounced back in 2002.

Table 10 . Market Shares: Glass Mirrors

Year	Domestic Sales (MT)	Imports (MT)	Total Apparent Consumption (MT)	Market Share (%)	
				Domestic Industry	Imports
1998	4,284	1,040	5,324	80.46	19.53
1999	4,820	2,001	6,821	70.66	29.34
2000	5,131	2,075	7,206	71.20	28.80
2001	3,563	2,121	5,684	62.68	37.32
2002	3,579	3,400	6,979	51.28	48.72

Source of basic data: AGP and import entries

Note: excludes imports of AGP

The Philippine glass mirror market was mainly supplied by the local glass industry from 1998 to 2001. The industry enjoyed an average market share of 71% whereas imports got the remaining 29% share. It was in 2002 when the market share of AGP significantly declined to 51% when imports cornered a high 49% share from a low 20% share in 1998.

The magnitude of the decline in the domestic market share of AGP, from an average of 71% in 1998-2001 to 51% in 2002 and the consequent erosion of its competitive position constitute serious impairment of its overall market condition.

8.2.2 Production, Sales and Inventory Levels

In the evaluation of AGP's production data, the Commission considered production as constituting total output regardless of size, quality and market. Thus, the Commission did not distinguish between production by size, quality, production for the domestic market, and production for export sales.

AGP's actual production and sales data were measured in converted cases (CCs) which were equivalent to 22 CC's per MT in weight.

Table 11. Production, Sales and Inventory : Glass Mirrors

Year	Production (MT)	% Change	Domestic Sales (MT)	% Change	Inventory (MT)	% Change
1998	4,267	-	4,284	-	960	-
1999	5,347	25.31	4,820	12.51	990	3.12
2000	5,330	(0.32)	5,131	6.45	1,459	47.37
2001	3,572	(32.98)	3,563	(30.56)	681	(53.32)
2002	3,330	(6.77)	3,579	0.45	420	(38.32)

Source of basic data: AGP

AGP used only one furnace, i.e., Furnace No. 5 (float glass line) for mirroring. On the average, 5% to 6% of float glass production was used as raw material for glass mirror.

From 4,000 MT in 1998, AGP's production of glass mirror rose to some 5,000 MT in 1999 and 2000 (*Table 11*). In 2001, actual production significantly declined by 33% from the previous year's level and continued to go down in 2002. The decline in production coincided with the increase in imports.

From 1998 level, volume of domestic sales increased in 1999 and in 2000. In 2001 however, sales volume significantly dropped by 31%. In 2002, domestic sales increased by 0.45% from the 2001 level but were 24% lower than the base year (1998) and 2000 levels (pre-surge). Domestic sales were unable to bounce back to their 1998 to 2000 levels as imports increased significantly.

Relative to demand, there was a considerable lag in the growth of local production and sales indicating serious impairment to the domestic industry.

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 and excludes AGP's imports of glass mirrors. The finished goods inventory for glass mirrors are net of breakages, own-use, adjustments (difference between physical count and accounting record) and inclusive of those transferred from recutting / washing.

In 1999, inventory increased by 3% from the previous year's level. The increase was much bigger in 2000 when inventory rose by 47%. The inventory increases in 1999 and 2000 though were still within the normal inventory level that was equivalent to 2 1/2 months of domestic sales. The inventory however, dropped to 681 MT or by 53% in 2001. In 2002, the decrease was 38% than the previous year's level. The industry managed to keep the inventory to its normal level to avert further losses due to increased imports.

8.2.3 Capacity Utilization

AGP's annual rated capacity for glass mirror production is 8,182 MT. It can operate on 3 shifts for 8 to 24 hours a day. Due to market contraction however, AGP reduced its operation to only one shift with a preventive maintenance conducted once a week to minimize breakdown.

Table 12. Capacity Utilization : Glass Mirrors

Year	Rated Capacity (MT)	Production (MT)	Capacity Utilization (%)	% Change
1998	8,182	4,267	52.15	--
1999	8,182	5,347	65.35	25.31
2000	8,182	5,330	65.14	(0.32)
2001	8,182	3,572	43.65	(32.99)
2002	8,182	3,330	40.70	(6.76)

Source of basic data: AGP

In 1998, AGP utilized 52% of its rated capacity. The utilization rate increased to 65.35% in 1999 which slightly decreased to 65.14% in 2000. Capacity utilization however significantly dropped to 43.65% in 2001. It further declined to 40.70% in 2002 notwithstanding the 22.78% increase in demand.

As shown in Tables 11 and 12, lower production in 2001 and 2002 led to corresponding reductions in both inventory and capacity utilization levels.

Capacity utilization could have grown with the increase in demand, had imports not gotten a big slice of the market. The surge of imports contributed to the underutilization of capacity resulting in serious impairment of the glass mirror industry's overall condition.

8.2.4 Profitability

The comparative financial performance of AGP for years 1998 to 2002 is presented below:

Table 13. Financial Performance/Profitability (in million pesos)

	1998	1999	2000	2001	2002
Sales	121	130	166	127	111
Less: Cost of Sales	110	102	95	108	104
Gross Profit	11	29	71	20	7
Less: Operating Expenses	4	4	4	5	12
Operating Income (Loss)	7	25	67	14	(5)
Less: Interest Expenses	8	9	14	11	3
Add/(Less): Other Income/(Expense)	1	--	(5)	--	(3)
Net Profit/(Loss)	(nil)	16	48	3	(11)

Source of basic data: Audited financial statements of AGP

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

During the first three (3) years of the POI, AGP generated income from operations ranging from ₱7M to a high ₱67M. In 2001 when imports started to increase, AGP's income from operations decreased significantly to ₱14M. The decrease in income could be attributed to the 23% reduction of net sales i.e., from ₱166M in 2000 to ₱127M in 2001.

In 2002 when glass mirrors arrived in significantly increased quantities, AGP's response was to reduce, as a pricing strategy, its selling prices in an (unsuccessful) attempt to preserve its market share. Along with high operating expenses, high cost of sales, and the decline in sales revenue and volume, AGP's recourse to import parity pricing resulted in a ₱5M loss for the first time since 1998.

Return on Sales

Table 14. Return on Sales

Year	Income (Loss) from Operations (million Pesos)	Sales Revenues (million pesos)	Return on Sales (%)
1998	7	121	5.78
1999	25	130	19.23
2000	67	166	40.36
2001	14	127	11.02
2002	(5)	111	(4.50)

Source of basic data: AGP

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

Return on sales in 1998 was at 6%. In 1999, rate of return increased by 19% and further by 40% in 2000 which resulted in an operating income of P25 million and P67 million, respectively. In 2001, return on sales significantly dropped by 11% and income from operations went down to P14 million.

When imports surged in 2002, the loss from operations of P5M resulted in a negative return on sales of 4.5%. This means that for every peso sale of glass mirror, AGP incurred a 4-centavo loss.

Price Trends

**Table 15. Landed Cost of Imports vis-à-vis Domestic Selling Price
(Pesos/MT)**

Year	Importers ***				Weighted Average Landed Cost*	Domestic Selling Price **
	Taiwan	China	Indonesia	Thailand		
1998	--	23,450	26,870	22,260	24,638	Confidential
1999	--	25,300	26,600	19,490	23,710	Confidential
2000	25,040	26,120	23,870	30,740	22,223	Confidential
2001	25,160	26,880	25,940	25,890	26,807	Confidential
2002	19,120	23,900	26,690	26,060	25,203	Confidential

Source of basic data : ** AGP Ave. Selling Price (ex-plant)

* Average landed cost w/o vat from country of origin

*** Import entries

Refer to Annexes F to J

The average landed costs of imported glass mirrors from Taiwan, China, Indonesia and Thailand during the POI were consistently below AGP's average domestic selling prices (ex-plant).

AGP's prices were substantially influenced by the prices of the top four (4) source countries of imported glass mirrors. Thus, AGP was forced to reduce its price in 2002 in order to compete with the low landed costs of imports and at the same time maintain its market position.

8.2.5 Employment

Table 16. Labor Force

Year	Number of Workers	% Change
1998	35	-
1999	34	(3)
2000	34	-
2001	27	(21)
2002	26	(4)

Source of basic data: AGP

The number of workers in AGP's glass mirroring operations steadily declined over the POI, from 35 workers in 1998 to 26 workers in 2002 (Table 16).

In 1999, there was a 3% reduction in workforce in the glass mirroring line from the previous year's level, i.e. from 35 to 34 workers. The employment in 2000 remained at the 1999 level. When imports increased in 2001, 7 workers were retrenched representing a 21% reduction in employment. A further decrease by 4% or one (1) worker from the previous year's level was observed in 2002.

Decline in AGP's employment in 2002, is insignificant as to constitute serious impairment.

8.2.6 Productivity

Table 17. Productivity

Year	Production (MT)	Number of Employees	Productivity (MT/Number of Employees)	% Change
1998	4,267	35	122	-
1999	5,347	34	157	29
2000	5,330	34	157	-
2001	3,572	27	132	(16)
2002	3,330	26	128	(3)

Source of basic data: AGP

For the years 1998 to 2002, labor productivity was measured by dividing annual production volume of glass mirror by the number of workers directly involved in production.

Productivity exhibited an increasing trend from 1998 to 2000. In 1999, productivity increased by 29% due to a decline in employment by 3%.

It was observed that beginning 2001 up to December 2002, productivity declined. A 16% decline in productivity was recorded in 2001 because of the 33% decline in production. In 2002, a reduction in productivity by 3% was noted due to the 7% decline in production.

The reduced productivity during the period of increased importation supports the earlier findings of serious impairment in the local industry's production and capacity utilization.

8.3 Conclusion

The Commission, in accordance with R.A. 8800, finds that the domestic glass mirror industry has suffered significant impairment in its overall market position, production and sales, capacity utilization, profitability, and productivity.

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 significant increase in imports in 2002, the industry dominated the market with an average market share of 71%. During the year of increased imports, the average share fell to 51% in 2002. The decline in the market share of the domestic industry and the erosion of its competitive position are directly attributable to the significant increase in imports in 2002.

9.1.2 Production and Sales

From an increase of 25% in 1999, production dropped in 2001 and 2002 by an average of 20%. Similarly, sales declined to its lowest levels in 2001 and 2002.

Moreover, relative to the 23% increase in demand in 2002, there was considerable lag in the growth of local production and sales indicating serious impairment to the local industry.

The reduction in production and the weak growth of sales, relative to the increase in demand, can be directly attributed to the increased importation in 2002.

9.1.3 Capacity Utilization

A significant decline in AGP's capacity utilization occurred in 2001 and 2002. The increased importation in 2002 contributed to the underutilization of capacity resulting in serious impairment of the industry's overall condition in 2002.

9.1.4 Profitability

From 1998 to 2001, AGP generated income from operations. The surge of cheap imports put pressure on AGP to adopt import parity pricing to preserve its domestic sales volume. This led to an operating loss of ₱ 5M in 2002.

9.1.5 Employment

Compared to 1998, total employment was reduced by 3% in 1999. In 2001, when increased imports were observed, 7 workers were retrenched representing a 21% reduction in employment. AGP's employment figures covering January to December 2002, indicated a 4% or one (1) worker decline as compared to the previous year.

Decline in employment in 2002 is attributable to AGP's effort to reduce costs.

9.1.6 Productivity

Despite the continuous retrenchment in its workforce, the industry's productivity declined substantially in 2001 and 2002 because of the reduced production.

Increased imports seriously impaired and affected AGP's productivity.

9.2 Other Factors

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

9.2.1 Interest Expense / Foreign Currency Losses

Interest expenses and foreign exchange loss in 2002 contributed to AGP's net deficit. Interest expense though decreased by 73% from ₱11M in 2001 to ₱3M in 2002.

Foreign exchange losses were a result of the depreciation of the peso from ₱51- ₱54 to \$1 (Annex E).

Interest expense and foreign exchange losses, while contributory to the overall impairment in profitability of the domestic industry, were not however related to increased imports.

9.3 Conclusion

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

10 CONCLUSION

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

1. The output of the applicant (AGP) constitutes a major proportion of the total domestic production of glass mirrors.
2. Locally produced unframed glass mirrors are “like products” to imported unframed glass mirrors. On the other hand, imported framed glass mirrors are “directly competitive” with the locally produced framed mirrors.
3. Glass mirrors were imported into the Philippines in significantly increased quantities, both in absolute terms and relative to domestic production, during the final year of the POI.
4. The industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; inability to increase production and sales volume despite the increase in demand; underutilization of capacity; substantial loss in operations; and decline in productivity.
5. While there are might be other factors which contributed to the overall impairment in the position of the domestic industry, cheap imports in increased quantities were the dominant cause of serious injury to the domestic glass mirror 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 IRR to R.A. 8800 provides that “the general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports. Provided, however, That when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury”.

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

The existence of a causal link between the increased imports of the product under consideration and serious injury to the domestic industry having been established, the Commission hereby recommends the appropriate definitive general safeguard measure to be imposed on imports of glass mirrors. 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

11.1.1 Tariff-Rate Quota

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

11.1.2 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 the historical growth of the glass mirror market, which expanded by an average of approximately 4.5% annually during the base period, allocation of in-quota volumes for the succeeding years is proportionately increased by such rate as presented in Table 18.

Table 18. Glass Mirror - Quota Allocation

Country	Import Volume (metric tons)			In-Quota Allocation per Country of Origin (metric tons)		
	1999	2000	2001	2004	2005	2006
TOTAL	2001	2075	2121	2066	2159	2256
China	151	312	562	342	357	373
Indonesia	877	783	511	724	756	790
Taiwan	61	416	772	416	435	455
Thailand	470	19	88	192	201	210
Malaysia	57	4	2	21	22	23
S. Africa	311	430	0	247	258	270
Korea	0	54	126	60	62	65
U. S.	10	5	0.202	5	5	5
Australia	48	21	0.007	23	24	25
Spain	0.194	0.027	20	7	7	7

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

11.1.3 Specific Duty on Out-Quota Imports

For imports exceeding the in-quota allocation, the definitive safeguard measure shall be a specific duty of ₱2,864 per MT. The specific duty was computed by comparing the weighted average landed cost of imports in 2002 vis-à-vis the weighted average domestic selling prices (ex-plant) of AGP's of the same year. The weighted average landed costs were adjusted (except those from ASEAN member countries) for the increase in the tariff rate on glass mirrors to 15% effective November 2003 (from 10% in 2002).

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

11.1.4 Ad Valorem Equivalents of the Specific Duty

The recommended specific duty of ₱2,864 per MT shall be applied equally on all imports, regardless of source. The equivalent ad valorem rate will however vary depending on the value of each shipment.

The specific duty on cheaper imported glass mirrors will have a higher ad valorem equivalent than that for higher-priced glass mirrors (Table 20). Thus, the impact on the landed cost of definitive measure will be greater for lower-priced imported glass mirrors.

Table 20. Equivalent *Ad Valorem* Duty of Definitive Measure Imposed on Specific Duty Imports of Glass Mirrors (Unframed and Framed) from Major Suppliers

COUNTRY	CIF/Dutiable Value per Country (₱/MT)	Definitive Duty on Out-Quota	
		Specific Duty (₱ /MT)	Ad Valorem Equivalent (%)
Taiwan	20,038	2,864	14%
China	21,370	2,864	13%
Thailand	23,274	2,864	12%
Indonesia	23,916	2,864	12%
Australia	1,194,543	2,864	0.24%
U.S.A.	168,034	2,864	2%
Total Weighted Average	22,541	2,864	13%

11.1.5 Requirement of Certificate of Origin

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

11.1.6 Application of the *De Minimis* Rule

The definitive safeguard measure shall not be applied to imports of glass mirror originating from Hongkong, a developing country, whose volume of imports is found to be *de minimis*.

In the event that imports of glass mirror originating from Hongkong reach the 3% threshold, 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 glass mirror for 2004. He shall conduct an annual review of the imports of glass mirror from developing countries and draw up the appropriate exemption lists for 2005 and 2006.

11.1.7 Notification to the WTO Committee on Safeguards

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

- (a) initiating an action relating to serious injury or threat thereof and the reasons for it;
- (b) adopting a provisional general safeguard measure following a positive preliminary determination; and
- (c) applying or extending a definitive general safeguard measure following a positive final determination”.

11.1.8 Articles 6 and 8 of the ASEAN-CEPT Agreement

Considering that glass mirror is covered by the ASEAN-CEPT Agreement, 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 countries concerned, i.e., Indonesia and Thailand, which may be affected by the application of the definitive safeguard measure on imports.

11.2 Review of the Definitive Safeguard Measure

Rule 15.6 of the IRR to R.A. 8800 provides that: *“The decision imposing general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity. The industry benefiting from the application of a general safeguard measure shall be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefiting industry fails to show any improvement, as may be determined by the Secretary”.*

Rule 16.1 of the same IRR to R.A. 8800 provides that: *“So long as any action taken under Rule 13 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.”*

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 Glass Mirror 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 glass mirror.
- Since the tariff-rate quota will allow the entry of significant volumes of glass mirror 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 glass mirror 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