

WORLD TRADE ORGANIZATION

G/SG/N/8/PHL/4/Suppl.1
G/SG/N/10/PHL/4
G/SG/N/11/PHL/4/Suppl.1
26 May 2004
(04-2263)

Committee on Safeguards

Original: English

**NOTIFICATION UNDER ARTICLE 12.1(b) OF THE
AGREEMENT ON SAFEGUARDS ON FINDING
A SERIOUS INJURY OR THREAT THEREOF
CAUSED BY INCREASED IMPORTS**

**NOTIFICATION PURSUANT TO ARTICLE 12.1(c)
OF THE AGREEMENT ON SAFEGUARDS**

**NOTIFICATION PURSUANT TO ARTICLE 9, FOOTNOTE 2,
OF THE AGREEMENT ON SAFEGUARDS**

PHILIPPINES

(Figured Glass)

The following communication, dated 24 May 2004, is being circulated at the request of the Delegation of the Philippines.

Further to the Philippine notification G/SG/N/7/PHL/4, G/SG/N/8/PHL/4, and G/SG/N/11/PHL/4 circulated on 30 September 2003, and pursuant to Article 12.1(b) and 12.1(c) and Article 9, Footnote 2, of the Agreement on Safeguards, the Philippines notifies the Committee on Safeguards that an affirmative finding has been made that increased imports of figured glass have caused serious injury to the domestic industry, and a definitive safeguard duty in the following amounts, in Philippine Pesos per metric ton, have been imposed on this product: 2,655 for the first year; 2,520 for the second year; and 2,394 for the third year.

A copy of the Order implementing the measure is enclosed.

**IN THE MATTER OF THE APPLICATION FOR GENERAL SAFEGUARD
MEASURES AGAINST THE IMPORTATION OF FIGURED GLASS
FROM VARIOUS COUNTRIES**

(Safeguard Investigation No. 01-2003)

**ASAHI GLASS PHILIPPINES, INC. (AGP)
Protestant**

ORDER

On 30 March 2004, the Department of Trade and Industry received the Tariff Commission's Formal Investigation Report on the application for general safeguard measure against the importation of figured glass (HS Code 7003.1290 now AHTN Nos. 7003.1220 and 7003.1290 and HS Code 7003.1990 now AHTN Nos. 7003.1920 and 7003.1990) from various countries.

The Commission concluded that, in accordance with RA 8800 and the WTO Agreement:

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

The existence of a causal link between the increased imports of figured glass and serious injury to the domestic industry having been established, the Commission recommended the imposition of definitive general safeguard measures in the form of tariff-rate quota and specific duty to be imposed on imports of figured glass. The measure shall be effective for three (3) years starting 13 October 2003, i.e. the date the provisional measure took effect.

The current inquiry was conducted in accordance with the requirements of the Safeguard Measures Act and the procedures prescribed by the WTO Agreement on Safeguards and Article XIX of GATT 1994, i.e. determination of existence of unforeseen developments and effect of obligations, including tariff concessions which led to the increased imports and resulting injury to the local industry. Although, these circumstances need not be demonstrated for the reason that figured glass is not the subject of any Philippine obligation or tariff concession under the WTO Agreement, current inquiry was governed by the national legislation (RA8800) and the terms and conditions of the Agreement on Safeguard Measures.

AGP was affected by the slow down in demand for glass products due to the excess capacity within the Asian region. Such excess regional supply found its way into smaller markets like the Philippines. The increased cheap imports in significant quantities from Asian sources consequently eroded the local industry's market share. Moreover, the MFN tariff rate of the Philippines is found to be lower and has declined at a faster rate than its neighbours which made the Philippine market more attractive to imports. The increased imports is recent, sharp and significant. These circumstances comprised the unforeseen development under Article XIX of GATT 1994.

Section 5 of RA 8800 states:

“The Secretary shall apply a general safeguard measure upon a positive final determination of the Commission that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest.”

Accordingly, the DTI has reviewed the Commission's findings and recommendations and has established that the application of general safeguard measures shall be in the public interest.

IN VIEW THEREOF, and in accordance with Section 13 of RA 8800, the DTI hereby orders the imposition of a definitive general safeguard duty in the amount of ₱2,655/MT for the first year of its implementation. Section 15(3) of RA 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”**. Thus, the definitive safeguard duty shall be at ₱ 2,520/MT for the second year and ₱2,394/MT for the third year of its implementation. Considering that the TC findings indicated that the major cause of injury to the local industry are the cheap priced imports from the major source countries, the amount of the definitive general safeguard duty were computed to a level that will provide adequate protection to the domestic industry while it is undertaking the necessary adjustment measures to achieve efficiency. The first year of implementation of the definitive general safeguard measure shall include the period in which the provisional safeguard duty took effect i.e. 13 October 2003, the date of the issuance of Customs Memorandum Order No. 24-2003. The measure shall be effective from the date of the issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) or 15 days after the publication of this Order in two (2) newspapers of general circulation, whichever comes earlier.

Pursuant to Section 13 of RA8800 and Rule 13.1.d of its IRR, **“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 per cent (3%): Provided, however, that developing countries with less than three per cent (3%) share collectively account for not more than nine per cent (9%) of the total Philippine imports of the product concerned”**, the countries listed in Annex A are excluded from the imposition of the definitive general safeguard measure on figured glass. DTI drew up this list based on the import statistics for 2003. Imports in 2003 from Taiwan, Korea and Hong Kong, developing countries which are regular sources of Philippine imports of figured glass, were found to be *de minimis* or below the 3 per cent threshold. In the event that imports originating from said countries individually reach the 3 per cent threshold or collectively account for more than 9 per cent of the total Philippine imports, the definitive safeguard measure shall be applied on such imports. DTI shall conduct an annual review of the Philippine imports of figured glass and draw up the appropriate exemption lists for 2005 and 2006.

As provided further under Section 13 of RA 8800 and its IRR, all cash bonds that may have been imposed on shipments originating from countries listed in Annex A and which entered in or are withdrawn from warehouses in the Philippines for consumption starting 13 October 2003, the date of the effectivity of CMO 24-2003, shall be immediately returned to the concerned importer. Rule 13.3.c of the IRR of RA 8800 also provides that: **“In case a cash bond has been filed, the same shall be applied to the safeguard duty assessed. In case of a negative finding or if the cash bond is in excess of the definitive safeguard duty assessed, the remainder shall be immediately returned to the importer within ten (10) calendar days from the date a final decision has been made: Provided, that no interest shall be payable by the government on the amount to be returned”**.

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

The notification and consultation requirements of Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with.

Imports originating from ASEAN Member states shall be governed by the provisions of Articles 6 and 8 of the Agreement on the CEPT Scheme.

The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Rules 15 and 16 of RA 8800. Applicant AGP is also directed to comply with its adjustment plan of 3 October 2003.

Let this Order be published in two (2) newspapers of general circulation and let individual notices be sent to all interested parties including the country members concerned.

SO ORDERED

CESAR V. PURISIMA
Secretary

14 April 2004

ANNEX A

LIST OF DEVELOPING COUNTRIES EXCLUDED FROM THE IMPOSITION OF DEFINITIVE SAFEGUARD MEASURE ON FIGURED GLASS

East & Southern Africa	West Africa	North Africa	South Asia
Angola Botswana Burundi Comoros Congo. Dem. Rep. Djibouti Eritrea Ethiopia Kenya Lesotho Madagascar Malawi Mauritius Mozambique Namibia Reunion Rwanda Seychelles Somalia Sudan Swaziland Tanzania Uganda Zambia Zimbabwe	Benin Burkina Faso Cameroon Cape Verde Central African Rep. Chad Congo, Rep. Cote d'Ivoire Equatorial Guinea Gabon Gambia, The Ghana Guinea Guinea, Bissau Liberia Mali Mauritania Niger Nigeria Sao Tome & Principe Senegal Sierra Leone Togo	Algeria Egypt, Arab Rep. Libya Morocco Tunisia	Afghanistan Bangladesh Bhutan British Indian Ocean Territory East Timor India Maldives Nepal Pakistan Sri Lanka

Europe & Central Asia	Middle East	Americas	East Asia & Pacific
Albania Armenia Azerbaijan Belarus Bosnia & Herzegovina Bulgaria Croatia Cyprus Czech Republic Estonia Georgia Greenland Hungary Kazakhstan Kyrgyz Republic Latvia Lithuania Macedonia, FYR Malta Moldova Poland Romania Russian Federation Slovakia Slovenia Tajikistan Turkey Turkmenistan Ukraine Uzbekistan Yugoslavia, Fed. Rep.	Bahrain Iran, Islamic Rep. Iraq Israel Jordan Kuwait Lebanon Oman Qatar Saudi Arabia Syrian Arab Rep. United Arab Emirates West Bank & Gaza Yemen, Rep.	Anguilla Antigua & Barbuda Argentina Aruba Bahamas Barbados Belize Bermuda Bolivia Brazil British Virgin Is. Cayman Is. Chile Colombia Costa Rica Cuba Dominica Dominican Rep. Ecuador El Salvador Falkland Is. (Malvinas) French Guiana Grenada Guadeloupe Guatemala Guyana Haiti Honduras Jamaica Martinique Mexico Montserrat Netherlands Antilles Nicaragua Norfolk Is. Panama Paraguay Peru Puerto Rico St. Helena St. Kitts & Nevis St. Lucia St. Pierre & Miquelon St. Vincent & the Grenadines Suriname Trinidad & Tobago Turks & Caicos Is. Uruguay US Virgin Is. Venezuela	American Samoa Brunei Darussalam Cambodia Christmas Is. Cocos (Keeling) Is. Cook Is. Fiji French Polynesia Guam Hong Kong Indonesia Johnston Is. Kiribati Korea, Dem. Rep. Korea, Rep. of Lao PDR Macau Malaysia Marshall Islands Micronesia, Fed. Sts. Midway Is. Mongolia Myanmar Nauru New Caledonia Niue Northern Marianas Is. Palau Pitcairn Is. Papua New Guinea Samoa Singapore Solomon Islands Taiwan Tokelau Tonga Tuvalu Vanuatu Vietnam Wake Is. Wallis & Futuna Is.