REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GLASS TEMP INDUSTRIES, INC., PHILTECH GLASS INDUSTRIES, INC., AND SAN FRANCISCO MIRROR CORP.,
Petitioners,

- versus -

SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY (DTI), SECRETARY OF THE DEPARTMENT OF FINANCE (DOF) BUREAU OF CUSTOMS, TARIFF COMMISSION and ASAHI GLASS PHILIPPINES, INC.,
Respondents.

C.T.A. CASE NOS. 7007, 7008 and 7009

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUN 2 2 2006

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DECISION

CASTAÑEDA, JR., J.:

Before this Court are three consolidated cases all entitled *"Glass Temp Industries, Inc., Philtech Glass Industries, Inc. and San Francisco Mirror Corp. vs. Secretary of the Department of Trade and Industry (DTI), Secretary of the Department of Finance (DOF), Bureau of Customs, Tariff Commission and Asahi Glass Philippines, Inc."*, seeking to annul the Orders of the public respondent Secretary of Trade and Industry all dated April 14, 2004, imposing safeguard duties on float glass, glass mirror and figured glass, allegedly in violation of Republic Act No. 8800, otherwise known as the "Safeguard Measures Act".

The facts as borne by the evidence and records of the three (3) consolidated cases are as follows:

Petitioners GLASS TEMP INDUSTRIES, INC., PHILTECH GLASS INDUSTRIES, INC. and SAN FRANCISCO MIRROR CORP., are importers and secondary processors of various types of glass products. They are incorporated entities, created under the laws of the Republic of the Philippines and hold office at 44 De Vera Street, San Francisco Del Monte, Quezon City and represented by their President, Reynaldo S. Chua.

Public respondent Secretary of the Department of Trade and Industry is tasked with receiving protests initiating a safeguard measure action, making preliminary determinations, to act on the recommendation of the Tariff Commission and to determine the appropriate general safeguard measures to be implemented.

Public respondent Secretary of the Department of Finance ("DOF") is tasked with the implementation of the Department of Trade and Industry ("DTI') Order.

Public respondent Bureau of Customs ("BOC") is a government agency under the DOF and is directly tasked with the implementation of the DTI Order and specifically, with the imposition of the safeguard measures on importation of glass products.

Public respondent Tariff Commission ("TC") is the governmental agency tasked with conducting the formal investigation, reception of evidence, recommending actions with regard to the application for the imposition of a safeguard measure.

All public respondents, Secretary of Trade and Industry, Secretary of Finance, Commissioner of Customs, and Chairman of the Tariff Commission, are being sued in their official capacities as such heads of their respective offices.

Private respondent Asahi Glass Philippines, Inc. ("Asahi") is the sole manufacturer of glass and mirror products in the country. It is the applicant/protestant in the safeguard measure proceedings with the Department of Trade and Industry.

On October 17, 2002, Asahi Glass Philippines, Inc., as the domestic manufacturer of float glass,[1] glass mirror[2] and figured glass,[3] filed three (3) applications with the DTI for provisional and definitive safeguard measures to be imposed on the importation of these products pursuant to Republic Act No. 8800 ("R.A. No. 8800"), otherwise known as the "Safeguard Measures Act". Asahi claimed that the said glass products were being imported into the

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[1] *Float glass is a monolithic, highly transparent glass. Its precise flatness gives the glass a high degree of transparency and its smooth surface permits natural light to flow in. It is manufactured by floating molten glass on molten tin. It is used to enhance aesthetic appearance of structures and serve as a barrier against hot and cold weather. Float glass is also used for exterior and interior windows doors, curtain walls, furniture, and safety glass for automobiles. Colored or tinted float glass is produced by adding traces of metals such as cobalt, iron and selenium.*

[2] *Local glass mirrors are made from top of the line float glass chemically treated with silver. The raw materials of imported glass mirrors are similar to those locally manufactured.*

[3] *Figured glass is a product of the most advanced roll-out process. It is locally manufactured using imported and locally sourced materials. It is translucent and has attractive patters on one surface. It is locally manufactured using imported and locally sourced materials.*

Philippines in such increased quantities causing serious injury or threat to the domestic industry.

The DTI, through its Bureau of Import Service ("BIS") initiated a preliminary investigation with the publication of Notices of Initiation in the Philippine Daily Inquirer and the Philippine Star.[4]

The DTI-BIS found that critical circumstances existed justifying the imposition of provisional safeguard measures on float glass, glass mirror, and figured glass imports to prevent irreparable injury to the local industry. Accordingly, on September 1, 2003, the then DTI Secretary, Mar Roxas, issued three (3) separate Orders for the imposition of provisional safeguard measures in the form of cash bond amounting to P2,000.00 per MT (metric ton) for clear float glass and P2,650.00 per MT for tinted float glass; P3,560.00 per MT for glass mirror; and P1,535.00 per MT for figured glass, on all importations of these products for a period not exceeding 200 days from the date of the issuance by the BOC of the relevant Customs Memorandum Order ("CMO"). To quote:

> **In the Matter of the Preliminary Determination of the Safeguard Measures Case Against the Importation of Float Glass From Various Countries (Safeguard Case No. 03-2003):**
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> "xxx WHEREFORE, IN VIEW THEREOF, the Department of Trade and Industry, acting under Section 7 of RA 8800, the 'Safeguard Measures Act', found after preliminary determination that increased imports of the product under consideration have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, employment, profitability and productivity

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[4] *Pages 121, 114 and 115 of CTA Case Nos. 7007, 7008, 7009, respectively*

and increased inventories. The industry's prices were also depressed and margins of profits declined. Landed costs of imports were found to be lower that the ex-plant prices of the domestic product.

Pursuant to Section 8 of RA 8800 which provides that '**in critical circumstances where a delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination that increased imports are a substantial cause of, serious injury to the domestic industry**' a provisional safeguard measure in the form of a cash bond amount to ₱2,000.00 per MT for clear float glass and ₱2,650.00 per MT for tinted float glass shall be imposed for a period not exceeding 200 days from the date of the issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) on all importations of float glass, clear and tinted, classified under HS Codes 7005.2190 and 7005.2990.

However, imports originating from the developing countries listed in Annexes A and B covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the provisional safeguard measure: *[sic]*

All importers of float glass (clear and tinted) 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.

Considering that float glass are covered by the ASEAN-CEPT Agreement, as provided under Articles 6 and 8 of the said Agreement, the Philippines is required to notify and accord adequate opportunity for consultation with the governments of the ASEAN countries concerned i.e. Indonesia, Singapore and Thailand which may be affected by the application of provisional safeguard measures on imports sourced from ASEAN countries.

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.

The case records will be transmitted to the Tariff Commission for formal investigation to determine whether or not there is a need to impose a definitive safeguard measure.

Let the 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."[5]

In the Matter of the Preliminary Determination of the Safeguard Measures Case Against the Importation of Glass Mirrors From Various Countries (Safeguard Case No. 01-2003)

"xxx WHEREFORE, IN VIEW THEREOF, the Department of Trade and Industry, acting under Section 7 of RA 8800, the 'Safeguard Measures Act', found after preliminary determination that increased imports of the product under consideration have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, employment, profitability and productivity. The industry's prices were also depressed and margins of profits declined. Landed costs of imports were found to be lower than the ex-plant prices of domestic product.

Pursuant to Section 8 of RA 8800 which provides that '**in critical circumstances where a delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination that increased imports are a substantial cause of, serious injury to the domestic industry**' a provisional safeguard measure in the form of cash bond amounting to ₱3,560.00 per MT shall be imposed for a period not exceeding 200 days from the date of the issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) on all importations of glass mirrors, whether or nor framed classified under HS Codes 7009.9100 and 7009.9200.

However, imports originating from the following developing countries covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the provisional safeguard measure: xxx

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

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[5] *Annex G, Petition for Review, CTA Case No. 7007, Rollo, pages 103-104*

manufacture as authenticated by the Philippine Embassy/Consulate thereat.

Considering that glass mirrors are covered by the ASEAN-CEPT Agreement, as provided under Articles 6 and 8 of the said Agreement, the Philippines is required to notify and accord 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 provisional safeguard measures on imports sourced from ASEAN countries.

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.

The case records will be transmitted to the Tariff Commission for formal investigation to determine whether or not there is a need to impose a definitive safeguard measure.

Let the 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."[6]

In the Matter of the Preliminary Determination of the Safeguard Measures Case Against the Importation of Figured Glass From Various Countries (Safeguard Case No. 02-2003)

"xxx WHEREFORE, IN VIEW THEREOF, the Department of Trade and Industry, acting under Section 7 of RA 8800, the 'Safeguard Measures Act', found after preliminary determination, that increased imports of the product under consideration have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales, capacity utilization, production, profitability and increased inventory. The industry's prices were also depressed and margins of profits declined. Landed costs of imports were found to be lower than the ex-plant prices of domestic product.

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[6] *Annex G, Petition for Review of CTA Case No. 7008, Rollo, pages 98-101*

Pursuant to Section 8 of RA 8800 which provides that '**in critical circumstances where a delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination that increased imports are a substantial cause of serious injury to the domestic industry**' a provisional safeguard measure in the form of cash bond amounting to ₱1,535.00 per MT shall be imposed for a period not exceeding 200 days from the date of the issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) on all importations of figured glass, classified under HS Codes 7003.1290 and 7003.1990.

However, imports originating from the following developing countries covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the provisional safeguard measure: xxx

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.

Considering that figured glass are covered by the ASEAN-CEPT Agreement, as provided under Articles 6 and 8 of the said Agreement, the Philippines is required to notify and accord adequate opportunity for consultation with the governments of the ASEAN countries concerned i.e. Malaysia and Thailand which may be affected by the application of provisional safeguard measures on imports sourced from ASEAN countries.

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.

The case records will be transmitted to the Tariff Commission for formal investigation to determine whether or not there is a need to impose a definitive safeguard measure.

Let the 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."[7]

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[7] *Annex G, Petition for Review, CTA Case No.7009, Rollo, page 98-101*

The Bureau of Customs issued CMO No. 24-2003 on October 13, 2003, directing the implementation of DTI's above Orders for the imposition of the provisional safeguard measures on every importation of float glass, glass mirror and figured glass except those originating from developing countries covered by Rule 8.8 *(de minimis rule)* of the Implementing Rules and Regulations of R.A. No. 8800. Then, on September 11, 2003, DTI-BIS endorsed to the Tariff Commission the petition of Asahi for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure on the imports of float glass, glass mirror and figured glass.[8]

Thereafter, the Tariff Commission issued a Formal Investigation Report[9] recommending the imposition of definitive safeguard measures in the form of TARIFF RATE QUOTA and Specific Duties on OUT- QUOTA IMPORTS amounting to ₱1,583/MT for clear float glass and ₱2,780/MT for tinted float glass;[10] ₱2,864/MT for glass mirrors;[11] and ₱689.00/MT for figured glass[12] to be effective for three (3) years starting October 13, 2003, the date the provisional measure was in effect.[13]

On April 14, 2004, after reviewing the recommendations made by the Tariff Commission, the then Secretary of the Department of Trade and Industry, Cesar V. Purisima, issued the assailed Orders finding that the application of general safeguard measures would be in the interest of the

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[8] *Pages 122, 114 and 115 of CTA Case Nos. 7007, 7008, 7009, respectively*
[9] *Annex H of the Petitions for Review*
[10] *Pages 58-59 of Annex H, CTA Case No. 7007, Rollo, pages 177-178*
[11] *Pages 48-40 of Annex H, CTA Case No. 7008, Rollo, pages 162-163*

public. Pertinent portions of the assailed ordered are hereunder reproduced for easy reference.

IN THE MATTER OF THE APPLICATION FOR GENERAL SAFEGUARD MEASURES AGAINST THE IMPORTATION OF FLOAT GLASS FROM VARIOUS COUNTRIES
(Safeguard Investigation No. 02-2003)

ASAHI GLASS PHILIPPINES, INC. (AGP)
Protestant

"**IN VIEW THEREOF**, and in accordance with Section 13 of RA 8800, the DTI hereby orders the imposition of a definitive general safeguard duty for clear float glass and for tinted float glass. 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**'. Moreover, 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 definitive general safeguard duty were computed to a level that will ensure adequate protection to the domestic industry while it is undertaking the necessary adjustment measures to achieve efficiency. Thus, the amount of the definitive general safeguard duty shall be as follows:

AMOUNT OF DUTY (₱/MT)

PRODUCT	**1ST YEAR**	**2ND YEAR**	**3RD YEAR**
Clear Float Glass	4,630	4,440	4,180
Tinted Float Glass	5,850	5,560	5,280

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 the Customs Memorandum Order No. 24-2003. The measure shall be effective from the date of the

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[12] *Pages 43-44 of Annex H, CTA Case No. 7009, Rollo, pages 156-157*
[13] *When CMO No. 24-2003 was issued*

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 Implementing Rules and Regulations, **'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%)xxx"**[14]

IN THE MATTER OF THE APPLICATION FOR GENERAL SAFEGUARD MEASURES AGAINST THE IMPORTATION OF GLASS MIRRORS FROM VARIOUS COUNTRIES
(Safeguard Investigation No. 03-2003)

ASAHI GLASS PHILIPPINES, INC. (AGP)
Protestant

"**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 ₱5,110/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 amount of the definitive general safeguard duty shall be at ₱4,855/MT for the second year and ₱4,615/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 definitive general safeguard duties 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 the Customs Memorandum Order No. 24-2003. The measure shall be effective from the date of the issuance by the Bureau of

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[14] Annex A, CTA Case No. 7007

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 Implementing Rules and Regulations, **'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%)xxx.**"[15]

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

"**IN VIEW THEREOF**, and in accordance with Section 13 of RA 8800, the DTI hereby orders the imposition of a definitive 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 general 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 the 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

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[15] *Annex A, CTA Case No. 7008*

> (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 percent (3%)xxx.**"[16]

Petitioners allegedly received a copy of the above DTI Orders on May 22, 2004,[17] and pursuant to Section 29 of R.A. No. 8800, they filed the present Petitions for Review docketed as CTA Case Nos. 7007, 7008 and 7009. In the three Petitions for Review, private respondent Asahi and public respondents filed their separate Answers on July 8, 2004 and September 17, 2004, respectively.

Petitioners filed a "Joint Motion to Set Hearing on the Application for TRO and/or Preliminary Injunction" in CTA Case No. 7007 on January 24, 2005 and in CTA Case Nos. 7008 & 7009, on February 16, 2005. Private respondent Asahi and public respondents filed their respective Oppositions. Petitioners likewise filed a "Joint Motion to Consolidate Cases" on February 16, 2005 which the Court granted on April 6, 2005 and accordingly set the consolidated cases for pre-trial. On May 13, 2005, the parties submitted their Joint Stipulation of Facts and Issues and approved by the Court on May 18, 2005.

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[16] *Annex A, CTA Case No. 7009*
[17] *Paragraph 3 of the Petitions for Review*

On July 13, 2005, the Court rendered its Resolution denying the "Prayer for the Issuance of the TRO and/or Preliminary Injunction" for lack of merit.

On August 17, 2005, counsels for petitioners manifested that the issues in these consolidated cases are purely questions of law and for that reason, they are submitting the cases for decision. Respondents interposed no objection thereto but moved for the striking out (from the records) of the judicial affidavit filed by petitioners' witness in lieu of a direct testimony. The Court granted the motion and ordered that such judicial affidavit be stricken out from the records. On September 15 and 26 and on October 14, 2005, petitioners, private respondent Asahi and public respondents filed their respective memoranda. Thus, on November 9, 2005, the consolidated cases were submitted for decision.

Petitioners and respondents, through their respective counsels, agreed to limit to the following, the issues for the determination of the Court:

(1) Whether or not the requisites for the imposition of safeguard measure on float glass, glass mirror and figured glass were established;

(2) Whether or not the respondent DTI Secretary seriously erred, to the prejudice of the public and the petitioners, when it ordered the imposition of ADDITIONAL safeguard duties in excess of what was recommended by the Tariff Commission;

(3) Whether or not the Honorable Secretary of the DTI, to the prejudice of petitioners erred when it ordered the imposition of the safeguard duties for the entire tariff headings regardless of whether or not the commodities are produced by the domestic industry;

(4) Whether or not the 'final determination' to be performed by the DTI Secretary under Section 13 of RA 8800 refers to the choice of the appropriate measure [i.e. duty imposition, tariff rate quota (minimum access volume), quantitative restrictions or any appropriate adjustment measures] and does not include the discretion to increase the safeguard measures recommended by the Tariff Commission based on its positive determination and injury calculations; and

(5) Whether or not the safeguard measures imposed on float glass, glass mirror and figured glass contravene R.A. 8800 and the Constitution.

On the above enumerated issues, petitioners contend that:

(1) the requisite of causal link between the alleged injury and increased import was not properly established;

(2) respondent DTI Secretary wrongfully and irregularly removed the in-quota importations exempted from safeguard duties and increased the applicable safeguard duties beyond what was recommended by the Tariff Commission;

(3) respondent DTI Secretary wrongfully imposed safeguard duties for entire tariff headings regardless of whether or not the commodities are produced by the domestic industry;

(4) the "final determination" to be performed by the DTI Secretary refers to the choice of the appropriate measure and does not include the discretion to increase the safeguard duties or to remove the in-quota importations; and

(5) the safeguard measures imposed on float glass, glass mirror and figured glass contravene R.A. No. 8800 and the Constitution.

On the other hand, private respondent Asahi maintains that all the requisites for the imposition of the safeguard measures on the glass products were complied with; the DTI Secretary did not commit any error when he ordered additional safeguard measures in excess of what was recommended by the Tariff Commission; no error was committed by the DTI Secretary when he imposed safeguard duties on the entire Tariff Headings covering clear and float glass; and that the imposition of the safeguard duties by the DTI Secretary does not in any way contravene R.A. No. 8800 and the Constitution.

The public respondents, for their part, aver that the Petitions for Review should be dismissed for petitioners' failure to exhaust all available remedies before resorting to this Court; that the imposition of the safeguard measures was in accordance with law; and that the recommendations of the Tariff Commission are not obligatory on the DTI Secretary.

With respect to the first issue raised, Section 5 of R.A. No. 8800 provides for the requirements for the imposition of safeguard measures, to wit:

> ***"SECTION. 5. Conditions for the Application of General Safeguard Measures.*** — 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."

Section 5 of R.A. No. 8800 provides for conditions precedent before the Secretary of Trade may apply a general safeguard measure. *First,* that there must be a positive final determination by the Tariff Commission that a product is being imported into the country in increased quantities (whether absolute or relative to domestic production), as to be a substantial cause of serious injury or threat to domestic industry. The *second* condition is that, in the case of non-agricultural products, the Secretary must establish that the application of such safeguard measures is in the public interest.[18]

With respect to the first condition, Section 6 of R.A. No. 8800 requires that the following elements be established:

(1) an increase in imports of like or directly competitive products;
(2) the existence of serious injury or threat thereof to the domestic industry; and
(3) the causal link between the increased imports of the product under consideration and the serious injury or threat thereof.

The first element requires that there must be an increase in imports of like or directly competitive products. Thus, the Tariff Commission considered the:

(a) manufacturing methods and technology;
(b) material composition;
(c) physical characteristics; and
(d) end use.

On the other hand, the second element requires the existence of serious injury or threat thereof to the domestic industry. In making a determination of the existence of a threat of serious injury, the Tariff Commission shall consider all relevant economic factors, as follows:

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[18] *Southern Cross Cement Corp. vs. The Philippine Cement Manufacturers Corp., et al., 434 SCRA 65 (2004)*

(a) the rate and amount of the increase in imports of the product under consideration in absolute and relative terms;

(b) the share of the domestic market taken by the increased imports;

(c) changes in the level of sales, prices, production, productivity, capacity utilization, inventories, profits and losses, wages and employment of the domestic industry;

(d) significant idling of productive facilities in the domestic industry including the closure of plants or underutilization of production capacity;

(e) inability of a significant number of firms to carry out domestic production at a profit; and

(f) significant unemployment or underemployment within the domestic industry.[19]

The last element is the causal link between the increased imports of the product under consideration and the serious injury or threat thereof.

An exhaustive review of the Tariff Commission's Formal Investigation Reports relative to the applications for general safeguard measures reveals that all the three (3) elements above-mentioned were established. Thus, the Tariff Commission made a positive determination that:

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

1. As the sole manufacturer of clear and tinted float glass in the Philippines, petitioner AGP accounted for the entire domestic production of the subject articles during the POI (period of investigation).
2. Locally produced clear and tinted float glass are like products to imported clear and tinted float glass.

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[19] *Philippine Tariff Commission, A Primer on New Developments in Trade and Tariff Policy (updated version), p. 69.*

3. Clear and tinted float glass were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the final year of the POI.
4. The domestic float glass industry suffered significant overall impairment in its condition in terms of loss of market share, inability to increase domestic sales proportionate to the growth in domestic demand, and substantial losses in operations during the ending year of the POI.
5. While there are other factors that contributed to the overall impairment of the condition of the domestic industry, imports in increased quantities were the dominant cause of aforesaid serious injury to the domestic float glass industry.[20]

GLASS MIRROR INDUSTRY:
SAFEGUARD ACTION AGAINST IMPORTS
(SG INVESTIGATION NO. 03-2003)

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 *[sic]* might be other factors that contributed to the overall impairment of the position of the domestic industry, cheap imports in increased quantities were the dominant cause of serious injury to the domestic glass mirror industry.[21]

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[20] *Page 56 of Annex H, CTA Case No. 7007, Rollo, page 175*
[21] *Page 46 of Annex H, CTA Case No. 7008, Rollo, Page 160*

FIGURED GLASS INDUSTRY:
SAFEGUARD ACTION AGAINST IMPORTS
(SG INVESTIGATION NO. 01-2003)

1. AGP is the sole domestic manufacturer of tinted and clear figured glass in the Philippines.
2. Locally manufactured figured glass is "like" to imported figured glass.
3. Figured glass is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, in 2002.
4. The industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; inability to increase production and sales volume despite increase in demand; and substantial financial losses in operations.
5. While there are other factors which contributed to the overall impairment in the position of the domestic industry, cheap imports in increased quantities were the major cause of serious injury to the domestic figured glass industry.[22]

In arriving at the above conclusions, the Tariff Commission took into consideration the following important factors: (a) market shares; (b) production, sales and ending inventory; (c) employment; (d) capacity utilization; and (e) profitability. It then concluded that the industry has suffered and is suffering a significant impairment in its overall market position, production and sales, capacity utilization, employment and profitability due to the upsurge of these imported glass products. While there were other factors that contributed to the overall impairment in the position of the domestic industry, cheap imports of these glass products increased quantities were the dominant cause of serious injury to the domestic glass industry.

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[22] *Page 42 of Annex H, CTA Case No. 7009, Rollo, page 155*

The Court finds no reason to disturb the above findings. Being considered experts in its field, the factual findings of the Tariff Commission are binding on the Court.[23]

Petitioners' argument that the losses of private respondent Asahi mainly resulted from the company's large foreign currency loans without sufficient foreign exchange denominated assets is bereft of merit. The amount of interest expense and foreign exchange losses were also adequately studied by the Tariff Commission. Hence, it found that:

> "AGP's audited financial statements showed that substantial interest expenses and foreign exchange losses in 2001 and 2002 contributed to the net deficits suffered by AGP during these years." xxx[24]
>
> "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 to ₱54 to $1 xxx.
> 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."[25]
>
> "Interest expense and foreign currency loss in 2002 contributed to AGP's net deficit. Though still high, interest expense went down with the retirement of foreign denominated loans. While contributory to the overall impairment in profitability of the domestic industry, interest expense and foreign exchange losses were not however related to increased imports."[26]

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[23] *Golden Thread Knitting Industries, Inc. vs. National Labor Relations Commission, 304 SCRA 568 (1999).*
[24] *Page 54 of Annex H, CTA Case No. 7007, Rollo, page 430*
[25] *Pages 44-45 of Annex H, CTA Case No. 7008, Rollo, pages 157-158*
[26] *Page 40 of Annex H, CTA Case No. 7009, Rollo, page 153*

Upon considering the above facts, the Tariff Commission still concluded that the **dominant cause** of the serious injury to the domestic glass industry was the significant increase in imports of these glass products.[27]

As for the additional condition with respect to non-agricultural products that the application of safeguard measures must be for public interest, respondent *Secretary of Trade and Industry* reviewed "the Commission's findings and recommendations and has established that the application of safeguard measures shall be in the public interest".[28]

The *Secretary of Trade and Industry*'s findings that the imposition "is in the public interest" is binding upon the Court. Being an official of the government called upon to execute or implement laws, his findings command respect and weight, in the absence of any proof to show that he has acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.[29] Elementary is the rule that courts will not interfere on matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under their respective special technical knowledge and training,[30] provided that their findings are supported by substantial evidence.[31]

Further, the law does not require the *Secretary of Trade and Industry* to categorically state in his decision the factors he considered in order to

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[27] *Annex H of CTA Case Nos. 7007, 7008 and 7009*
[28] *Annex A of CTA Case Nos. 7007, 7008 and 7009*
[29] *Protector's Services, Inc. vs. Court of Appeals, 330 SCRA 404 (2000)*

establish the concept of "public interest". "Public interest", according to the Supreme Court is too elastic, broad and comprehensive which may include most anything though of minor importance, but affecting the public.[32] It must be understood to mean "more than a mere curiosity; it means something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected."[33]

In the present case, respondent *Secretary of Trade and Industry* based his decision to apply safeguard measures on the Tariff Commission's findings and conclusions. Such is enough. The Supreme Court elucidated on the subject matter as follows:

> "We recognize that Congress deemed it necessary to insulate the process in requiring that the factual determination to be made by an ostensibly independent body or specialized competence, the Tariff Commission. This prescribed framework, constitutionally sanctioned, is intended to prevent the baseless, whimsical, or consideration-induced imposition of safeguard measures. It removes from the DTI Secretary jurisdiction over a matter beyond his putative specialized aptitude, the compilation and analysis of picayune facts and determination of their limited causal relations, and instead **vests in the Secretary the broad choice on a matter within his unquestionable competence, the selection of what particular safeguard measure would assist the duly beleaguered local industry yet at the same time conform to national trade policy.** Indeed, the SMA recognizes, and places primary importance on the DTI Secretary's mandate to formulate trade policy, in his capacity as the President's *alter ego* on trade, industry and investment-related matters." [34] *(Emphasis Supplied)*

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[30] *Batelec II Electric Cooperative, Inc. vs. Energy Industry Administration Bureau, 447 SCRA 482 (2004) and Energy Regulatory Board vs. Court of Appeals, 357 SCRA 30 (2001)*
[31] *Floralde vs. Court of Appeals, 337 SCRA 371 (2000)*
[32] *In Re: Parazo, 82 Phil. 230 (1948)*
[33] *Banco Filipino vs. Monetary Board, 142 SCRA 523 (1986)*
[34] *Southern Cross Cement Corp. vs. Philippine Cement Manufacturers Corp. Resolution, 465 SCRA 532 (2005).*

Clearly, the respondent *Secretary of Trade and Industry*'s mandate is to decide, only after the Tariff Commission's positive final determination, whether to apply safeguard and to determine the appropriate definitive measure as provided in Section 13 of R.A. No. 8800.

The next three issues can be summarized into one: *Did the DTI Secretary err in imposing definitive safeguard measures different from that recommended by the Tariff Commission?*

We rule in the negative. Section 13 of R.A. No. 8800 provides:

> "SEC. 13. Adoption of Definitive Measures. — 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 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)."

More importantly, this issue has been put to rest in the case of *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp. et al.,*[35] thus:

> "Undoubtedly, Section 13 prescribes certain limitations and restrictions before general safeguard measures may be

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[35] *434 SCRA 65 (2004)*

imposed. However, *the most fundamental restriction on the DTI Secretary's power in that respect is contained in Section 5 of the SMA (Safeguard Measures Act)— that there should first be a positive final determination of the Tariff Commission* — which the Court of Appeals curiously all but ignored. Section 5 reads:

> Sec. 5. Conditions for the Application of General Safeguard Measures. — The Secretary **shall apply a general safeguard measure upon a positive final determination of the [Tariff] 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. (emphasis supplied)

The plain meaning of Section 5 shows that it is the Tariff Commission that has the power to make a "positive final determination." **This power lodged in the Tariff Commission, must be distinguished from the power to impose the general safeguard measure which is properly vested on the DTI Secretary.**

All in all, there are two condition precedents that must be satisfied before the DTI Secretary may impose a general safeguard measure on grey Portland cement. First, there must be a positive final determination by the Tariff Commission that a product is being imported into the country in increased quantities (whether absolute or relative to domestic production), as to be a substantial cause of serious injury or threat to the domestic industry. Second, in the case of non-agricultural products the Secretary must establish that the application of such safeguard measures is in the public interest. As Southern Cross argues, Section 5 is quite clear-cut, and it is impossible to finagle a different conclusion even through overarching methods of statutory construction. There is no safer nor better settled canon of interpretation that when language is clear and unambiguous it must be held to mean what it plainly expresses: xxx

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Moreover, Rule 5 of the Implementing Rules and Regulations of the SMA, 92 which interprets Section 5 of the law, likewise requires a positive final determination on the part of the Tariff Commission before the application of the general safeguard measure.

The SMA establishes a distinct allocation of functions between the Tariff Commission and the DTI Secretary. The plain meaning of Section 5 shows that it is the Tariff Commission that has the power to make a "positive final determination." This power, which belongs to the Tariff Commission, must be distinguished from the power to impose general safeguard measure properly vested on the DTI Secretary. The distinction is vital, as a "positive final determination" clearly antecedes, as a condition precedent, the imposition of a general safeguard measure. ***At the same time, a positive final determination does not necessarily result in the imposition of a general safeguard measure. Under Section 5, notwithstanding the positive final determination of the Tariff Commission, the DTI Secretary is tasked to decide whether or not that the application of the safeguard measures is in the public interest.***

It is also clear from Section 5 of the SMA that the positive final determination to be undertaken by the Tariff Commission does not entail a mere gathering of statistical data. In order to arrive at such determination, it has to establish causal linkages from the statistics that it compiles and evaluates: after finding there is an importation in increased quantities of the product in question, that such importation is a substantial cause of serious threat or injury to the domestic industry.

xxx xxx xxx

Section 13 of the SMA lays down the procedure to be followed after the Tariff Commission renders its report. The provision reads in full:

> SEC. 13. Adoption of Definitive Measures. — 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).
>
> The Commission may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the product, to alleviate the injury or threat thereof to the domestic industry, and to facilitate positive adjustment to import competition.
>
> 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 a serious injury.
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To better comprehend Section 13, note must be taken of the **distinction between the investigatory and recommendatory functions of the Tariff Commission under the SMA.**

The word **"determination,"** as used in the SMA, pertains to the factual findings on whether there are increased imports into the country of the product under consideration, and on whether such increased imports are a substantial cause of serious injury or threaten to substantially cause serious injury to the domestic industry. The SMA explicitly authorizes the DTI Secretary to make a preliminary determination, and the Tariff

Commission to make the final determination. The distinction is fundamental, as these functions are not interchangeable. The Tariff Commission makes its determination only after a formal investigation process, with such investigation initiated only if there is a positive preliminary determination by the DTI Secretary under Section 7 of the SMA. On the other hand, the DTI Secretary may impose definitive safeguard measure only if there is a positive final determination made by the Tariff Commission.

In contrast, a **"recommendation"** is a suggested remedial measure submitted by the Tariff Commission under Section 13 after making a positive final determination in accordance with Section 5. The Tariff Commission is not empowered to make a recommendation absent a positive final determination on its part. Under Section 13, the Tariff Commission is required to recommend to the [DTI] Secretary an "appropriate definitive measure." The Tariff Commission "may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the products, to alleviate the injury or threat thereof to the domestic industry and to facilitate positive adjustment to import competition."

The recommendations of the Tariff Commission, as rendered under Section 13, are not obligatory on the DTI Secretary. Nothing in the SMA mandates the DTI Secretary to adopt the recommendations made by the Tariff Commission. In fact, the SMA requires that the DTI Secretary establish that the application of such safeguard measures is in the public interest, notwithstanding the Tariff Commission's recommendation on the appropriate safeguard measure based on its positive final determination. The non-binding force of the Tariff Commission's recommendations is congruent with the command of Section 28(2), Article VI of the 1987 Constitution that only the President may be empowered by the Congress to impose appropriate tariff rates, import/export quotas and other similar measures. **It is the DTI Secretary, as alter ego of the President, who under the SMA may impose such safeguard measures subject to the limitations imposed therein. A contrary conclusion would in essence unduly arrogate to the Tariff Commission the executive power to impose the appropriate tariff measures. That is why the SMA empowers the DTI Secretary to adopt safeguard**

> **measures other than those recommended by the Tariff Commission.**

In sum, the recommendations of the Tariff Commission, pursuant to Section 13 of R.A. No. 8800 are not obligatory on the DTI Secretary. The Secretary is authorized to decide, after receipt of the report of the Tariff Commission, whether or not to impose the general safeguard measure, and if in the affirmative, what general safeguard measure should be apply. Even after the imposition of the general safeguard measure, the Secretary is empowered to extend, terminate, reduce or modify his previous rulings.

Thus, it is only the positive determination of the Tariff Commission (as to whether there are increased imports into the country of the product under consideration, and on whether such increased imports are a substantial cause of serious injury or threaten to substantially cause serious injury to the domestic industry), which is binding on the DTI Secretary. But it is the DTI Secretary, as the alter ego of the President, who shall determine the appropriate safeguard duties to be imposed.

The reason behind the provision was explained by the Supreme Court also in the *Southern Cross* case, to wit:

> "Moreover, the mechanism established by Congress establishes a measure of check and balance involving two different governmental agencies with disparate specializations. The matter of safeguard measures is of such national importance that a decision either to impose or not to impose then could have ruinous effects on companies doing business in the Philippines. Thus, it is ideal to put in place a system which affords all due deliberation and calls to fore various governmental agencies exercising their particular specializations.

> Finally, if this arrangement drawn up by Congress makes it difficult to obtain a general safeguard measure, it is because such safeguard measure is the exception, rather than the rule. The Philippines is obliged to observe its obligations under the GATT, under whose framework trade liberalization, not protectionism, is laid down. Verily, the GATT actually prescribes conditions before a member-country may impose a safeguard measure. xxx"[36]

The Department of Trade and Industry in its assailed Orders explained that the safeguard duties were computed at a level merely to ensure adequate protection to the domestic industry.

Anent the last issue, petitioners argue that the safeguard measures imposed on float glass, glass mirror and figured glass contravene R.A. No. 8800 and the Constitution citing Section 19 of the Constitution and Section 36 of the Safeguard Measures Act ("SMA") on monopolies, hereunder respectively reproduced for easy reference:

> *Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.*

> *Section 36. Conditions for the Application of Safeguard Measures. – In the application for any safeguard measure under this Act, the following conditions must be observed:*
> *(1) All actions must be transparent and shall not allow any anti-competitive, monopolistic or manipulative business devise..."*

A monopoly is defined as a privilege or peculiar advantage vested in one or more persons or companies, consisting in the **exclusive** right or

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[36] *Southern Cross Cement Case, supra, pp.105-106.*

power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service.[37]

In the present case, this Court agrees with the assertion of the Solicitor General that the fact that Asahi is the sole manufacturer of float glass, glass mirror and figured glass in the Philippines does not amount to monopoly considering that the manufacture of these products is open to all companies. Further, even assuming that the glass industry is monopolized by private respondents, monopolies are not objectionable *per se* as the Supreme Court said, even the Constitution recognizes monopolies, providing only that they can be regulated or even prohibited when the public interest so requires. Thus, contrary to petitioners' claim, the actions taken by both the Tariff Commission and the Department of Trade and Industry were in accord with R.A. No. 8800.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[37] *Tatad vs. The Secretary of the Department of Energy and the Secretary of the Department of Finance, 282 SCRA 337 (1997)*

WE CONCUR:

ERLINDA P. UY
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice