ANTI-DUMPING

BOC CUSTOMS MEMORANDUM CIRCULAR NO. 232-97, May 14, 1997

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Appended for your information and guidance is a copy of the Decision of the Department of Finance on Anti-Dumping Case No. 3-97 entitled: "In the Matter of Protest Against the Importation of Clear float Glass (HS) 7005, 29 90) from Thailand" filed by Republic-Asahi Class Corporation.

Adopted: 10 June 1997

(SGD.) RAY M. ALLAS
Deputy CommissionerInternal Administration Group

“Attachment:”

In the Matter of Protest Against the
Importation of Clear Float Glass(HS7005, 29 90) from Thailand

Anti-Dumping Case No. 3-97

Republic-Asahi Glass Corporation, Protestant

X x

DECISION

Under Consideration is the Anti-Dumping protest against the importation of Clear Float Glass from Thailand filed with this Department by Republic-Asahi Glass Corporation (RAGC). Specifically, the protest covers the importation of Six Hundred Forty-two Thousand Three Hundred Thirty-three (642,333) square feet of Clear Float Glass produced in Thailand imported by San Francisco Mirror Corporation, AA Aluminum Supply, Inc., Sun Industrial Corporation and Unicorn Safety Glass, Inc., on July 1993.

Finding a prima facie case of dumping, this Department forwarded the case to the Tariff Commission on 24 February 1994 for full investigation with the advice to the Commissioner of Customs not to release any pending and subsequent shipment of subject articles from Thailand unless a bond in an amount equal to twice the estimated dutiable value thereof is posted pursuant to the provisions of Section 301(e) of the Tariff and Customs Code, as amended.

Upon receipt of the advice, the Tariff Commission conducted a formal investigation on the dumping protest. Notice of Public Hearing was published on 13 September 1994 in the Philippines Star and the Manila Times, both newspapers of general circulation

Public hearings were conducted on September 28, October 18, November 29 and December 16 all of 1994 and January 5, 1995 after which the parties were required to submit their respective memoranda. The Tariff Commission, after a thorough evaluation of the evidence presented, both oral and written, submitted its report of findings and recommended the dismissal of the protest, stating:

"CONCLUSION

A price difference has been shown between the HCV in Thailand, the country of origin, and the purchase price from Singapore the country of export. However, since the latter is not included in the protest, and therefore the HCV therein cannot be considered, the appropriate/relevant price difference as basis for dumping cannot be established. For this reason, the instant protest must fail." (TC Report, p. 13)

The principal issue in this particular case is whether the protested articles may be considered as Thai Products for purposes of applying the provisions of Section 301 of the TCC, as amended, considering the fact that the importer's documents show that the country of export is Singapore, the actual exporter being Yuan Guang Building Materials Pte., Ltd., Jurong, Singapore.

Resolution of the aforesaid issue before going further is relevant it appearing that available data on HCV presented during the hearing pertain only to HCVs of the protested article in Thailand.

On the foregoing issue, the Tariff Commission submits:

"Based on the evidence presented, since the protested importations apparently entered the commerce of Singapore, the HCV-Thailand cannot be considered for comparison with the export price from Singapore in establishing the basic requirement of price difference.

"There is a provision in the Tariff Code which refers to a dumping protest where an intermediate country is involved. Section 301b(iii) provides that:

"In the case where products are not imported directly from the country of origin but are exported to the country of importance from an intermediate country, the fair value shall be the home consumption price in the country of origin or the country of export whichever is higher."

"It is our position that the afore-quoted provision can apply only if both the country of origin and the country of export are included in the protest, and their corresponding HCVs compared with each other and with the export price in the Philippines. In the present case, the protestant insisted that the involved country was only Thailand, thus excluding Singapore from its protest. It was only the country of origin, Thailand that was protested. Thus the said provision cannot be made to apply.

"The very basic requirement of price difference in a dumping protest has not been complied with in this case, For this reason the instant protest cannot prosper." (TC Report, pp. 6-7)

Data submitted to this Department by the Tariff Commission seem to point that protestant was hardly affected by the importation of the article subject hereof. Thus, the Commission reported.

"V. Summary of Findings

1. Price difference were computed between the purchase price from Singapore and the FMVs in Thailand of imported clear float glass. A summary is presented below.

Table 14. Summary of Price Differences (in US$/sq.ft.)

Thickness

Price Difference

2mm

0.125

3mm

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0.235

0.245

5mm

0.675

6mm

0.792

10mm

1.590

12mm

1.900

2. From the evidence submitted, such as the SGS-CRFs and the commercial invoices of Yuan Guang Bldg. Materials Pte, Ltd. of Singapore, and in the absence of evidence to the contrary, indication is that the protested articles entered the commerce of Singapore.

3. Since Singapore is not the protested country, the required price difference as basis for dumping can not be established.

4. Imports of clear float glass over the five-year period starting 1989 peaked in 1990, then declined until 1993.

5. Local production of clear float glass decreased in 1992 and 1993 due to an increase in the production of tinted float glass.

6. Local average production aggregating to 78,138 thousand net kilograms exceeded apparent consumption estimated at 43,567 thousand net kilograms. Based on these figures, the 10% requirement on supply was satisfactory.

7. While volume sales of clear float glass posted an increase in 1993, revenues from sales decreased.

8. In value terms, inventories of raw materials and goods in process expanded from 1992 to 1993. Finished goods inventory, on the other hand, contracted due to a decline in production accompanied by an increase in sales volume in 1993.

9. Total employment was generally increasing from 1991 to 1993 due mainly to a general expansion in the regular work force — both direct and indirect.

10. Republic-Asahi Glass Corporation posted a hefty increase in net income, from P4 million in 1992 to P101 million in 1993, due mainly from an increase in both net sales and other income." (TC Report, pp. 12-13)

After going over the records of the case, we find no cogent reason to disturb the findings of the Tariff Commission.

Accordingly, the instant protest is hereby dismissed as recommended by the Tariff Commission for lack of merit.

Let copies of this decision be furnished the Protestant, Protestees, the Tariff Commission, the Bureau of Customs, the Bureau of Internal Revenue, the National Economic and Development Authority, the Bangko Sentral and Pilipinas, the Department of Trade and Industry, the Department of Foreign Affairs, the Singapore Embassy and

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the Government Printing Office for the publication of this Decision in the Official Gazette and local newspaper of general circulation.

Adopted: 14 May 1997

(SGD.) ROBERTO F. DE OCAMPO
Secretary

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