

**AUSTRALIAN CUSTOMS SERVICE
CUSTOMS ACT 1901 - PART XVB**

TRADE MEASURES BRANCH

REPORT NO. 32

**SPLIT SYSTEM CARAVAN AIR CONDITIONERS
FROM ITALY**

7 March 2001

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Aircommand	Aircommand Australia Pty Ltd
Caravan	includes, motor homes, camper vans and camper trailers
CIA	Caravan Industry Association
CEO	Chief Executive Officer of Customs
CTMS	cost to make and sell
EL	Electrolux Leisure Pty Ltd
Electrolux	The principal Electrolux entities in this investigation <ul style="list-style-type: none">- Electrolux Leisure Pty Ltd- Electrolux WTA SRL (Italy)
EG	Electrolux Group
ESing	Electrolux Singapore
ESwed	Electrolux Sweden
EWTA	Electrolux WTA SRL (Italy)
FOB	free-on-board
LDPIS	landed duty paid into store
Minister	Minister for Justice and Customs
NIP	non-injurious price
OEM	original equipment manufacturers
PAD	preliminary affirmative determination
Rooftop	rooftop caravan air conditioner
RMVAA	Recreational Vehicle Manufacturers Association of Australia
Split system	split system caravan air conditioner
SEF	statement of essential facts
SG&A	selling, general and administrative
The Act	the <i>Customs Act 1901</i>
The goods	the goods the subject of the application
USD	United States Dollar
USP	unsuppressed selling price
WTO	World Trade Organization

1 SUMMARY

2 This report presents the results of the Australian Customs Service (Customs)
3 investigation into the alleged dumping of split system caravan air conditioners
4 (split systems).

5 Aircommand Australia Pty Ltd (Aircommand) lodged an application with
6 Customs requesting that anti-dumping measures be imposed on split systems
7 from Italy. The industry claimed that those exports were at dumped prices
8 and causing material injury.

9 Local production and imports from Italy supply the Australian market for split
10 systems. Aircommand is the sole Australian producer of split systems.
11 Electrolux WTA SRL (EWTA) is the producer and supplier in Italy, and
12 Electrolux Leisure Pty Ltd (EL) located in Australia is both the exporter and
13 importer.

14 Customs examined split system imports from Italy over the period
15 1 October 1999 to 30 September 2000 and established that all models and
16 shipments were dumped, with margins ranging between 56.80% and 63.44%.

17 Prior to the arrival of split system imports in the March quarter 2000, the
18 Australian industry held 100% of the split system market. By the end of the
19 March quarter 2000 imports accounted for 16% of the market and by the end
20 of the June quarter 2000 imports had obtained a market share of around 40%
21 and maintained that share in the September quarter 2000, the last period
22 examined.

23 Customs has concluded that the Aircommand has suffered material injury in
24 the form of price undercutting, price depression, price suppression, loss of
25 specific sales, loss of market share and reduced profits and profitability.

26 Customs is satisfied that there is a causal link between the dumped imports
27 and the material injury suffered by Aircommand.

28 In light of the above, Customs has recommended that the Minister impose
29 anti-dumping duties on split systems exported from Italy.

2 INTRODUCTION

2.1 Investigation process

Under section 269TB of the *Customs Act 1901* (the Act), an Australian industry may lodge an application for the Minister to impose anti-dumping measures on goods exported to Australia at dumped prices, which are causing material injury to the Australian industry.

Where the Australian industry provides reasonable evidence to support its claims, Customs will formally undertake an investigation in accordance with the Act.

Interested parties are invited to participate in the investigation through a public notice in a national newspaper or by direct contact from Customs. Submissions from importers, exporters and other interested parties are due within 40 days from the commencement of the investigation.

From day 60 of the investigation, Customs may make a preliminary affirmative determination (PAD) that the goods have been dumped and have caused material injury to the Australian industry. In those circumstances Customs may impose provisional measures (in the form of securities) on imports of the goods. These measures have the effect of providing the Australian industry with a temporary remedy from the effects of dumping, pending the Minister's final decision.

Customs must issue a statement of essential facts (SEF) on or before 110 days after the initiation of the investigation, or by such later date as the Minister may allow in accordance with section 269ZHI of the Act. The SEF outlines the facts on which Customs proposes to base its report to the Minister. Interested parties then have 20 days to respond and lodge submissions on matters of concern.

After consideration of the submissions received, Customs reports its conclusions and make recommendations to the Minister on or before day 155 of the investigation, or by such later date as the Minister may allow in accordance with section 269ZHI of the Act.

An appeal by an interested party against the Minister's decision may be lodged with the Trade Measures Review Officer (TMRO) within 30 days of the announcement of the decision. Other parties will have a further 30 days in which to lodge submissions in response to the grounds of appeal. The TMRO must make recommendations to the Minister within 60 days of the public notification of the appeal.

For more information on Customs investigations and dumping generally refer to the glossary at Appendix 1.

2.2 Background to this investigation

On 21 September 2000, Customs received an application from Aircommand Australia Pty Ltd (Aircommand), for the publication of a dumping duty notice in respect of split systems exported to Australia from Italy. The application alleged that dumped imports from Italy were causing material injury Aircommand in the form of:

- price undercutting;
- price depression;
- price suppression;
- loss of volume;
- loss of market share; and
- loss of profits and reduced profitability

After consideration of the Aircommand's claims, Customs initiated the investigation on 3 October 2000.

Section 269TDAA of the Act requires Customs to place on the public record the statement of essential facts (SEF) on which it proposes to base its recommendations to the Minister. The SEF must be placed on the public record within 110 days after initiation, or such longer period as the Minister may allow under section 269ZHI of the Act.

Customs placed the SEF on the public record on 21 January 2000. Based upon its evaluation of the facts at that time, Customs considered it necessary at that time to make a preliminary affirmative determination for the purposes of imposing provisional measures. The measures were effective from 22 January 2001.

Interested parties were given 20 days to make submissions in response to the SEF.

2.3 Submissions received in response to the SEF

Responses to the SEF have been considered by Customs in making its recommendations to the Minister. The following interested parties made submissions:

- Aircommand Australia Pty Ltd; and
- Electrolux Leisure Pty Ltd and Electrolux WTA SRL.

2.4 Public Notification

Notification of the investigation was through public notice in the *Australian Financial Review* of 3 October 2000 and Australian Customs Dumping Notice (ACDN) No. 00/046.

Customs notified an investigation period from 1 October 1999 to 30 September 2000, the period during which imports would be assessed to establish whether they were dumped. Customs also notified an injury analysis period of 1 July 1998 onwards.

Non-confidential versions of the application and relevant questionnaires were distributed to the known exporter and Australian importer of split systems.

Non-confidential versions of the application, Australian industry visit reports, the importer visit report and normal value report were placed on the public record. The public record is held by Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra 2601, telephone (02) 6275 6057.

All ACDN's and the SEF are available on the Internet at <http://www.customs.gov.au/notices/index.htm>.

3 THE GOODS UNDER CONSIDERATION

The goods under consideration (GUC) are split system caravan air conditioners (split systems) with a cooling output of 3.0 kW or less exported to Australia from Italy.

Split systems comprise two major components: the condenser set and the air handler unit. These components are separately located within the caravan, hence the name 'split system'. Unlike other air conditioners the split systems are not a self-contained unit and do not incorporate a valve for reversal of the cooling/heat cycles.

The units are specifically designed for use in caravans and similar recreational use vehicles.

The imported split system units are produced in Italy by Electrolux WTA SRL (EWTA) and are known as 'Blizzard' air conditioners. The imports have to date been predominantly the vertical model (Model number SA101). A single shipment of a horizontal model (Model number SA102) was imported during the investigation period.

In response to the SEF, Electrolux pointed out that Customs had incorrectly quoted the specifications of the two models when discussing the cooling capacity. Customs re-examined the specification data provided by EL and EWTA. EL's information only deals with the SA101 model and indicates that it's cooling output is 2.625 kW¹. EWTA's information shows that the cooling output of the SA101 model is 3.0kW and for the SA102 model 2.625kW². On the basis of the Electrolux submission and the specifications provided by the producer Customs accepts that the cooling capacities claimed by EWTA are the correct ones. This issue is further discussed at Section 6.

Split systems are classified under sub-heading 8415.82.00 statistical code 61, in Schedule 3 to the *Customs Tariff Act 1995*. The general rate of duty applicable to imports from Italy is five percent.

¹ Importer Visit Report Electrolux Leisure Pty Ltd. See Customs file C00/09382, folio 7

² Normal Value Report Electrolux WTA SRL. See Customs file C00/10297, folios 87-88

4 LIKE GOODS

Aircommand describes the locally produced goods as follows:

The goods produced by the Australian industry are “Heron” split system caravan air conditioners with cooling outputs of 2.2 kW and 3.0 kW. A brochure describing the “Heron” split system air conditioners is at Attachment B. The Australian product is not identical in all respects but has characteristics closely resembling the imported goods. It is functionally the same and resembles the imported goods in size, weight, shape and appearance.

Customs investigations confirmed that the Australian industry produces two models of split system, the Heron 2.2 kW and the Heron 3.0 kW, using local and imported components. Customs is satisfied that the locally produced goods have characteristics closely resembling the GUC. Those characteristics that are considered similar are:

- components;
- functions;
- physical configuration and design;
- technology.

Customs concludes that the locally produced split systems are like goods to the GUC.

4.1 Rooftop Air Conditioners

Customs has also considered whether rooftop air conditioners (rooftops), which are self-contained units with heating and cooling functions, are like goods to split systems. Rooftop air conditioners are also designed for installation in recreational vehicles and some marine applications

Customs contacted interested parties seeking their views on this issue. Those contacted included the Australian industry, the supplier, the importer & exporter, the Caravan Industry Association (CIA), the Recreational Vehicle Manufacturers Association of Australia (RMVAA), and a number of original equipment manufacturers (OEM's) and dealers. The views of these parties are set out below.

4.1.1 Australian Industry

Industry was of the view that split systems and rooftops were not like goods for the following reasons:

Different physical characteristics – the rooftop air conditioner is a self-contained unit which, as its name implies, is installed on the roof of caravans. The split system air conditioner is divided into two units that can be up to 5 metres apart. The evaporator is normally installed in the top of a cupboard while the condenser is normally placed under a seat or bed. The evaporator is similar for both split system models, but the condenser for the Heron 3.0 model is significantly larger;

1 Not directly substitutable - The weight of a rooftop unit is about 44kg and this precludes
2 it from being installed on the roof of 'pop top' caravans and about 70% of caravan sales
3 are 'pop top' caravans. In addition, the rooves of 80% of standard caravans require
4 strengthening to enable roof top air conditioners to be installed. This information is
5 based on Air command's knowledge and experience in the market and can be
6 confirmed by reference to relevant industry associations.

7 Sales of rooftop air conditioners have been largely unaffected by the introduction of split
8 system air conditioners. Sales increased in 1998-99 and fell by about 6.5% in 1999-
9 2000. In addition, sales of roof top air conditioners have not been affected by imports of
10 split system air conditioners at dumped prices

11 Tariff Classification - it is considered that roof top air conditioners (being self-contained)
12 are classified to 8415.10.00. Split system air conditioners are not reverse cycle systems
13 and do not have a valve for reversal of the cooling/heat cycle and are classified to
14 8415.82.00. Both Aircommand and Electrolux split system air conditioners operate by
15 blowing air over a heating or cooling element and are not reverse cycle systems.

16 **4.1.2 Electrolux**

17 In a submission³ to the investigation Electrolux made the following claims in
18 support of its view that rooftop and split systems were like goods.

19 In this case, the strong similarities between rooftop and the 3.0kw split are:

20 Power – at 3.0kw the rooftops and splits are identical

21 Output – nearly identical heating and cooling output

22 Technology – the units use fundamentally similar technology

23 End use – the units have identical end use – cooling and heating air

24 Price – Electrolux has the same price of \$ [REDACTED] for each unit. Aircommand has similar
25 pricing.

26 There is essentially only one difference between the units and that is that roof tops are
27 assembled in one physical enclosure while split systems have the compressor
28 separated or "split" from the other elements and therefore comprise two physically
29 separate segments. This in turn necessitates different locations for installation – roof or
30 cupboard.

31 Electrolux asserts that the available evidence suggests that within the relevant market
32 segment, that is, the market consisting of fixed roof caravans and motorhomes, the
33 choice of type is influenced by both dealer/OEM and the end consumer.

34 From the consumers point of view, in the absence of any significant differences in
35 features, functionality or price, the determining factors are reduce to locational
36 preference – the roof or cupboard. Within this alternative, there are trade-off factors:

37 Split system – normal vehicle height with reduced cupboard space, and smother overall
38 vehicle profile

39 Rooftop – increased overall height affecting clearance for storage in carports/garages,
40 altered vehicle profile but no reduction in cupboard space.

³ Submission dated 8 November 2000, See Customs File C2000/09382

1 The experience of Electrolux is that OEM's and dealers offer splits and rooftops as
2 interchangeable options to end use consumers allowing them to assess the trade-off for
3 themselves. There is some evidence that individual OEM's have a preference for
4 rooftops based upon a comparatively simpler installation in the roof.

5 **4.1.3 Associations, OEM and Dealers**

6 The CIA expressed some views on the general structure of the market for
7 'hard top', ie conventional caravans and 'pop top' caravans. The observation
8 was made that rooftops were primarily used for hard top applications and that
9 that the rooftop was generally not suitable for pop top applications. The CIA
10 stated that split systems have different characteristics and are suitable for pop
11 tops but can be used in hard tops as well.

12 The RVMAA made no comment.

13 In respect of OEM's and dealers, Customs noted that there was a reticence to
14 openly express any view on the issue, and that all of these parties were most
15 concerned that their comments should remain confidential. No OEM's or
16 dealers were prepared to make any written submission. All of those prepared
17 to verbally express a view claimed that rooftops and split systems were not
18 like goods.

19 **4.1.4 Customs**

20 In the Australian market there are two types of air conditioners designed for
21 use in caravans, mobile homes and pop-tops. These are rooftop and split
22 system.

23 An application has been made for a dumping duty notice to be published in
24 respect of split system air conditioners exported to Australia from Italy. The
25 Australian industry manufactures split system air conditioners and Customs
26 has concluded that these are like goods to the imports on the basis that they
27 have characteristics closely resembling the imports.

28 The Australian industry also manufactures rooftop air conditioners. The issue
29 is whether rooftop air conditioners have characteristics closely resembling the
30 imported split system air conditioners, and are therefore also like goods to the
31 imports. The following sections examine factors that Customs takes into
32 consideration when deciding whether goods are like goods.

33 **4.1.4.1 Physical characteristics**

34 Split system air conditioners consist of two individual units: a condenser unit
35 and an air handler unit. Both units are placed inside the vehicle and can be
36 up to five metres apart.

37 Rooftop air conditioners are a single unit that is placed on the roof of the
38 vehicle. The rooftop air conditioners produced by the Australian industry, use
39 reverse cycle technology, which is a different air conditioning process to the
40 split system technology. However, the two types have similar technical

1 specifications in terms of weight, electrical inputs and power outputs, although
2 the Australian industry's rooftop air conditioners, being reverse cycle, can
3 heat more effectively than the split system air conditioners.

4 4.1.4.2 End-use

5 The design differences mean that rooftop air conditioners are placed on the
6 roof of a vehicle, while split system air conditioners are placed inside the
7 vehicle.

8 However, both rooftop air conditioners and split system air conditioners have
9 the same functional end-use: they cool and heat air.

10 4.1.4.3 Substitutability

11 This is the most important factor according to recent GATT Panel and
12 Appellate Body reports. In the 1996 *Japan - Taxes on Alcoholic Beverages*
13 case both the Panel and the Appellate Body viewed like goods as a subset of
14 "directly competitive or substitutable products".⁴ The Panel went on to state
15 that "the appropriate test to define whether two products are 'like' or 'directly
16 competitive or substitutable' is the marketplace"⁵. The Appellate Body's
17 approach was affirmed as relevant to the definition of like goods for the
18 purposes of the WTO Agreement on Subsidies and Countervailing Measures
19 in the 1998 Panel Report *Indonesia - Certain Measures Affecting the*
20 *Automobile Industry*.⁶

21 In the present case the Australian industry has claimed that, due to the weight
22 of the rooftop air conditioner (approximately 44kg), it cannot be used on
23 pop-tops, which are caravans that have a collapsible roof (the roof collapses
24 by about 30 to 60 centimetres). Further, the industry claims that sales of
25 pop-tops account for around 70% of total sales of caravans, mobile homes
26 and pop-tops.

27 Accepting the industry's claims, the market for rooftop air conditioners is
28 restricted to 30% of the market for split system air conditioners. The issue for
29 Customs then becomes: does the competition from rooftop air conditioners in
30 30% of the market for the imported split system air conditioners (not an
31 insignificant proportion of the market) mean that rooftop air conditioners are
32 "directly competitive or substitutable" and, if so, like goods to split system air
33 conditioners?

34 The following sections analyse three cases where the determination of like
35 goods was an issue and apply those principles to the present case.

⁴ *Japan - Taxes on Alcoholic Beverages*, Report of the Panel, 1996 and of the Appellate Body, 1996, International Trade Law Reports, Volume 1, Issue 2

⁵ *ibid*, p 215

⁶ *Indonesia - Certain Measures Affecting the Automobile Industry*, Report of the Panel, 1998, International Trade Law Reports, Volume 3, Issue 4

1 *Japan - Taxes on Alcoholic Beverages*

2 In the Japanese alcohol taxes case, the Panel had to determine whether a
3 number of alcoholic beverages were like goods (or products) to the Japanese
4 clear alcoholic beverage shochu. The Panel stated that:

5 In the Panel's view, only vodka could be considered as like product to shochu since,
6 apart from commonality of end-uses, it shared with shochu most physical
7 characteristics. Definitionally, the only difference is in the media used for filtration.
8 Substantial noticeable differences in physical characteristics exist between the rest of
9 the alcoholic beverages at dispute and shochu that would disqualify them from being
10 regarded as like products. More specifically, the use of additives would disqualify
11 liqueurs, gin and genever; the use of ingredients would disqualify rum; lastly,
12 appearance (arising from manufacturing processes) would disqualify whisky and
13 brandy.⁷

14 Later on in the report, the Panel concluded "that shochu and the other
15 products subject to dispute are directly competitive or substitutable"⁸. The
16 Appellate Body agreed with the Panel's analysis.⁹ In effect, the Panel found a
17 range of products to be directly competitive or substitutable. However, only
18 the product with the most physical characteristics in common with the product
19 under consideration was found to be like goods to that product. The panel
20 even considered that the appearance of the brown spirits whisky and brandy
21 was enough to render them not like goods to the clear spirit shochu.

22 Applying this approach to the present case, it is arguable that rooftop and split
23 system air conditioners are directly competitive or substitutable, if only in 30%
24 of the total market. However, the split system air conditioners produced by
25 the Australian industry clearly have the most in common with the imported
26 split system air conditioners. The differences in physical characteristics
27 between the rooftop and split system air conditioners are such that the rooftop
28 air conditioners can only be used in 30% of applications. In Customs view
29 this would disqualify rooftop air conditioners from being regarded as like
30 goods to the imported split system air conditioners.

31 *Indonesia - Certain Measures Affecting the Automobile Industry*

32 In the Indonesian automobile case, the Panel considered whether all
33 passenger cars, some cars or no other cars were like goods to a particular
34 Indonesian model of car. The Panel stated that:

35 We are aware that there are innumerable differences among passenger cars and that
36 the identification of appropriate dividing lines between them may not be a simple task.
37 However, this does not in our view justify lumping all such products together where the
38 differences among the products are so dramatic.

39 ...

40 One reasonable way to approach the "like product" issue is to look at the manner in
41 which the automotive industry itself has analysed market segmentation. ... DRI's *Asian*
42 *Automotive Industry Forecast Report of June 1997* divides passenger cars into five
43 segments: Small Cars Segment (Segment A), Supercompact Segment (Segment B),

⁷ *Japan - Taxes on Alcoholic Beverages*, op cit, p 216

⁸ *ibid*, p 221

⁹ *ibid*, p 244

1 Lower Medium Segment (Segment C), Upper Medium Segment (Segment D) and
2 Executive Segment (Segment E).

3 ...

4 The question remains whether the criteria used by the DRI in arriving at its market
5 segmentation are appropriate to a like product analysis under the Subsidies and
6 Countervailing Measures Agreement. We consider that they are.

7 ...

8 We consider such an approach, which segments the market based on a combination of
9 size and price/market position, to be a sensible one which is consistent with the criteria
10 relevant to "like product" analysis under the Subsidies and Countervailing Measures
11 Agreement.¹⁰

12 The Panel went on to conclude that the particular Indonesian model of car
13 was within Segment C, and that the other cars within that segment were like
14 goods to that car, except for one car, which had "clear superiority in its
15 features"¹¹. In effect, the Panel found that for the purposes of assessing like
16 goods, a large range of products could be broken down into groups of
17 products or segments.

18 In the automobile case, it would be logical to conclude that there would be
19 some competition between cars from different segments. Nevertheless, the
20 majority of competition would occur within a market segment and the Panel
21 restricted the assessment of like goods to those products within a segment.
22 The Panel even excluded one particular model of car within the same
23 segment, due to its particular features.

24 Applying this approach to the present case, the total market for air
25 conditioners for caravans, mobile homes and pop-tops includes rooftop and
26 split system types. However, the majority (70%) of competition is among split
27 system air conditioners only. Due to differences in physical characteristics,
28 the rooftop air conditioners do not compete fully with split system air
29 conditioners and can be categorised as a separate type of air conditioner and
30 should not be considered like goods to the imports.

31 *EC - Footwear from China*

32 In 1997 the EC conducted an anti-dumping investigation into footwear from
33 China. The EC initially categorised indoor slippers as like goods to outdoor
34 shoes. However, following arguments from interested parties throughout the
35 investigation, the EC stated in its definitive regulation:

36 ...slippers, due to their usual flimsiness, do not appear to be suitable for most outdoor
37 uses. This also appears to be confirmed by the consumers' perception of both
38 products. It has therefore to be concluded that the second 'interchangeability test', ie
39 whether an indoor shoe can replace an outdoor shoe, is not satisfied and accordingly
40 that slippers and outdoor footwear of the kind under consideration cannot be regarded
41 as one single category of products.¹²

¹⁰ *Indonesia - Certain Measures Affecting the Automobile Industry*, op cit, pp 1244-1245

¹¹ *ibid*, p 1248

¹² Bronkers, M & McNelis, N, *Rethinking the "Like Product" Definition in WTO Antidumping Law*, *Journal of World Trade* 33(3), 1999, p 81

1 In effect, the EC found that while indoor slippers were suitable for some
2 outdoor uses, they could not be considered like goods to outdoor shoes
3 because they could not replace outdoor shoes for all, or a majority,
4 applications.

5 Applying this approach to the present case, while rooftop air conditioners are
6 suitable for some of the applications of split system air conditioners, they can
7 not be considered like goods to split system air conditioners because they
8 could not replace split system air conditioners for all, or a majority,
9 applications.

10 **4.1.5 Conclusion**

11 Applying the principles of the three cases cited above to the present
12 circumstances leads to the conclusion that rooftop air conditioners produced
13 by the Australian industry are not like goods to split system air conditioners
14 exported from Italy.

15 The approaches cited in those cases are consistent with the general principle
16 in the definition of "like product" in Article 2.6 of the WTO Anti-dumping
17 Agreement. That article states that a like product is an identical product to
18 the product under consideration, or in the absence of an identical product,
19 another product that has " characteristics closely resembling" the product
20 under consideration. It seems logical that in the absence of an identical
21 product, the like product would be the next product that most closely
22 resembles the product under consideration.

23 In Customs view there are physical differences between the two units that
24 have implications for their end-use and substitutability. There is no doubt that
25 the two units perform the same function of cooling and that one unit is
26 probably a more powerful generator of heat.

27 The fact that two distinct types are produced and that they primarily cater for
28 different segments of the caravan market, ie standard and 'pop top' caravans,
29 would in Customs view indicate that they are not like goods. Customs
30 acknowledges that a degree of overlap in the caravan market exists for
31 around 30% of vehicles. However, the majority of the market, the 'pop top'
32 segment, can only be readily serviced by the split system unit due to inherent
33 design limitations, ie the inability of a 'pop top' to support the weight of a
34 rooftop unit. Practical considerations and personal preferences limit the
35 ability for split system units to supply the whole market. Similarly, it is not
36 possible for the rooftop to supply the whole market simply due to physical
37 considerations, such as the weight and height of the units.

38 While the rooftop unit is a mature product the split system unit is still
39 developing in the sense of its market and in terms of refinements in its design,
40 eg vertical versus horizontal configuration. There is still some scope for split
41 system units to take sales away from the traditional rooftop unit, however the
42 reverse is unlikely, as to do so would go against recent trends which reflect a
43 strong growth in split system sales as a result of increased registrations of
44 pop-top vehicles.

1 As claimed by Electrolux in their submission, the market can be a strong
2 indicator on this issue. Customs is further persuaded by the responses from
3 OEM's and dealers who were prepared to voice an opinion. There was a
4 clear indication from those parties that they do not consider the units to be
5 like goods from an installer's perspective due to the physical limitations of
6 their respective designs.

7 Customs has concluded that the rooftop unit is not a like good to a split
8 system unit.

5 THE AUSTRALIAN INDUSTRY

Aircommand, the applicant is a wholly owned Australian company, commenced trading some 23 years ago. It produces a range of rooftop and split system air conditioners. It also purchases, modifies and sells refrigerators for use in recreational vehicles.

Aircommand claimed:

About 4 years ago Aircommand developed and marketed a split system caravan air conditioner and quickly became the number one supplier of caravan air conditioners in Australia. The "Heron 2.2" split system unit was released in August 1996 and this was followed 18 months later (February 1998) with release of the "Heron 3.0", a larger model. In 1999 Aircommand achieved overall sales increase of about 300% on 1995 sales. Detailed sales analyses are at Attachment E.

The application nominates Aircommand as the sole Australian producer of split system in Australia. No party has disputed this claim and no information obtained during the investigation indicated that any other producer existed. Customs therefore concludes that Aircommand is the only member of the Australian industry producing like goods.

Since Aircommand, the sole Australian producer of like goods, has made the application, it is accepted that the industry support conditions of subsection 269TB(6) of the Act have been met.

To satisfy the requirements of subsections 269T(2), 269T(3) and 269T(4) of the Act on the existence of an Australian industry, Customs inspected the factory and held discussions with Aircommand on the production process.

Aircommand claims to produce like goods from imported and locally sourced components. Aircommand stated that significant components such as the compressor, condenser coil, fan unit and evaporator coil are imported components, purchased from local distributors, and that these imported components constitute around █% of the value of the inputs. Customs examination of the bill of materials for both Heron models established that the imported component content is around █% of the cost of production.

Other less costly components such as the pressed and punched metal components forming the chassis, copper tubing and the injection moulded fascia units are designed by Aircommand and sourced locally in Australia from unrelated parties.

During the tour of the factory Aircommand provided a detailed description of the processes undertaken in producing the finished units. It was consistent with the details provided in Attachment O of its application¹³. The description included the process of constructing the hermetic system which involves the placement of the components (comprising the compressor, condenser coil and service valves) into a jig and brazing the joints of the joints of the

¹³ Application for Dumping Duty Notice by Aircommand, See Customs File C00/08105

1 interconnecting copper tubing. The unit is charged with refrigerant and tested
2 for leaks. The components of the air delivery system are assembled and the
3 complete system packaged for warehousing.

4 **5.1.1 Conclusion**

5 Having considered the information provided by the Australian industry and
6 having undertaken an inspection of their manufacturing facilities, Customs
7 concludes that like goods are partly manufactured in Australia and that a
8 substantial process of manufacture is undertaken by the industry in Australia.
9 Accordingly, the requirements of subsection 269T(2) of the Act have been
10 met.

6 THE AUSTRALIAN MARKET

Before January 2000, Aircommand supplied the Australian market for split systems. Aircommand commenced sales of split systems around August 1996. In January 2000 that situation changed with the arrival of imports in commercial quantities. EL had imported small quantities of split systems prior to that date for use as sample (evaluation) units. Currently the Australian market for split systems is shared between these two suppliers.

Since imports commenced the market has been supplied with four models, two local and two imported. The local models are the Heron 2.2kW (horizontal) and the Heron 3.0kW (vertical) and the imported models are the Blizzard SA101 (vertical) with a cooling output of 3.0kW and the Blizzard SA102 (horizontal) having a cooling output of 2.625kW. The table below provides a comparison between some key specifications of the local and imported models.

Component	Dimensions	Blizzard SA102 (horizontal)	Heron 2.2kW (horizontal)	Blizzard SA101 (vertical)	Heron 3.0kW (vertical)
Air handler	Height	258mm	220mm	258mm	220mm
	Width	520mm	385mm	520mm	380mm
	Depth	230mm	230mm	230mm	215mm
Condenser	Height	240mm	235mm	455mm	765mm
	Width	590mm	460mm	520mm	460mm
	Depth	400mm	440mm	250mm	220mm
Cooling Output		2.625kW	2.2kW	3.0kW	3.0kW

Customs had previously indicated that both imported models had a cooling output of 2.625kW based upon information provided by EL. Electrolux¹⁴ explained to Customs that the SA101 model in fact had a cooling capacity of 3.0kW. The specification sheets provided by EWTA support this.

Electrolux¹⁵ stated that in its view there were two distinct markets for the 3.0kW and 2.2kW models and therefore the Blizzard 3.0kW could only compete against the Heron 3.0kW in that segment of the market. This statement ignores the shipment of lower capacity horizontal units with a cooling output of 2.625 kW.

Relevant extracts of Electrolux's submission are reproduced below.

Aircommand is quoted as saying that "price is everything" in the market in the context of brand loyalty and packing. If indeed price is everything, there is no market for a 3.0 unit

¹⁴ Electrolux submission, dated 9 February 2001, see Customs Public File C00/01433

¹⁵ Electrolux submission, dated 12 January 2001, see Customs Public File C00/08149, folios 44 to 47

1 where a 2.2 will do the job. There is no market for a Blizzard 3.0 or a Heron 3.0 if a
2 Heron can be bought for a significantly lower price.

3 Electrolux Leisure has been made acutely aware by its customers, and by potential
4 customers, that they will not purchase a Blizzard 3.0 unit for a smaller caravan because
5 Aircommand has a cheaper 2.2 unit that will do the job. Whatever claims are made
6 about the effects of the promotional offer by Electrolux for part of 2000, the situation
7 from October 2000, and today, is that Aircommand has a 2.2 unit which sells for
8 significantly less than its own 3.0 unit and the Blizzard 3.0, which is dearer again. The
9 current OEM price for the Blizzard 3.0 is \$■■■■, or \$■■■■ more than the Heron 2.2!
10 Aircommand is correct in one thing at least: "price is everything".

11 The two capacities available in local split systems could be expected to create
12 a degree of market segmentation by virtue of the fact that each unit is
13 designed for particular applications based upon the units ability to perform its
14 intended function efficiently. However despite design limitations and
15 manufacturer guidance, purchasers do not always follow recommendations
16 regarding applications. It is also apparent that there is scope for overlap in
17 application between the 2.2kW and the 3.0kW units. While the 2.2kW unit
18 might struggle to perform efficiently in an application more suited to the
19 3.0kW unit the 3.0kW unit will no doubt, subject to physical size limitations,
20 perform the primary function of cooling as well or better than the 2.2kW unit.

21 The Electrolux submission raises the issue of price and states that the price
22 of the 2.2kW unit is such that no one would purchase a 3.0kW unit where a
23 2.2kW unit would do the job. Subject to the exceptions outlined above
24 Customs agrees with Electrolux's submission as a general rule.

25 Customs analysis of EL's sales data contradicts the claims made in the
26 Electrolux submission on a number of important points.

27 First the average sale price of the Blizzard split system has in fact severely
28 undercut not just the price of the Heron 3.0kW but also the price of the Heron
29 2.2kW during the investigation period. The degree of undercutting is more
30 than twice the normal price differential between the Heron 2.2kW unit and the
31 Blizzard unit. Customs notes that Electrolux emphasises the size of the price
32 differential between the normal prices of the Heron 2.2kW and its own
33 Blizzard unit, but also notes that the differential between the Blizzard
34 promotional price and the prices of the two Heron models was even larger.

35 Logic suggests that if a higher capacity product is sold at a price which
36 significantly undercuts a smaller capacity unit then subject to physical
37 limitations customers can be expected to opt for the more powerful but
38 cheaper unit. In Customs view the marketing strategy employed by EL
39 effectively removed the price barrier between the two 'capacities' and created
40 a single market.

41 Secondly the reference to the 'promotional offer by Electrolux for part of 2000'
42 is suggestive of a short lived promotion. EL provided information that
43 indicates that initially the offer was to have a short life, but the promotion was
44 extended and was technically available for a period of eight months from
45 February to September 2000, inclusive.

1 However, the offer effectively operated significantly longer through a
2 mechanism whereby orders placed prior to 30 September for delivery in the
3 future would qualify for the promotional price. In Customs view the promotion
4 had an effective life of at least eleven months and in a limited sense will
5 continue into 2001 for some individual units covered by orders placed prior to
6 30 September 2000.

7 Customs is of the view that had there been two distinct and separate market
8 segments for the different cooling capacities, by Electrolux's own logic their
9 marketing strategy effectively removed any segmentation. That view is
10 supported by the injury analysis discussed later at Section 8.2.2.1, which
11 indicates that Aircommand, has suffered injury in its sales of 2.2kW units.

12 **6.1.1 Market structure**

13 Both Aircommand and Electrolux can be viewed as being at the same level
14 within the Australian market. Both hold stocks of finished goods in their
15 respective warehouses; both supply units directly to larger OEMs and to
16 distributors who on sell to wholesalers, smaller OEMs and dealer/installers.
17 Generally OEMs, etc purchase from both suppliers.

18 **6.1.2 Market size**

19 Customs examined the market for split systems during the period September
20 quarter 1998 to the end of the December quarter 2000. Customs estimated
21 the size of the Australian market using sales information from the Australian
22 industry, and sales data obtained from EL. As there are only two suppliers in
23 the marketplace and the sales data is verified, the resultant market
24 assessment is considered to be accurate.

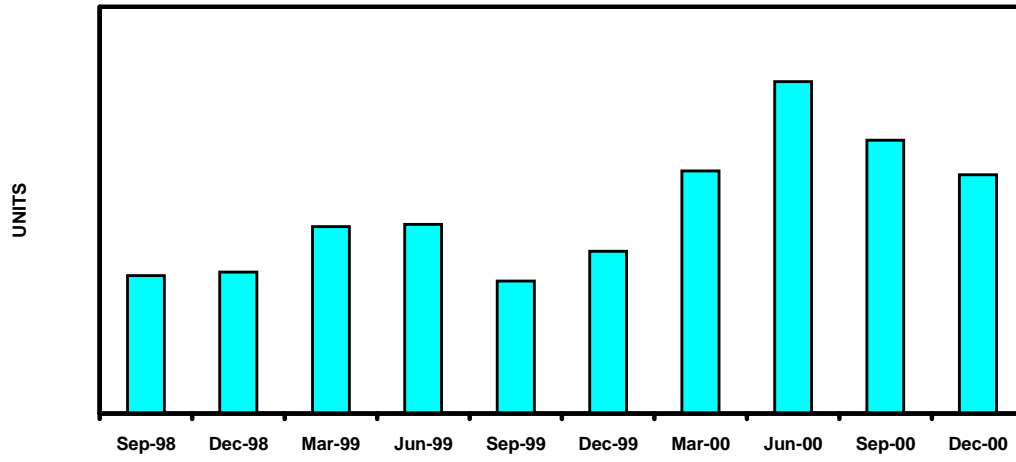
25 The total Australian market has been presented in the charts below as
26 follows:

- 27 1. by quarter from September quarter 1998 to December quarter 2000;
- 28 2. by fiscal year for 1998-1999 and 1999-2000; and
- 29 3. by calendar year for 1999 and 2000.

30 The analysis shows that the Australian market for split systems is increasing
31 at a fast rate. On a fiscal year basis the market in 1999-2000 increased 33%
32 over the preceding year. On the calendar year basis the market in 2000
33 increased 62% over 1999.

34

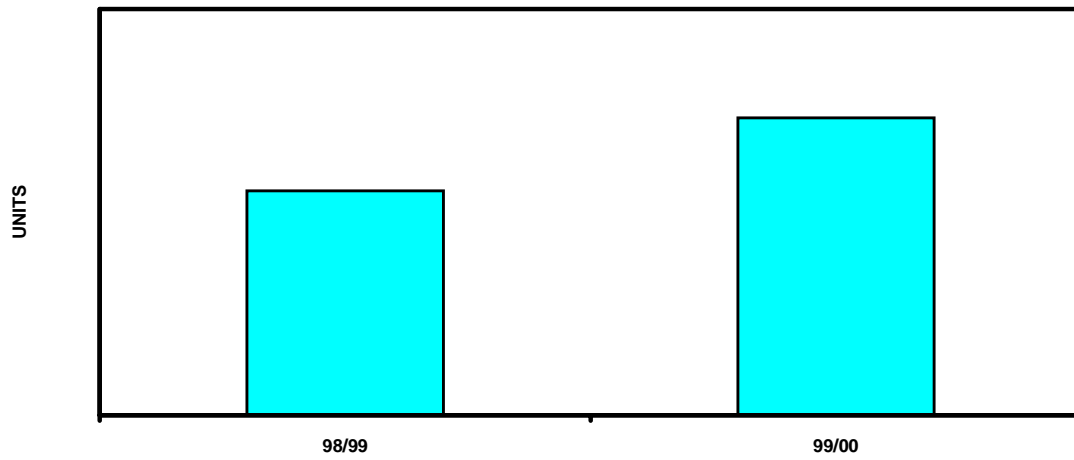
TOTAL AUSTRALIAN MARKET BY QUARTER



1

2

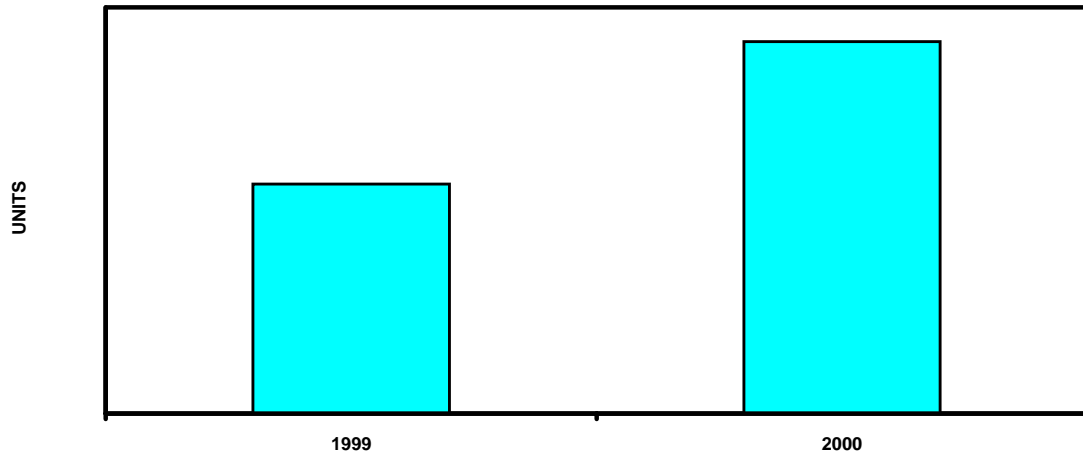
TOTAL AUSTRALIAN MARKET BY FISCAL YEAR



3

4

TOTAL AUSTRALIAN MARKET BY CALENDAR YEAR



1

7 THE DUMPING INVESTIGATION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product, in the domestic market of the country of export. This section explains the results of Customs investigations on this aspect.

7.1 Background

Customs identified EWTA as the only supplier of the split systems from any source during the investigation and injury periods, ie from July 1998 to September 2000.

7.2 Export price

7.2.1 The Exporter and the Importer

Customs investigation confirmed that EWTA manufactures split systems in Italy. EWTA receives an order from EL, an associated company. EWTA invoices EL at an ex-factory level. EL pays EWTA for the goods. Payments between Electrolux related companies are accounted for through the group internal payment system (GIPS). In the case of sales between EWTA and EL the payment is channelled through intermediate Electrolux entities, including Electrolux Australia (Waverley) who consolidate payments by Oceania region companies and Electrolux Finance divisions in Singapore and Sweden who perform a financial service for the group.

Having purchased the goods at an ex-factory level, EL is responsible for the transportation of the goods from the factory in Italy to the waterfront at La Spezia, shipment to Australia along with clearance of the goods in Australia. EL is the beneficiary on the marine insurance contract. EL is a beneficial owner at the time of importation.

On the basis of the above facts Customs is of the view that:

- EWTA is the producer and supplier; and
- EL is both the exporter and the importer.

7.2.2 Arms Length

For an export price to be considered reliable it must be the result of an 'arms length' relationship between the buyer and the seller. The relevant legislative provision section 269TAA deals with arms length and is reproduced below.

(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

- (a) there is any consideration payable for or in respect of the goods other than their price; or
- (b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

1 (c) in the opinion of the Minister the buyer, or an associate of the buyer, will,
2 subsequent to the purchase or sale, directly or indirectly, be reimbursed, be
3 compensated or otherwise receive a benefit for, or in respect of, the whole or any
4 part of the price.

5 Subsection 269TAA(2) provides that:

- 6 **(2)** Without limiting the generality of subsection (1), where:
7 (a) goods are exported to Australia otherwise than by the importer and are purchased
8 by the importer from the exporter (whether before or after exportation) for a
9 particular price; and
10 (b) the Minister is satisfied that the importer, whether directly or through an associate
11 or associates, sells those goods in Australia (whether in the condition in which
12 they were imported or otherwise) at a loss;

13 the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss
14 as indicating that the importer or an associate of the importer will, directly or indirectly, be
15 reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or
16 a part of the price.

17 And at subsection 269TAA(3) it provides that:

- 18 **(3)** In determining, for the purposes of subsection (2), whether goods are sold by an
19 importer at a loss, the Minister shall have regard to:
20 (a) the amount of the price paid or to be paid for the goods by the importer; and
21 (b) such other amounts as the Minister determines to be costs necessarily incurred in
22 the importation and sale of the goods; and
23 (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to
24 be recovered within a reasonable time; and

25 such other matters as the Minister considers relevant.

26 Customs policy for the purposes of paragraph 269TAA(3)(c) is to interpret a
27 'reasonable period of time' as being generally not less than 12 months¹⁶.

28 In this case there is no sale between the exporter and the importer because
29 of the finding that EL is both the exporter and the importer and so subsections
30 269TAA(2) & (3) do not apply.

31 However, Customs considers that the general principle of subsections
32 269TAA(2) & (3) can be applied to ascertain whether other transactions are
33 arms length.

34 7.2.2.1 Sales at a loss by EL

35 To assist in establishing whether export transactions between EWTA and EL
36 are arms length Customs examined sales of split systems by EL on the
37 Australian domestic market during the period 1 October 1999 to
38 31 December 2000, to assess the profitability of those sales.

39 Customs analysis of data provided by EL indicates that significant numbers of
40 split systems had been sold at a loss by EL primarily through its promotional
41 marketing campaign of 'buy three get five', and in smaller numbers as a result
42 of discounted prices.

¹⁶ Customs Manual, Division 2, page 33, para (15) – February 2000

1 Electrolux Leisure

2 EL made a submission¹⁷ on the issue of sales dumping in response to
3 Customs examination of their sales. Key extracts of that submission and
4 Customs comments on those elements are reproduced below.

5 **Comments on Section 269 TAA**

6 Section 269 TAA provides a clear legislative basis to exclude sales from arms length
7 characterisation where any of the criteria in sub-section 1(a) through (c) are found to
8 exist. The net here is quite wide and includes in sub-section 1(a), any consideration
9 paid or payable other than the price paid for the goods; in 1(b) where the price in
10 influenced by commercial or other relationship; and 1(c) where the Minister is of the
11 opinion that the buyer or an associate of the buyer will be compensated or reimbursed
12 directly or indirectly partially or wholly for any part of the price.

13 Applying this to the subject transactions between Electrolux Italy (called "WTA") and
14 Electrolux Leisure Pty Ltd (called "EL") it is strongly asserted to Customs that none of
15 the criteria above can apply.

16 In support of those assertions, the evidence provided is as follows:

17 1(a) – matching the export transactions and commercial price in the commercial invoice
18 to actual payments through the GIPS system;

19 1(b) –each Electrolux entity is a separate profit centre and there is no question of
20 transfer pricing; and

21 1(c) – there is no corporate practice or culture of direct or indirect reimbursement or
22 compensation between Electrolux entities in respect of commercial transactions
23 between manufacturing entities (such as WTA) and sales entities (such as EL).

24 Customs agrees that the invoiced price has been paid on all export shipments
25 through the GIPS. Customs has some reservations regarding the claim that
26 each Electrolux entity is a separate profit centre, given that the group appears
27 to provide a centralised payment and financial service for which it is
28 apparently not compensated by the various profit centres. In response to the
29 SEF, Electrolux claimed that this statement was incorrect and that Customs
30 had been provided with documentary evidence to support the claim that
31 financial services were provided at market rates¹⁸. At the time of the visit to
32 EWTA neither EWTA personnel nor the other senior Electrolux personnel
33 present were able to explain how the cost of such services was recovered
34 from the subsidiary companies. Subsequent to the visit Electrolux provided a
35 facsimile which included a statement that Electrolux Finance sells its services
36 at market conditions and is a profitable activity. Despite that statement
37 Customs continues to have reservations as to whether each entity within the
38 Electrolux Group (EG) is a true profit centre.

39 The statement by Electrolux that there is no corporate practice or culture of
40 direct or indirect reimbursement or compensation between Electrolux entities

¹⁷ EL submission 'Sales Dumping', received 15 November 2000, see Customs Public File C00/08148, folios 72 to 80

¹⁸ EL submission dated 12 January 2000, 'The GIPS System and your Arms Length Assessment', see Customs file C01/00362, folios 83-86

1 remains an unsupported statement. That said, Customs recognises the
2 difficulty any commercial entity would have in trying to establish the accuracy
3 of such a statement.

4 Section 269 TAA (2)(a) is the most directly relevant section.

5 “(a) goods are exported to Australia otherwise than by the importer and are purchased
6 by the importer from the exporter (whether before or after exportation) for a particular
7 price;”

8 Sub-section 2(a) above applies because the goods were exported by WTA to EL for a
9 specified price and some of those goods, over a short period, were sold at a loss
10 pursuant to the “get five for the price of three” promotion.

11 It is this sub-section which allows the Minister to regard such sales at a loss as
12 indicating that there may be a proscribed reimbursement or compensation arrangement
13 in respect of part of the price under section 269 TAA (1)(c).

14 Customs has concluded that EL is both the exporter and the importer and
15 therefore subsections 269TAA(2) & (3) do not apply.

16 The facts do not support the claim “some of those goods, over a short period,
17 were sold at a loss pursuant to the “get five for the price of three” promotion.”
18 The facts are that sales at a loss:

- 19 • represent at least [REDACTED] % of total sales of the goods; and
- 20 • have taken place over a period of at least [REDACTED] months; and
- 21 • will continue to be made on an individual unit basis for an undefined
22 period of time.

23 **The price paid plus GS&A costs?**

24 [REDACTED]
25 [REDACTED]

26 Customs agrees.

27 **Can the total costs be recovered within a reasonable time?**

28 The real issue is not the fact of some sales at a loss but the likelihood that the full costs
29 of such units can be recovered within a reasonable time. That consideration involves
30 an accounting exercise in respect of the entirety of sales of the goods under
31 consideration over a reasonable period.

32 Customs agrees.

33 **“A Reasonable Period”?**

34 The Ministerial directive fixes a period of not less than 12 months as a reasonable
35 period for this purpose under the ADA. Accordingly over a twelve month period from
36 commencement of “sales at a loss” it is necessary to look at:

- 37 1. the sales revenue derived from the “five for three” promotional sales for the limited
38 period of such sales
- 39 2. all other “normal” sales of the split system units

- 1 3. projected sales revenues from future "normal" sales for stock
2 4. projected sales revenue from future importations over the balance of the
3 reasonable period.

4 This twelve month reasonable period should commence with the first sales of the goods
5 under consideration in February 2000 and run therefore until the end of January 2001.

6 It has been demonstrated conclusively by the confidential costs and sales income
7 figures, those actual to date, and those projected, that EL will recover its full costs of
8 sale over this period.

9 Customs agrees that a 'reasonable period' should generally be at least 12
10 months, and in this case the period should be defined as commencing
11 February 2000 through to the end of January 2001.

12 Customs disagrees with the assertion by EL that their cost and sales data
13 indicates that the full cost will be recovered over a reasonable period.
14 Customs analysis indicates that even were all sales throughout January and
15 future months made at the 'normal' profitable price it would take a further [REDACTED]
16 [REDACTED] months or longer for Electrolux to break even. Customs
17 analysis is premised on a further [REDACTED] units to be sold at the promotional price,
18 being sold at the normal price, and includes an assumption that EL will
19 maintain its past sales volumes in the future.

20 The legislative provisions listed above therefore require the Minister to take the
21 following steps to form a relevant opinion that sales at a loss by EL render non-arms
22 length the export transactions with WTA. Those steps are:

- 23 1. a determination pursuant to section 269 TAA (3) that the goods are sold at a loss;
24 and
25 2. having formed an opinion that goods have been sold at a loss, making an inference
26 that EL will receive a benefit in respect of the price pursuant to section 269 TAA (2);
27 and
28 3. a decision to treat the export transaction as non-arms length pursuant to section
29 269 TAA (1)(c).

30 As explained, Customs has determined that EL is both the exporter and
31 importer and so that while subsection 269TAA(1) applies the strict terms of
32 subsections 269TAA(2) & (3) do not apply. However, the general principle of
33 section 269TAA can be applied in other circumstances to determine whether
34 sales are arms length or not. Accordingly Customs agrees that the first step
35 is to establish that the goods are sold at a loss. In Customs view having
36 established that sales are at a loss, that is a sufficient indicator in itself for the
37 Minister to treat the sale of those goods at a loss as indicating that there will a
38 direct or indirect reimbursement.

39 **Submission**

40 Accordingly EL submits that the Minister, and Customs, should, in all of the
41 circumstances, determine that the cost to make and sell in Italy is the proper basis for
42 determining the normal value of the goods under consideration. WTA has full and
43 complete production, administrative, financial and other records available for inspection
44 and these will demonstrate satisfactorily that the fully absorbed cost to make and sell

1 the goods, plus the profit margin, exceed the transaction price to EL. That is, that sales
2 to EL are sales at arms length and are not not sales at a loss for WTA.

3 Electrolux in response to the SEF pointed out that there were obvious errors
4 in this part of its submission. Electrolux explained that it was not admitting
5 that the export price is a dumped price and that the second 'not' in the final
6 sentence is a typographical error.

7 However, the facts as established by Customs indicate that EWTA has set a
8 price between itself and EL that is around the cost of production and does not
9 recover all costs or provide for any profit. Customs also established that
10 normal values exceed transaction prices to EL by the dumping margins
11 detailed at Section 7.4.

12 Customs view

13 During the period February to December 2000, EL sold a total of [REDACTED] units on
14 the Australian domestic market. Of those units, [REDACTED] units were sold at a profit
15 and [REDACTED] units or [REDACTED]% were sold at the promotional price or a discounted price
16 that was not profitable. Overall sales of split systems were made at a
17 substantial loss, which amounted to around \$[REDACTED] as at 31 December
18 2000.

19 EL claimed that the promotion was originally to run for a short period but was
20 extended to end on 30 September 2000. However, the terms of the
21 promotion involved an arrangement whereby orders placed before the end of
22 the promotion period involving sales/deliveries in the future would also qualify
23 for the 'promotional prices'. As a result of that arrangement a significant
24 volume of units were 'sold' at a loss after 30 September 2000. Advice
25 received from EL suggests that a number of units ([REDACTED]) will continue to be sold
26 at the promotional price in 2001 as a result of an order placed prior to
27 30 September 2000.

28 Customs sought an explanation as to why some higher priced sales had been
29 made to a customer subject of the promotional offer, who appeared to have
30 outstanding orders to be filled. Customs was verbally advised¹⁹ that the
31 higher prices were indicative of EL's decision not to sell any further units at
32 the promotional price despite the above-mentioned arrangement. However
33 the sales report Customs was questioning did not support that claim,
34 indicating that a significant volume of sales at the promotional price continued
35 to be made after those few sales at the higher price.

36 Customs applied similar tests as those outlined in subsection 269TAA(3) in
37 analysing the EL's sales. The analysis indicates that EL would have to sell all
38 split systems at a normal price for a minimum period of [REDACTED]
39 [REDACTED] to recover the losses incurred to 31 December 2000.

40

¹⁹ Customs File Note, dated 12 January 2001, Customs file C2000/09389, folio 85

1 Customs concludes that overall, sales of split systems by EL were made at a
2 significant loss and those losses will not be recovered within a reasonable
3 period of time. Therefore sales by EL can be considered to have been made
4 at a loss consistent with the principle of paragraph 269TAA(2)(b).

5 Customs must now consider whether the Minister should interpret those sales
6 at a loss as indicating that the EL or an associate of EL will, directly or
7 indirectly, be reimbursed, be compensated or otherwise receive a benefit for,
8 or in respect of, the whole or part of the price. Were Customs to consider
9 those sales at a loss as being indicative of some compensatory arrangement
10 the 'true' export price would then be established by the deductive method.

11 EL stated that the sales at a loss were the result of a 'promotion' designed to
12 encourage OEMs of caravans and other significant purchasers to change
13 over to the new imported split system, the Blizzard. The promotion involving
14 the buy three units at the normal price and receive five units equated to a
15 discount of ■% off the normal price. Apart from the conversion of significant
16 purchasers to the Blizzard units, other benefits included increased sales
17 volumes and market share for EL.

18 EL's unprofitable sales of split systems have been:

- 19 • made to significant customers of EL;
- 20 • made over a long period;
- 21 • at such low prices that they have severely undercut the prices of the
22 Australian industry; and
- 23 • have been of such magnitude that EL has incurred a significant operating
24 loss on all sales of split systems during the period, February to December
25 2000.

26 The submission made by EL appears to rely solely on the claim that the costs
27 will be recovered within a reasonable period of time as a basis for arguing that
28 there is no compensatory arrangement between EWTA and EL. Customs
29 analysis demonstrates that costs will not be recovered within a reasonable
30 period of time.

31 It would therefore be reasonable for the Minister to conclude that a
32 compensatory arrangement exists between EWTA and EL and that
33 transactions between the two parties involving split systems should be treated
34 as not arms length.

35 Although not usually relevant to the issue export price, in this case Customs
36 has compared the invoiced export prices between EWTA and EL to EWTA's
37 fully absorbed cost to make and sell for split systems. Customs notes that the
38 invoiced export price approximates the cost of production of the split system
39 air conditioner.

40 Customs is of the view that it is likely that EWTA has supported EL's
41 marketing strategy by setting prices at a level that does not recover all of
42 EWTA's costs or contribute to its profits. Having contributed to the marketing

1 strategy by pricing split systems at less than the full cost and without any
2 recovery of profit, Customs is of the view under those circumstances it is less
3 likely that EWTA would provide any other support in the form of a
4 compensatory arrangement.

5 7.2.2.2 Associated Companies and Group Financial Operations

6 Associated companies

7 EWTA and EL are associated companies, both being subsidiaries within the
8 Electrolux Group. Their association is consistent with the definition provided
9 at subsection 269TAA(4), in that they are both bodies corporate both of whom
10 are controlled, directly or indirectly, by a third person (whether or not a body
11 corporate).

12 Customs asked EWTA and EL to provide any documents regarding the
13 development of the product, the price negotiations between EWTA and EL,
14 the marketing strategy in general for the split systems in Australia and the
15 decision to promote split systems through the buy three get five offer which
16 resulted in losses over a lengthy period for EL.

17 EWTA produced a facsimile between itself and Electrolux Finch Pty Ltd (the
18 predecessor to EL) in which it advised Electrolux Finch of the price it would
19 charge having assessed all the expenditures for manufacture of the goods.
20 EL produced two similar documents.

21 EWTA and EL indicated that there was no other documentation available.

22 Financial Services

23 As mentioned earlier, parties to the export transaction are EG companies and
24 therefore utilise the services of other EG companies in completing
25 transactions. Generally those entities are companies involved in facilitating
26 group financial services and payments. Entities known to be involved in
27 transactions between EL and EWTA include, Electrolux Australia (Waverley)
28 in its capacity as a clearing house for invoicing and Electrolux Sweden and
29 Singapore in their financial service capacity, involving the operation of the
30 Group Internal Payments System (GIPS), the provision of fixed monthly
31 exchange rates and forward cover where applicable.

32 Customs normal value report expressed concern that while both EL and
33 EWTA claim to operate as profit centres within the EG with their own audited
34 accounts, there is apparently no charge in either company's accounts for the
35 various payment and financial services provided by the EG. The concern was
36 that the provision of these apparently free services might have implications for
37 the assessment of whether transactions between EWTA and EL were arms
38 length and more generally under which legislative provision export price might
39 be assessed.

1 EWTA provided the investigation team with a copy of the Electrolux Group
2 Annual Report for 1999²⁰. At pages 27 to 29 inclusive the report comments
3 on the various financial operations undertaken by the Group on behalf of its
4 subsidiaries. The services provided appear to be extensive and cover the full
5 spectrum of financial activities. There is no explanation of how such
6 expenses are recovered from the subsidiary companies.

7 In a submission responding to the conclusions on arms length contained in
8 the normal value report²¹ (as they relate to the financial services) EWTA
9 claimed that:

10 The facts of the matter are that both EWTA and EL only use the GIPS system and do
11 not utilise any other financial services available to group members.

12 The costs absorbed by the GIPS system, so far as the relevant operations of EWTA
13 and ET [EL] are concerned, are limited to bank fees that would otherwise be incurred by
14 the debtor in making foreign currency payments to creditors. These costs are
15 transactionally based, are readily calculable and negligible.

16 As a sales company, EL has a relatively small number of monthly payments to overseas
17 creditors. As a manufacturing company, EWTA sources and pays for components
18 supplied by external suppliers in the ordinary commercial course at its own expense.
19 Payments from debtors, whether group or external, directly into a company bank
20 account are not, in any arms length relationship, accompanied by transaction costs at
21 the expense of the creditor. Put another way, the GIPS system confers no cost saving
22 benefit on EWTA in respect of payments due to it as creditor of group companies. This
23 is because it does not incur, and would not accept, any transaction costs in respect of
24 payments made by non-group debtors. In effect, all debtors must pay the full amount
25 due without cost to the creditor – all debtors are equal.

26 Accordingly, it is submitted that any costs avoided by ET [EL] or EWTA through use of
27 the GIPS system for payments by ET [EL] to EWTA are in fact able to be ascertained,
28 are negligible, and have had no influence on the export price.

29 Accordingly, in light of the above, it is submitted that all relevant circumstances of the
30 export sales are known, and the export price can be properly determined pursuant to
31 269TAB(1)(c), and not 269TAB(3).

32 In light of the above submission and Customs own assessment, it appears
33 that the benefit if any is in all probability relatively small, although Customs
34 acknowledges that it is not possible to accurately assess the implications due
35 to the lack of documented evidence. It is also Customs view that any benefit
36 is unlikely to have been a factor in the pricing decision.

37 Customs has therefore assessed export prices under paragraph
38 269TAB(1)(c), rather than subsection 269TAB(3) as recommended in the
39 normal value report. The export prices assessed do not change.

40 7.2.2.3 Arms Length Conclusion

41 The most significant issue relevant to the assessment of arms length is the
42 losses on sales incurred by EL. As explained Customs is of the view that it is

²⁰ Confidential Attachment G1

²¹ EL submission dated 12 January 2001, See Customs File C00/09205

1 unlikely that EWTA would support the marketing of split systems on the
2 Australian domestic market by selling at dumped prices and by providing
3 compensatory payments. Were EWTA to support EL's low prices, it would be
4 simpler to do so by a single mechanism, either by dumping or by
5 compensatory arrangement.

6 For that reason, on balance Customs is of the view that the sales at a loss by
7 EL do not render the transactions between EWTA and EL not arms length
8 and thereby the invoiced export prices unreliable.

9 **7.2.3 Price Paid**

10 Customs undertook verification of price paid or payable between EL and
11 EWTA for all export transactions. During the visit to EWTA it was found that
12 EWTA records did not reflect the receipt of payment by EL on the February
13 2000 shipment of ■ units. EWTA was unable to produce any evidence that it
14 had processed the request for payment through the GIPS. EWTA was able
15 to establish that the payment remained outstanding in EL's account. EWTA
16 explained to Customs that payment would not be made by EL until such time
17 as EWTA processed a request and that group companies did not make
18 voluntary payments. For example a company that owed monies to group
19 companies and was similarly owed monies by group companies would only
20 initiate claims for the monies owed relying upon the companies to which they
21 owed monies to initiate claims on them.

22 Subsequently Customs contacted EL, seeking to confirm that payment had
23 not been made. However, contrary to the explanation by EWTA, EL advised
24 that it had made payment and supported that claim with documentation from
25 GIPS showing a net amount payable during the relevant period and payment
26 records.

27 As the records produced up to that point in support of payment were primarily
28 internal records from the GIPS, Customs requested that EL produce all
29 associated invoices to support the subsidiary amounts and the net amount
30 payable. EL provided Customs with copies of invoices to support all the
31 significant amounts, reflected in the GIPS documents. Customs is therefore
32 satisfied that payment had been made by EL for the ■ units in question.

33 Payments for all other shipments during the investigation period were verified
34 to source documents and no discrepancies identified.

35 Customs is satisfied that the invoiced price is paid by EL to EWTA via the
36 GIPS.

37 **7.2.4 Recommendation**

38 It has previously been concluded that EL is both the exporter and the importer
39 of the goods and therefore no sale exists between the exporter and the
40 importer. For those reasons export price cannot be determined pursuant to
41 subsections 269TAB(1)(a) or (b).

1 As explained EG Finance provides certain financial services to EG
2 companies. While the full extent of these services and the benefit is not
3 known, it is Customs assessment that they are in all likelihood not of great
4 significance. Customs is therefore of the view that it can determine export
5 price pursuant to subsection 269TAB(1)(c) based upon all the circumstances
6 of the sale.

7 **7.3 Normal value**

8 EWTA submitted a comprehensive response to the 'Exporter's
9 Questionnaire', providing information on:

- 10 • the company in general; and
- 11 • a cost to make and sell estimate for the goods exported to Australia.

12 **7.3.1 Domestic prices**

13 The exporter, EL does not sell like goods on the domestic market. EWTA the
14 producer of the goods and only known potential 'other seller' of like goods
15 also does not sell like goods on the Italian domestic market. Therefore it is
16 not possible to determine normal values pursuant to subsection 269TAC(1).

17 **7.3.2 Third country sales**

18 In its response to the exporter questionnaire EWTA claimed that 'The GUC
19 are only sold to the above mentioned country.' ie Australia. Subsequently in
20 its response to the SEF Electrolux advised that it had now been ascertained
21 that EWTA had sold units directly to New Zealand in a shipment of ■ units in
22 July 2000. Customs notes that the volume claimed is less than 5% of the
23 exports to Australia and therefore would not be of sufficient volume to form
24 the basis for the assessment of normal values.

25 **7.3.3 Cost to make and sell plus profit**

26 EWTA provided verified information on its costs for split systems and for the
27 same general category of goods, ie rooftop air conditioners that are sold
28 domestically. As explained under 'export price' it appears that the cost of
29 'Group' financial service functions is not charged back to EWTA, nor can the
30 quantum of this expense be established. Customs assessment is that the
31 cost associated with any benefit obtained in the case of EWTA is in all
32 likelihood quite small. For that reason Customs is satisfied that it has
33 sufficient information to enable normal values to be determined pursuant to
34 subsection 269TAC(2)(c).

35 Customs has constructed normal values under subsection 269TAC(2)(c)
36 using the cost of production of the exported good, ie the split system and the
37 actual A,S&G and profit for the same general category of goods sold on the
38 domestic market. The same general category of goods was identified as the
39 rooftop units produced by EWTA and sold on the Italian domestic market.

7.3.4 Adjustments

In determining normal values under subsection 269TAC(2)(c) Customs has made certain adjustments pursuant to subsection 269TAC(9) to ensure fair comparison between the normal values so determined and relevant export prices. EWTA in its response to the exporter questionnaire did not make any claims for adjustment. However, during the verification visit a number of potential adjustments were identified. Adjustments were made for, Technical Insurance (partly); Service Personnel Wages; Domestic transport; Agents Commissions; Social Costs for Commissions; Agents Indemnity; Advertising, Promotions and Exhibitions; Travel; and Administration Compensation (partly).

Claims for adjustment for Warranty; Level of trade; and Credit terms were not allowed. For more detail regarding the determination of normal values and adjustments refer to Customs Normal Value Report for EWTA²².

7.4 Dumping margins

Dumping margins have been established by comparing export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the that period, pursuant to subsection 269TACB(2)(b).

Calculation of dumping margins forms **Confidential Appendix 3**.

Dumping margins applicable to the seven relevant shipments are detailed in the table below:

Shipment No	Model	Dumping Margin Euro/Unit	Dumping Margin % of EP
3	SA101		60.72%
4	SA101		61.03%
5	SA102		56.80%
6	SA101		63.16%
7	SA101		63.16%
8	SA101		63.44%
9	SA101		63.44%

Customs is satisfied that the goods have been exported at dumped prices throughout the investigation period and that the dumping margins established are not negligible pursuant to subsection 269TDA(1).

²² Normal Value Report Electrolux WTA SRL, See Customs Public File C2000/08149. folios 1-35

8 THE ECONOMIC CONDITION OF THE INDUSTRY

8.1 Introduction

This section reports Customs consideration of the economic condition of the industry. The applicant claimed that injury had commenced in the period February to April 2000.

Customs in its initiating ACDN erroneously advised that it would examine details of the Australian market from 1 July 1999 for injury analysis. The correct period from 1 July 1998 was published in the newspaper.

8.2 Industry's claims

The Australian industry claimed injury in the following forms:

- loss of volume;
- loss of market share
- price undercutting;
- price depression;
- price suppression; and
- loss of profit and profitability.

The following sections summarise Customs analysis of industry's injury claims and other relevant injury indicators.

8.2.1 Industry data

During the course of the investigation Customs visited Aircommand and verified the accuracy of the data it submitted in support of its injury claims. Customs is satisfied that as a result of that process the data relied reasonably reflects the economic condition of Aircommand.

8.2.2 Price effects

8.2.2.1 Price undercutting

Price undercutting occurs where the imported product sells below the price of the Australian manufactured product.

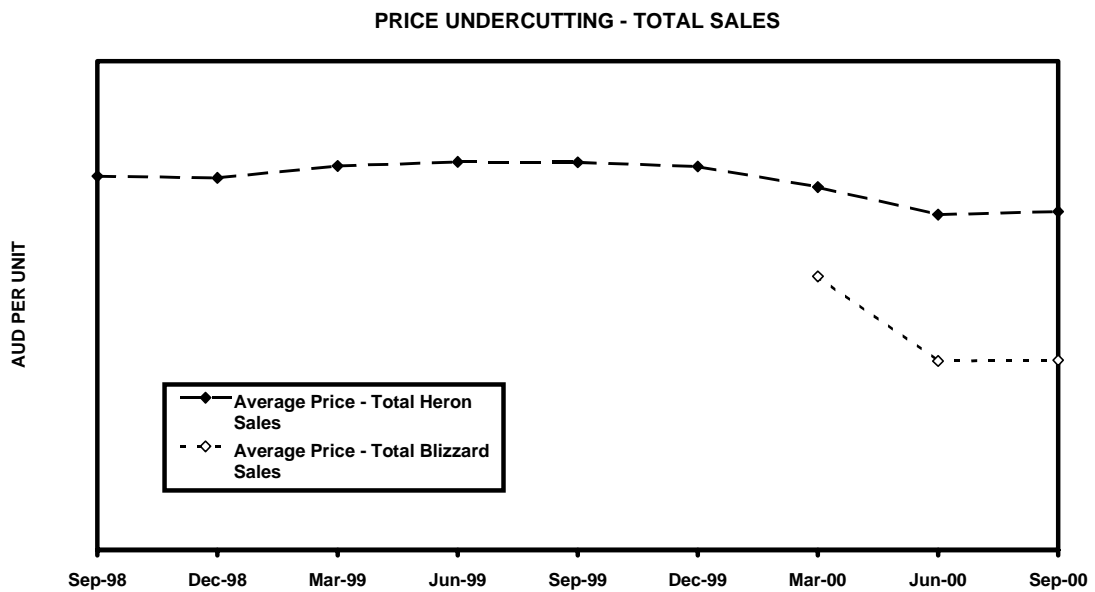
Aircommand provided sales reports and credit notes that support its claim that it had offered rebates and discounts off the list price in order to compete with the imported split systems.

1 Customs collected data on sales by the importer to their customers on a line
2 by line basis over the period February 2000 to December 2000, identifying
3 customers by category, ie OEM, dealers and sundry.

4 Customs is of the view that the most comparable level for a price undercutting
5 comparison would be between the industry's selling prices to OEMs and
6 distributors, and the importer's selling price to its OEMs and distributors.

7 The following charts show Aircommand and EL's quarterly average selling
8 prices over the injury analysis period. The first illustrates the average selling
9 prices for all sales of split systems by each company and the second
10 compares the various models of Blizzard and Heron units.

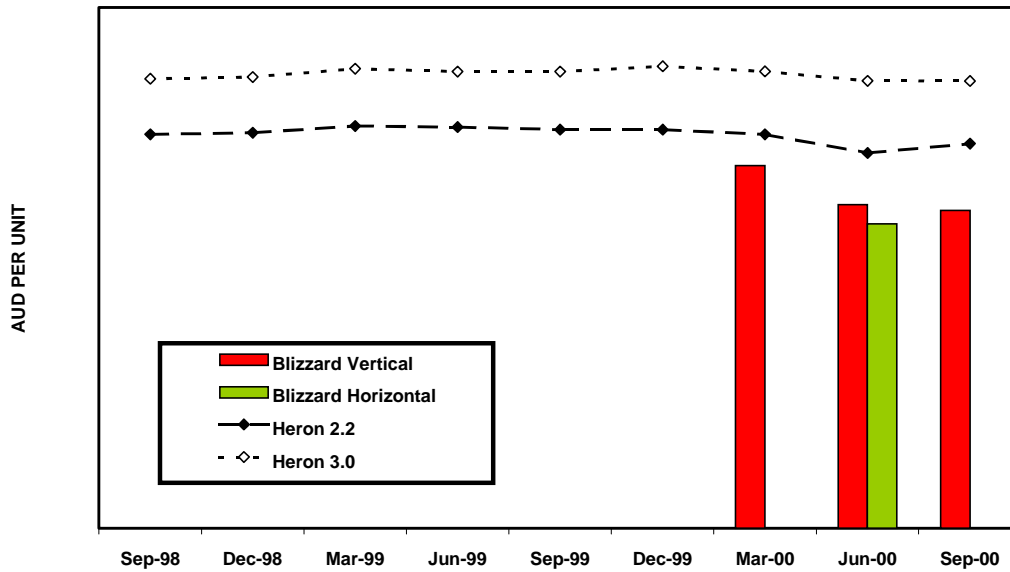
11



12

13

PRICE UNDERCUTTING -BY MODEL



1

2 It is evident from the above charts that industry's prices have been
 3 significantly undercut by the selling prices of the imported split systems since
 4 imported split systems entered the market in February 2000.

5 It was not practical during the investigation for either Aircommand or EL to
 6 identify the outward freight cost per unit for each sale. All of Aircommand's
 7 sales are on an FIS basis, whereas only sales to EL's Melbourne-based
 8 customers are sold FIS. Customs acknowledges that this variation in terms
 9 results in an overstatement of the price undercutting on sales to customers
 10 outside the Melbourne metropolitan area. However, in view of the magnitude
 11 of the price undercutting apparent in the above charts, (approximately 20%),
 12 this factor is not considered material in the undercutting analysis.

13 Customs concludes that the prices of the imported split systems, sold by EL,
 14 have undercut the prices of like goods sold by the Aircommand throughout
 15 the period in which imports have been sold.

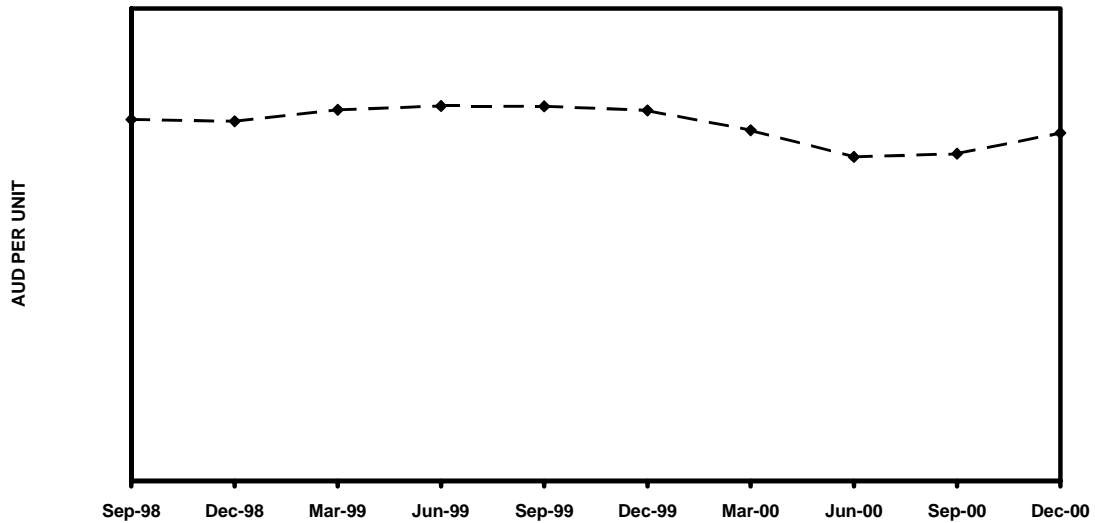
16 8.2.2.2 Price depression

17 Price depression is the reduction in selling prices of the Australian product in
 18 the domestic market.

19 The following charts illustrate the movement in industry quarterly average
 20 selling prices. The first illustrates the movement in quarterly average selling
 21 prices for all Heron sales and the second shows the movement in each
 22 model's quarterly average selling price.

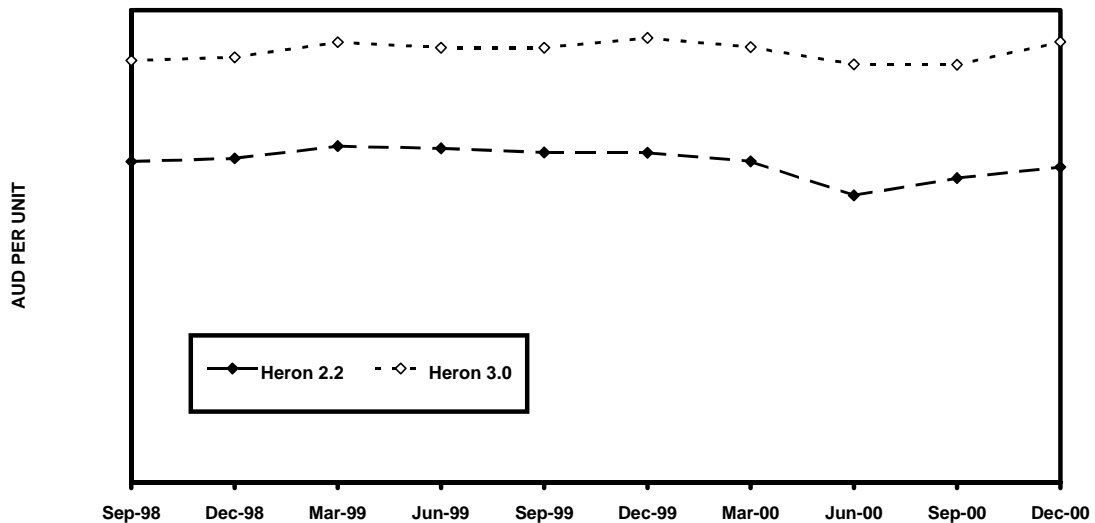
23

PRICE DEPRESSION - TOTAL SALES



1
2

PRICE DEPRESSION - BY MODEL



3

4 The analysis shows that average selling prices of Aircommand increased
 5 during the 1998-99 financial year and then fell from the March quarter 2000.
 6 The most significant price decrease occurred in the June quarter 2000,
 7 with the price of Heron 2.2 units falling by 4.78% and Heron 3.0 units by 2.1%.
 8 This represented a 3.58% overall decrease in the quarterly weighted average
 9 selling price of all Heron units in the June quarter 2000.

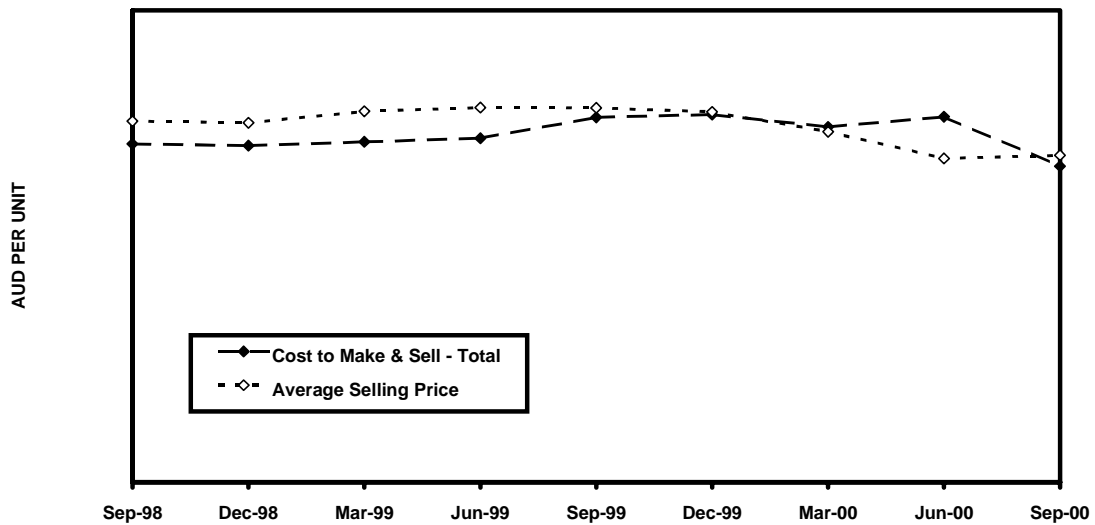
10 Customs finds that the Australian industry has suffered price depression in all
 11 quarters since the December quarter 1999.

1 8.2.2.3 Price suppression

2 Price suppression is experienced when the Australian industry's margin
3 between costs and selling prices is reduced.

4 The following charts illustrate industry net selling prices and the unit cost to
5 make and sell (CTMS). The first illustrates the change in the margin between
6 cost and price for all sales of Heron air conditioners and the second shows
7 the margin for each Heron model.
8

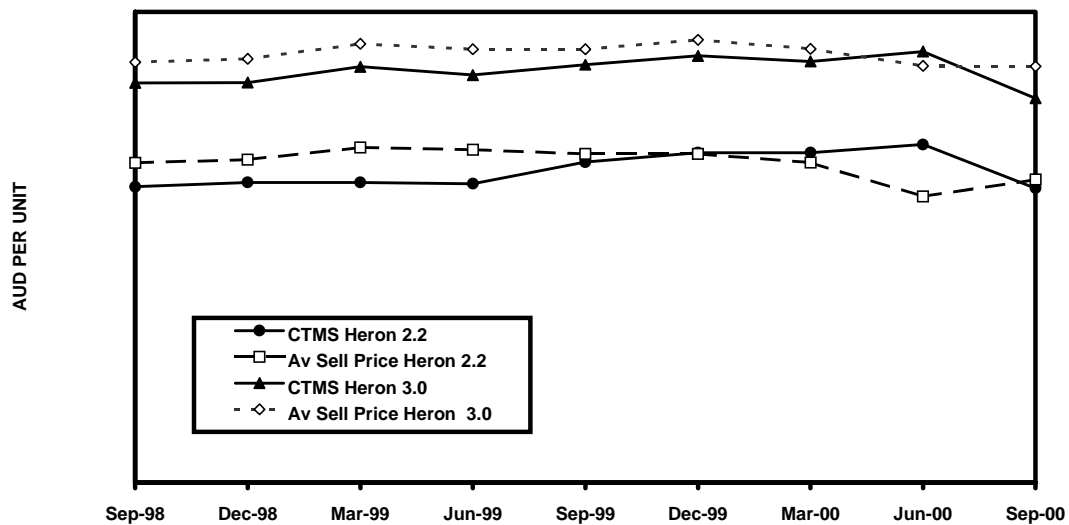
PRICE SUPPRESSION - TOTAL SALES



9

10

PRICE SUPPRESSION - BY MODEL



11

1 The charts show the margin between Aircommand's selling price and cost to
2 make and sell decreased in every quarter from September quarter 1999 to
3 June 2000 and then improved slightly in September 2000. The margin for
4 the Heron 2.2 decreased from a high of \$ [REDACTED] per unit in the March quarter
5 1999 to a negative margin of -\$ [REDACTED] in the June quarter 2000 while the
6 margin for the Heron 3.0 decreased from a high of \$ [REDACTED] per unit in the June
7 quarter 1999 to a negative margin -\$ [REDACTED] in the June quarter 2000. The
8 average margin on all Heron air conditioners followed the same pattern with
9 the margin peaking at \$ [REDACTED] per unit in the June quarter 1999 and falling to a
10 low of -\$ [REDACTED] per unit in the June quarter 2000.

11 Customs notes that some price suppression was evident from the September
12 quarter 1999 and that the situation was exacerbated from the December
13 quarter 1999 onwards, being at its worst in the June quarter 2000.

14 Customs finds that the Australian industry had suffered injury in the form of
15 price suppression.

16 **8.2.3 Volume effects**

17 Customs analysed the Australian market for split systems using sales data
18 provided by Aircommand and EL.

19 Customs was able to obtain sales data from both Aircommand and EL up to
20 the end of the December quarter 2000. Thus Customs volume analyses
21 reflect the availability of that later data.

22 8.2.3.1 Lost sales

23 Prior to the appearance of the imported split systems in commercial quantities
24 in February 2000, Aircommand supplied 100% of the Australian market. In
25 that situation any sale of an imported unit is logically is a lost sale or potential
26 sale for the Australian industry.

27 Aircommand claimed in its application and during the industry visit that
28 specific sales to its largest customers had been lost to EL. It provided data
29 on sales lost from its [REDACTED] largest customers that included a total of [REDACTED] units
30 from [REDACTED], [REDACTED] units from [REDACTED], [REDACTED] units from [REDACTED] and
31 [REDACTED] units from [REDACTED]. An examination of EL's sales records show that EL
32 has made sales to all the mentioned customers.

33 An analysis of Aircommand's total sales indicates that it has not lost sales
34 volume. The data in the table below shows that Aircommand's sales volume
35 increased in each financial year. Though sales volume increased in 1999-00
36 over 1998-99, Aircommand claimed that consideration should be given to
37 sales lost based upon the size of the total market. As shown in the table
38 below, the total market increased in 1999-00 over 1998-99 by significantly
39 more than the increase in Aircommand's sales volume, with imports
40 accounting for the difference. Aircommand's market share decreased from
41 100% in 1998-99 to 80% in 1999-00.

Period	AIRCOMMAND		ELECTROLUX LEISURE	
	Sales (units)	Market Share %	Imports (units)	Market Share %
1997/98	██████████	100	██████████	0
1998/99	██████████	100	██████████	0
1999/00	██████████	80	██████████	20
2000/01 - 6 months	██████████	71	██████████	29

1 The data shows that Aircommand's sales increased in 1998-99 over 1997-98
2 by 77.25% and then increased by only 6.3% in 1999/00.

3 Customs finds that the Australian industry has lost sales to specific customers
4 but that on an aggregated basis Aircommand has not lost sales volume.

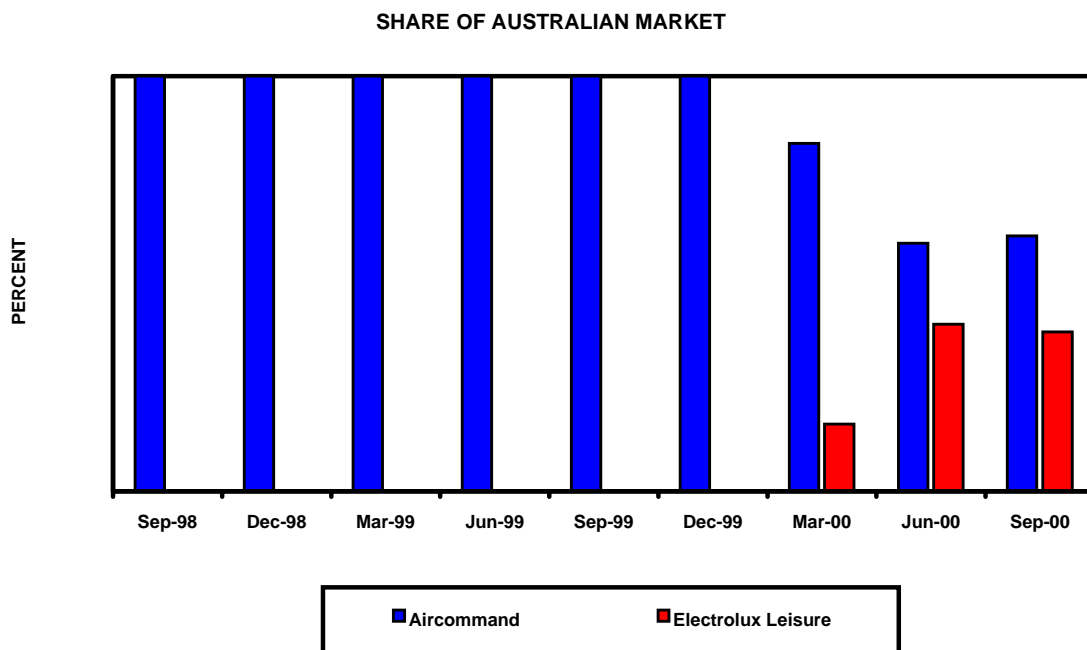
5 8.2.3.2 Loss of market share

6 The size of the Australian market has increased 32.67% from ██████████ units in
7 the financial year 1998-99 to ██████████ units in 1999-00. On a calendar year
8 basis the market increased by 62% in 2000 over 1999.

9 In 1999-00 Aircommand did not maintain its market share in line with the
10 increased market, with its share falling from 100% to 80%.

11 For the six months July to December 2000, Aircommand's market share fell to
12 71% while imports increased their market share to 29%.

13 The following chart illustrates changes in market shares held by Aircommand
14 and EL for split systems on a quarterly basis, over the period September
15 quarter 1998 to December quarter 2000.



16

1 On the assumption that Aircommand could have expected to maintain its
 2 market share, it's loss of market share can be measured in terms of lost
 3 sales, which are substantial. The results are presented in the table below.

Period (financial year)	Aircommand Sales (Units)	Sales Lost (Units)
1997/98	██████████	██
1998/99	██████████	██
1999/00	██████████	██████
2000/01 - 6 months	██████████	██████

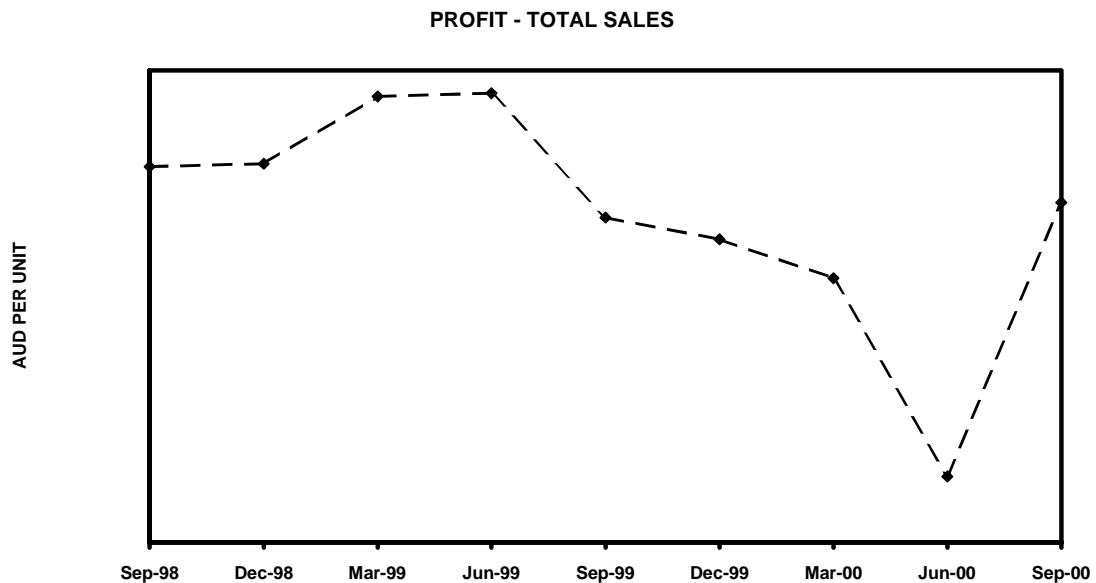
5 Customs finds that the Australian industry has lost market share.

6 8.2.4 Profits and profitability

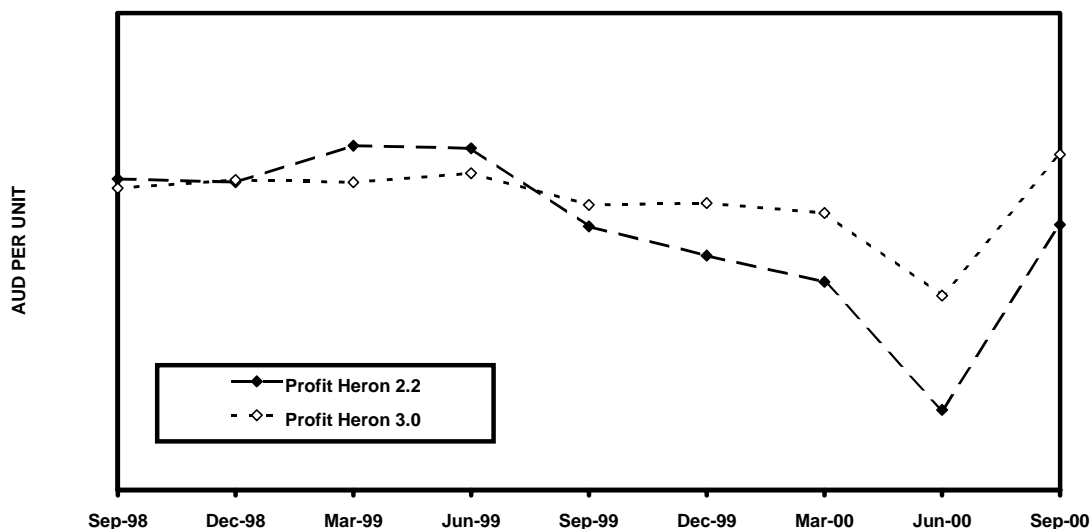
7 Aircommand claimed that it had suffered loss of both profits and profitability
 8 as a result of price undercutting by the dumped imports from Italy.

9 From the data obtained and verified during the visit to Aircommand, Customs
 10 has established an industry cost to make and sell for both models of the
 11 Heron range over the injury analysis period. Customs also obtained data
 12 relating to the net revenue from sales of split systems.

13 Customs used that information to establish the total profits of the industry,
 14 which are reflected in the charts below. The first chart illustrates the
 15 movement in profits on all sales of Heron air conditioners and the second
 16 shows the profits for each model.



PROFIT - BY MODEL

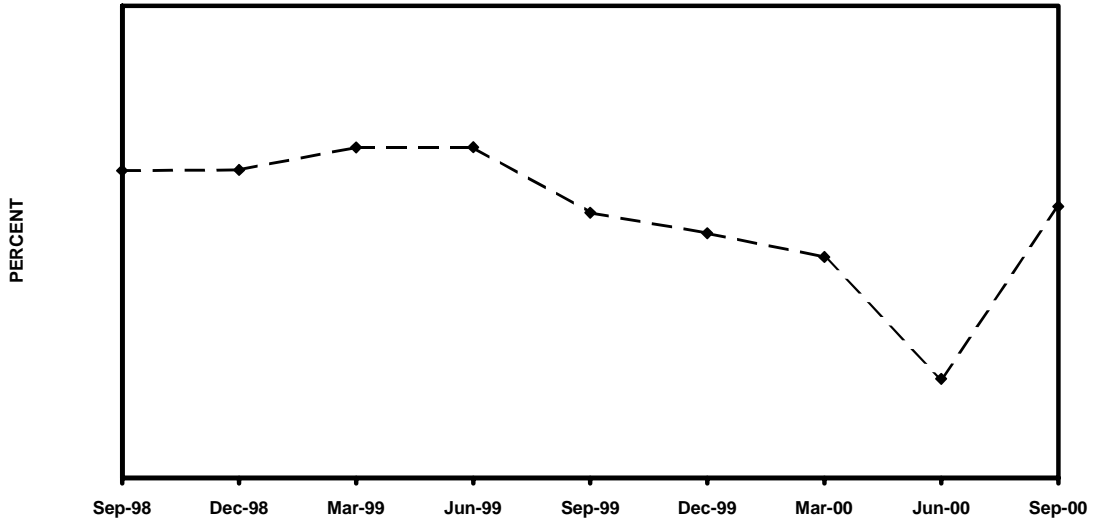


1

2 The above charts indicate that total profit for Aircommand peaked in the
 3 March quarter 1999 for the Heron 2.2 and June quarter 1999 for the Heron
 4 3.0 models. Since that time total profits have declined in particular for the
 5 Heron 2.2 model, falling to their lowest levels for both models in the June
 6 quarter 2000. The fall in profits occurring in the September quarter 1999 can
 7 be attributed to increased costs of imported components. A significant
 8 recovery has occurred in the September quarter from a loss-making situation
 9 to profitable situation albeit just profitable. The improvement primarily reflects
 10 from improved revenues as significant rebates and ad hoc payments that
 11 affected revenues in previous quarters have not been made in the September
 12 quarter and a decrease in costs reflecting significantly lower compressor
 13 costs.

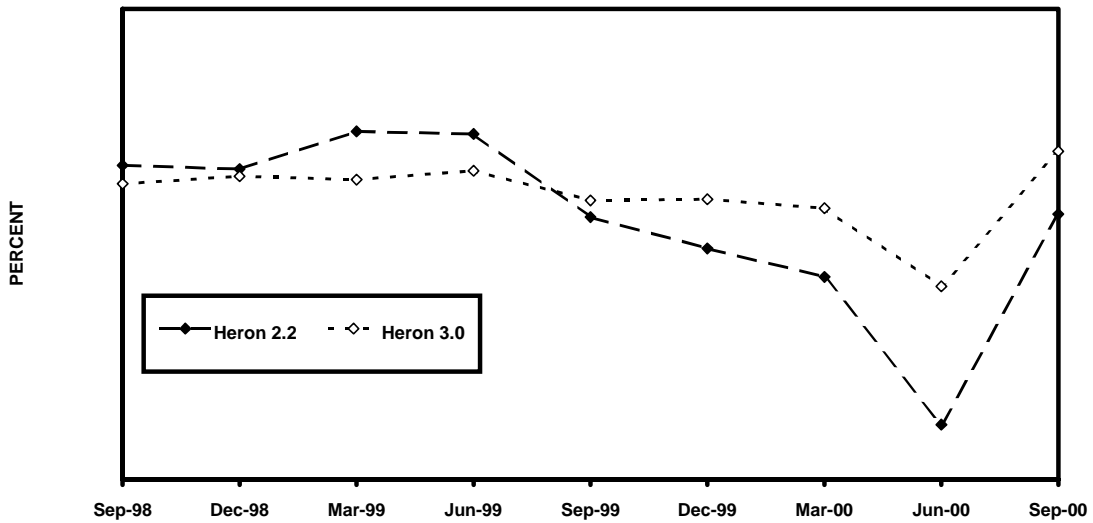
14 Customs determined Aircommand's profitability by expressing net profit or
 15 loss as a percentage of sales revenue. Aircommand's profitability is shown in
 16 the following charts. The first chart represents the profitability of combined
 17 sales of Heron split systems and the second shows profitability by model.

PROFITABILITY - TOTAL HERON SALES



1

PROFITABILITY - BY MODEL



2

3 The first chart shows that overall profitability increased during 1998-99 to a
 4 high of ████% in the June quarter 1999 and then decreased to a low point of
 5 -███% in the June quarter 2000. The movement in profitability on sales of
 6 each model followed the same pattern with profitability on sales of Heron 2.2
 7 increasing to a high of ████% in the March quarter 1999 to a low of -███% in
 8 the June 2000 quarter. Profitability on sales of Heron 3.0 reached a high
 9 point of ████% in the June quarter 1999 and then decreased to a low of -
 10 ████% in the June quarter 2000.

11 Customs concludes that Aircommand has suffered injury in the form of
 12 reduced profits and profitability.

8.3 Other Factors

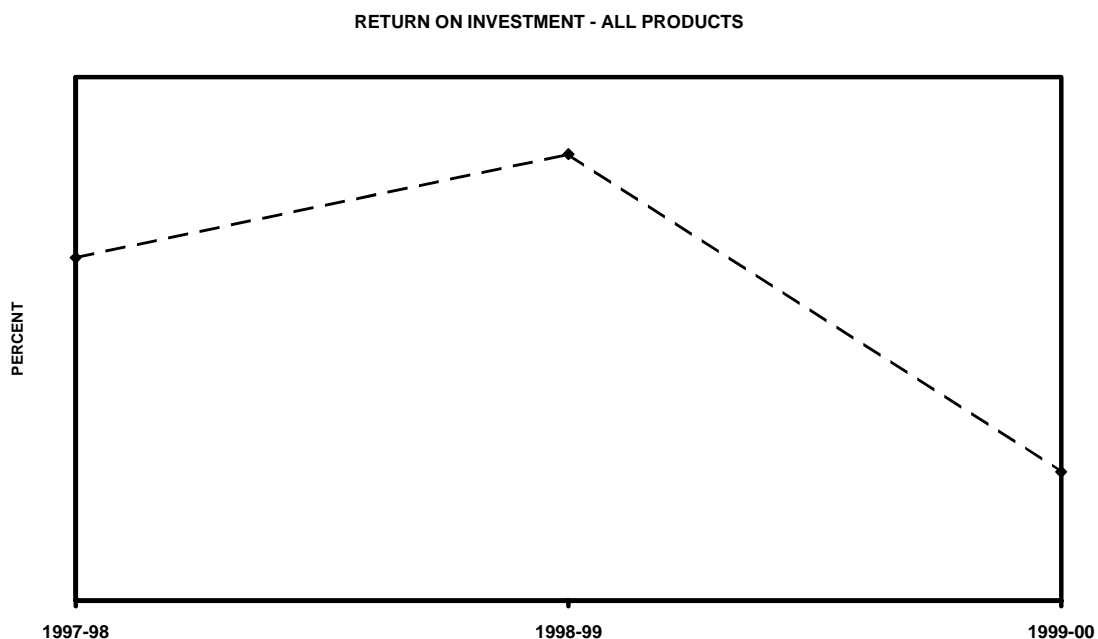
8.3.1 Degree of Utilization of Capacity

Aircommand has not claimed injury in the form of reduced utilisation of capacity. However, the company expressed concern that a continued decline in its market share, combined with the expansion of the factory, which it claimed was undertaken to meet the rapidly increasing market demand, may result in future under-utilisation of capacity. The expansion to the factory has not been completed at this stage.

8.3.2 Return on Investment

Aircommand claims that its return on investment in split systems has been adversely affected by the dumping of the goods. However, the company does not produce separate balance sheets for each product, so it is difficult to prove this assertion.

Customs calculated the return on investment from 1997-98 to 1999-00 for all products produced by Aircommand and the results can be seen in the following chart.



The chart shows that the overall return on investment increased in 1998-99 but then declined by █% in 1999-00 when compared with 1998-99.

8.3.3 Ability To Raise Capital

Aircommand claims its ability to raise capital has not been adversely affected by the dumping of the split systems from Italy. The main reason for this situation is that it sources overdraft and other loan funds from a finance company owned by the Henshall family, the owners of Aircommand.

1 **8.3.4 Liquidity**

2 Aircommand claims it has not encountered any major cash flow problems as
3 a direct result of the dumping of split systems. The bank overdraft and
4 overdraft with Range Finance increased in 1999-00 compared with 1998-99,
5 as did financing charges, but these increases were related to products other
6 than split systems.

7 **8.3.5 Employment**

8 To date, the level of employment at Aircommand has not been adversely
9 affected by the importation of split systems. However, the company claims
10 the number of employees may have to be reduced if prices of its split systems
11 continue to be undercut and further sales are lost to EL.

12 **8.3.6 Inventories**

13 Aircommand has not claimed injury in the form of inventory build-up as a
14 result of lost sales and market share. The company explained this situation
15 was due mainly to the implementation of a form of just-in-time production
16 system at the factory.

17 **8.4 Conclusions**

18 Customs concludes that the Australian industry, Aircommand has suffered
19 injury in the form of:

- 20 • price depression;
- 21 • price suppression;
- 22 • price undercutting;
- 23 • loss of specific sales – due to the overall increase in the market
24 Aircommand did not lose sales volume;
- 25 • loss of market share; and
- 26 • reduced profits and profitability.

9 HAS DUMPING CAUSED MATERIAL INJURY?

This section considers whether the effect of the dumping on the Australian industry is such that the dumping has caused material injury to the industry.

It also considers whether the injury was caused by other factors and such injury must not be attributed to the dumping.

9.1 Industry's claims

The Australian industry claimed that injury had commenced in February/April 2000. In the application injury was claimed in the following forms:

- loss of volume;
- loss of market share;
- price undercutting;
- price depression;
- price suppression; and
- loss of profits and profitability

On the issue of 'causal link' Aircommand stated in its application:

It has been demonstrated that dumped exports of "Blizzard" airconditioning units have substantially undercut the selling prices offered by the Australian industry and as a result Aircommand has lost sales and market share and has suffered price depression and suppression, resulting in substantial loss of profit and profitability. It has also been demonstrated that further material injury will be experienced by Aircommand and a further substantial reduction in the rate of growth of the Australian industry will occur in the absence of anti-dumping measures.

9.2 Importers' and exporters' claims

9.2.1 Electrolux Leisure Pty Ltd

Neither EL nor EWTA have made specific submissions on issues relating to material injury and causal link. The only submission received that is related to those issues is entitled 'Notes to Non-Confidential Submission of Aircommand Australia Pty Ltd'²³. The submission appears to be a commentary on the claims on Aircommand rather than providing any meaningful rebuttal of Aircommand's claims.

On the issue of 'causal link' Electrolux in its submission states:

The applicant attributes all its material injury solely to the volumes of dumped imports reducing its market share, causing price suppression, price depression and reduced profit and profitability. The applicant, in its paranoia, expects Electrolux will finish the

²³ Electrolux submission received 13 November 2000, see Customs Public File C00/08148, folios 110-115

1 job and put them out of business by continuing to import and sell the product at dumped
2 prices. This is not the fact, or intention of Electrolux, which has finished its promotional
3 program and reverted to normal pricing levels.

4 **9.3 Customs assessment**

5 **9.3.1 Cumulative effect of exportations in assessing material injury**

6 Subsection 269TAE(2C) provides for consideration of the cumulative effect of
7 exports by different exporters from the same country or exports from different
8 countries; if after having regard to:

- 9 • the conditions of competition between the exported goods; and
- 10 • the conditions of competition between the exported goods and the like
11 goods that are domestically produced;

12 the Minister is satisfied that it is appropriate to do so.

13 With total exports being made by one exporter from a single country the issue
14 of cumulative assessment of material injury is not an issue.

15 **9.3.2 Dumping**

16 Customs has established that all exports of split systems from Italy during the
17 investigation period were made at dumped prices and that the dumping
18 margins were significant, ranging from 57% to 63%.

19 **9.3.3 Price effects**

20 Prior to the arrival of imports in the marketplace in commercial quantities, ie
21 from February 2000 onwards, the importer EL brought into Australia [REDACTED]
22 sample (evaluation) units in April 1999. Thus imported units had a limited
23 presence in Australia after that time.

24 Aircommand had been selling split systems since August 1996. Despite
25 Customs earlier conclusion that split systems and rooftops were not like
26 goods, Aircommand was faced with the problem of convincing market
27 participants that they should move away from the established and accepted
28 rooftop air conditioner and accept in certain applications the concept of split
29 system air conditioning. That would have required Aircommand to price the
30 split system at comparable price to that of the rooftop unit even though this
31 may not have provided for an adequate return.

32 Aircommand's stated strategy for the split system was to initially establish the
33 unit in the marketplace and then through marketing and volume incentives try
34 to position the split system as 'the standard' for the growing 'pop top' caravan
35 market. Aircommand's expectations were that with the growth in 'pop tops'
36 they would eventually obtain the benefits of economies of scale thus reducing
37 unit costs and increasing margins.

1 Customs analysed Aircommand's sales on a quarterly basis. The analysis
2 indicates that unit sales revenues were increasing slowly at the
3 commencement of the injury analysis period, ie from the September quarter
4 1998 through to the December quarter 1999. During that period (prior to the
5 claimed commencement of injury) there were price movements identified
6 presumably reflecting the normal ebb and flow of the caravan air conditioning
7 market.

8 From February 2000 coinciding with the arrival of commercial quantities of the
9 Blizzard split system and the 2000-show circuit, EL pursued an aggressive
10 marketing strategy. EL in its submission²⁴ on 'Sales Dumping' explained its
11 marketing strategy as follows:

12 Given that EL intended to approach OEM's to purchase and install Electrolux split
13 system units, a new product on the market for EL to compete with the 3 kilowatt unit
14 manufactured by Aircommand, EL gave careful consideration to the manner in which it
15 would promote such sales to OEMs.

16 [confidential]...Accordingly EL decided to promote the sale of the units directly to OEMs
17 and decided upon a promotional package strategy...[confidential]

18 The alternative to the promotional deal offered to the OEMs as a media promotion or
19 advertising campaign. For reasons mentioned above, such a campaign was unlikely to
20 influence consumer choice to specify the Electrolux product, at least to the extent the
21 expense of such a campaign would require, nor would such a campaign influence
22 OEMs who are traditionally offered incentives and promotional offers in relation to new
23 product lines.

24 It is important part of sales marketing and product launching to promote products at
25 caravan shows throughout Australia. The promotion for the new split system
26 commenced in February, prior to the Adelaide caravan show, which started on 1 March
27 2000. It was intended to run...[confidential].

28 Despite suggestions to the contrary, there is no doubt that the promotional package was
29 terminated effective 30 September 2000.

30 The marketing strategy involved an offer for customers to buy three and be
31 supplied with five, the equivalent of a ■% discount off the 'normal price'.

32 The analysis of price effects established that the quarterly average unit sales
33 revenue of the imported goods consistently and significantly undercut industry
34 prices during the period February 2000 to September 2000. Coinciding with
35 the price undercutting, industry prices have been depressed since February
36 2000. Due to price pressure in the marketplace Aircommand was forced to
37 offer strategic customers significant price reductions via mechanisms such as
38 discounts and large rebates to maintain customer competitiveness and
39 loyalty. Although data for the September quarter 2000 reflects an increase in
40 unit revenues, prices remain depressed compared to December quarter 1999
41 levels.

²⁴ EL submission received 15 November 2000, "Confidential submission on "Sales Dumping", see Customs Public File C00/08148, folios 72-80.

1 **9.3.4 Volume effects**

2 The Australian market for split system's increased in 1999-2000 by around
3 33% compared to 1998-99. Total market sales in the six months of the
4 September and December quarters of 2000 reflects an increase of 107% in
5 sales over the corresponding quarters in 1999. Despite the possibility of
6 seasonal influences the market for split systems appears to be growing at a
7 fast rate.

8 Prior to the presence of the split systems imported from Italy Aircommand
9 held 100% of the market. It is therefore logical that a volume related causal
10 link must exist where there is only one other market participant and they have
11 achieved sales in that market.

12 The analysis of Aircommand's sales volumes shows that sales volumes for
13 the Heron 2.2 model peaked at the end of the March quarter 1999 and March
14 quarter 2000, declining after each peak. It is Customs view that it is not
15 possible from the volume figures alone to attribute the decline in sales after
16 the March quarter 2000 solely to the presence of dumped imports. In the
17 case of Heron 3.0 sales these show the same seasonal effect in the June
18 quarter 1999. However, the same effect is not present in the June quarter
19 2000 and is followed by a marked decline in volume in the September
20 quarter. The lack of a seasonal increase in sales around the March and
21 June quarters 2000 coincides with the presence of imports and appears to be
22 indicative of the loss of market share to imports. The significant decline in
23 sales volumes in the September quarter 2000 coincides with the presence of
24 dumped imports.

25 The market share analysis clearly establishes a link between the loss of
26 market share by Aircommand and the dumped imports from Italy, there being
27 only two competitors in the marketplace.

28 **9.3.5 Profits and Profitability**

29 Aircommand's profits and profitability had deteriorated as early as the
30 September quarter 1999 and this would have arisen from other factors (see
31 earlier discussion at 8.2.4 and examination of other possible causes at 9.4).
32 However, it is evident that from the March quarter 2000 onwards, the profits
33 and profitability of Aircommand deteriorated further in a period of increasing
34 market and seasonal highs in terms of sales and production. That period
35 coincides with the availability of the imported split systems in the market place
36 at prices that significantly undercut Aircommand's prices. Aircommand
37 consequently lost of specific sales, market share and suffered price
38 depression.

39

40

9.4 Other possible causes of injury

Subsection 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than dumped imports. Customs has therefore considered whether any injury to the Australian industry is being caused by other factors.

Neither Aircommand nor Electrolux has identified in any submission any other possible causes of the injury suffered by Aircommand. However, Customs is of the view that there are other factors that have contributed to the injury identified as being suffered by Aircommand.

One such factor is EL's decision, having purchased the goods at dumped prices; to sell split system units at a significant loss. The purchase of split systems at dumped prices would have allowed EL to sell profitably and still undercut Aircommand's prices. Customs views the sale by EL of split system units at a loss, in addition to the advantage it enjoyed due to purchasing at dumped prices, as a separate cause of injury to Aircommand and that the injury so caused should not be attributed to the dumping.

Customs also notes that there was deterioration in profits and profitability (a measure of price suppression) in the December quarter 1999 just prior to the availability of commercial quantities of imported split systems. Customs attributes this to other causes such as increasing component costs caused in part by deteriorating exchange rates and the seasonal downturn in sales and production volumes.

Customs also examined Aircommand's export performance and ensured that in the financial data submitted expenses were properly allocated to export sales. Over the period September quarter 1998 to December quarter 2000 a total of ■■■ units (■■■ Heron 3.0kW and ■■■ Heron 2.2kW) were exported. In the December quarter 2000, ■■■ Heron 3.0kW units were exported which represents ■■■% of total sales of 3.0's for that quarter. Total sales of 3.0kW units (domestic and export) for that quarter was ■■■ units.

Customs established that overall, export sales of split systems are profitable and on that basis Customs concludes that export sales by Aircommand have not contributed to the injury identified.

9.5 Conclusion

Customs is satisfied that exports from Italy have been made at prices that reflect dumping margins that are significant. The availability of those exports at dumped prices contributed to the importer's ability to adopt an aggressive marketing strategy that also involved a decision to sell at a significant loss over a long period. Customs is satisfied that the ability to purchase split systems from Italy prices reflecting significant dumping margins represents the major proportion of the marketing strategy that saw EL severely undercut Aircommand's prices.

1 By undercutting Aircommand's prices the dumped imports have caused
2 Aircommand to suffer price depression and suppression and in particular a
3 loss of market share thus impacting adversely on Aircommand's profits and
4 profitability.

5 Customs concludes that the dumping of exports of split systems from Italy
6 has of itself caused material injury to the Australian industry producing like
7 goods.

10 WILL DUMPING CONTINUE?

2 In the case where the Minister is satisfied that material injury has been
3 caused to an industry, anti-dumping measures may be imposed on future
4 exports if the Minister is also satisfied that the future exports may be dumped.
5 By signing a notice under subsection 269TG(2) to this effect, the measures
6 are made prospective

7 Customs notes that all shipments of split systems examined during the
8 investigation period were at dumped prices.

9 Customs is of the view that failure to put in place a prospective dumping duty
10 notice would result in further exports from Italy, most likely at dumped prices.

11 Customs is therefore satisfied that exports in the future from Italy may be at
12 dumped prices.

11 NON-INJURIOUS PRICE

11.1 Introduction

Dumping duties may be applied where it has been established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The maximum duty cannot exceed the dumping margin, but a lesser duty may be applied if it is determined that such lesser duty is sufficient to remove the injury. This lesser duty provision is contained in the WTO Anti-Dumping Agreement. Australian legislation reflects the principle of this provision in subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

A non-injurious price (NIP) is calculated to determine the level of dumping duty that needs to be applied to dumped imports to remove the injury suffered by the Australian industry. The NIP is defined in section 269TACA of the Act.

Anti-dumping and countervailing duties are normally based on free-on-board (FOB) prices in the country of export. Therefore a NIP is also normally calculated in FOB terms for the country of export. The method of calculating a NIP is not defined in the legislation, however Customs will generally derive a NIP from the Australian industry's unsuppressed selling price (USP).

11.2 Unsuppressed selling price

An unsuppressed selling price (USP) is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to establish the USP including:

- the price for locally produced goods when the Australian market was not affected by dumping and adjusting that price to make it contemporary;
- the Australian industry's cost to make and sell plus an estimated profit (if any) that the industry could achieve in a market unaffected by dumping; or
- using the lowest Australian domestic price for non-dumped imports, if it can be shown that those imports set the market price or that those imports influence the price.

11.2.1 Market prices

To find market prices unaffected by the dumping, Customs would use selling prices before February 2000, ie prior to the arrival of commercial quantities of imports. Electrolux have submitted that this should be the basis for the USP, being a period during which Aircommand enjoyed 100% of the market.

However, Customs is concerned that the prices achieved by the Australian industry prior to the dumping may not be a suitable basis for assessing the

1 USP. The reason is that toward the end of 1996 Aircommand introduced the
2 split system into the market. The air conditioner market prior to the
3 introduction of the split system was supplied entirely by rooftop units. In
4 introducing the split system Aircommand was asking the recreational vehicle
5 industry and consumers to make a significant change in terms of how a
6 recreational vehicle might be air conditioned. For that reason the split system
7 would have had to be priced at a level which was comparable to rooftop units
8 despite the fact that adequate returns were not being achieved.

9 Aircommand has stated that they were anticipating increased sales due to the
10 boom in sales of recreational vehicles and in particular the popularity of pop-
11 tops. Aircommand expected to achieve economies of scale and increased
12 margins as the split system market matured and split systems became the
13 standard. The market for split systems continues to be a developing market
14 in terms of acceptance by the recreational vehicle industry and market.

15 As prices and returns prior to the arrival of imports are indicative of a
16 developing market and abnormal returns for the industry, Customs has
17 decided not to base the USP on historical industry prices.

18 **11.2.2 Cost to make and sell plus profit**

19 An alternative is to use the Australian industry's most recent cost to make and
20 sell data plus an amount of profit (if any).

21 Customs decided that it should base the USP on Aircommand's weighted
22 average cost to make and sell for fiscal year 1999/2000.

23 Aircommand submitted that a profit rate of ■% was appropriate based upon
24 the widely held belief that 35% gross margin was the minimum level required
25 for the recovery of all costs, etc, and an extract of an article in the Business
26 Review Weekly relating to the top 25 companies. Electrolux, while not resiling
27 from its view that prices are the appropriate basis for the USP, submitted that
28 a profit comparable to that obtained by a manufacturer of goods of the same
29 general character would be appropriate. The example provided indicated
30 rates of profit in the order of 5.7% to 6.01%

31 Customs sought to establish an appropriate rate of profit from an independent
32 source. It consulted the latest Australian Bureau of Statistics report for the
33 Manufacturing Division. Within 'Manufacturing' there are nine sub-divisions,
34 the most relevant being 'Machinery and Equipment Manufacturing'. The
35 report charts profit margins on sales for small, medium and large business.
36 Small businesses are those that employ fewer than 20 people. Aircommand
37 is a small business based upon that definition.

38 Customs has used a rate of 5.5%, the 1998/99 rate of profit for small
39 business within the 'Machinery and Equipment Manufacturing' sub-division.

11.3 Non-injurious price calculation

To calculate the NIP, post FOB exportation costs such as: overseas freight and insurance; costs incurred in Australia; and where appropriate an amount for the importer's profit; are deducted from the USP. An example of this calculation is as follows.

Unsuppressed selling price	100
Less post exportation costs	
Ocean freight & marine insurance	10
Duty	5
Port & broker charges	1
Cartage to store	2
SG&A expenses	8
Profit	10
Total	36
Non-injurious price	64

Customs will use this method to calculate a NIP. In this case sales between EWTA and EL are made at an ex-factory level, therefore additional deductions for inland export freight and various costs associated with getting the goods to FOB will be deducted.

Customs has considered whether it was appropriate to deduct an amount of profit for the importer. Electrolux submitted that a deduction for importer profit of [REDACTED]% should be made. Electrolux also submitted that there is no basis to suggest that no profit margin should be deducted as historically Electrolux is a profitable company and sales of split systems at the normal price are profitable to the same extent as overall sales are profitable.

Customs notes that the calculation of profit on split systems submitted by Electrolux is based upon EL's purchase of goods at a dumped price and a sale at the normal price. The calculation submitted by Electrolux is therefore flawed because it is based upon the premise that EL will continue to purchase at a dumped price and sell at the full 'normal' price. Should the Minister decide to impose anti-dumping measures, EL will not be able to purchase at a dumped price, as the intention of the measures is to remove the dumping to the extent that it is causing injury. Also it cannot be assumed that EL will sell at the normal price when historically the vast majority of its sales have not been at that price.

Domestic sales by EL have been made at significant losses over the [REDACTED]-[REDACTED]. Customs analysis indicates that EL will not break even for at least another [REDACTED] months or longer. In light of EL's past performance over a long period Customs has decided not to deduct an amount of profit in calculating the NIP. This will go some way to ensuring that Aircommand receives the full benefit of the measures imposed.

1 As there are two domestic models affected by the dumping, it raises the issue
2 of whether there should be one or two USPs and consequently one or two
3 NIPs for the split systems. Earlier in this report (see Section 6 - The
4 Australian Market) Customs tabulated a comparison between the imported
5 and locally produced goods. Both imported and local units have been
6 produced in vertical and horizontal configurations, although to date the
7 majority of imported units have been the vertical model.

8 While the configuration of the imported horizontal model compares with the
9 lower capacity Heron 2.2kW model, the cooling capacity of the imported
10 horizontal model places it slightly closer to the Heron 3.0kW model. It is
11 Customs view that there is likely to be significant cross elasticity between the
12 models and that preference for one model over another eventually comes
13 down to consumer preference, the ability to locate the unit in the desired
14 vehicle and price (not necessarily in that order).

15 Were Customs to set a NIP for the Blizzard SA102 (horizontal) model based
16 upon the lower USP of the Heron 2.2kW unit it would enable the Blizzard
17 model to be imported and sold at a price that would be injurious to the Heron
18 3.0kW model. It would also be a price that would be dumped and causing
19 injury.

20 Customs has therefore calculated the NIP for both the Blizzard models based
21 upon the USP for the Heron 3.0kW model.

22 **11.4 Conclusion**

23 Customs has calculated the NIP for the imported models from a USP based
24 upon the cost to make and sell of the Heron 3.0kW models and an amount of
25 profit. The USP has been adjusted to a NIP at an ex-factory level by
26 deducting relevant costs incurred by EL in exporting, importing and selling the
27 goods. Customs has not deducted an amount for profit for EL.

28

12 ANTI-DUMPING MEASURES

12.1 Background

Under the Anti-Dumping Agreement of the World Trade Organisation (WTO), anti-dumping measures may be take the form of specific dumping duties on imports of the goods or of price undertakings by the exporter(s) of the goods.

12.1.1 Price Undertaking

The alternative remedies to anti-dumping duties available under the Dumping Agreement and Australia's legislation are price undertakings. Where an exporter offers a price undertaking and the Minister accepts it, the investigation is suspended so far as it relates to the goods exported by that exporter. The Minister can not accept a price undertaking from an exporter until a preliminary affirmative determination (PAD) has been made in relation to that exporter.

On 22 January 2001 Customs made a preliminary affirmative determination in relation to the goods exported from Italy. On 20 February 2001 Customs received a written expression of interest from Electrolux to explore the terms of a price undertaking that would be acceptable to both Electrolux and the Minister.

In deciding whether to recommend that the Minister accept any price undertaking, Customs must consider whether such a measure is appropriate in this case. The circumstances in this case are:

- the goods were exported at significant dumping margins;
- the importer sold the goods at a significant loss for a long period in addition to the advantage already gained from the purchase of the goods at dumped prices;
- the exporter and importer are the same entity;
- the supplier and the importer are associated companies;
- there are practical difficulties in ensuring compliance where the business activities of the two parties includes transactions involving other goods and associated companies.

Given the above circumstances Customs has reservations that a price undertaking could be effectively monitored. In short a price undertaking may not ensure that the Australian industry is protected from any future material injury.

Accordingly, Customs recommends that the Minister not accept a price undertaking.

1 **12.1.2 Interim dumping duty**

2 **12.1.2.1 General**

3 An interim dumping duty is collected on each importation of goods subject to
4 dumping duties. In determining the amount of interim dumping duty payable,
5 the Minister must ascertain an export price, a normal value and a
6 non-injurious price for the goods.

7 The interim dumping duty is based on the difference between the ascertained
8 export price and the lower of the ascertained normal value and the
9 ascertained non-injurious price (NIP). The interim dumping duty may include
10 the amount, if any, by which the export price is less than the ascertained
11 export price.

12 An importer can apply for repayment of any interim duty paid in excess of the
13 actual duty liability. Further, an affected party can seek a review of
14 anti-dumping measures 12 months or more after the Minister imposed them
15 or 12 months after the last review.

16 Article 9.2 of the WTO Anti-Dumping Agreement states that when imposing
17 final measures all the exporters of the goods from a single country must be
18 named unless it is impracticable to do so. In this case there was only one
19 exporter during the investigation period and accordingly Customs has
20 imposed measures specific to that exporter.

21 As shown in the tables at Section 7.4, the dumping margins vary between the
22 different models of split systems. For this reason Customs has ascertained
23 export prices and normal values for each of the two models of split systems.

24 The following paragraphs explain how Customs calculated interim dumping
25 duties for the goods exported from Italy to Australia.

26 **12.1.3 Ascertained export price**

27 Customs has calculated ascertained export prices based upon the most
28 recent transaction for each model. Ascertained export prices are at
29 **Confidential Appendix 8**.

30 **12.1.4 Ascertained normal value**

31 Customs has calculated ascertained normal values based upon the Italian
32 producer's cost to make and sell and profit for the two models. Ascertained
33 normal values are at **Confidential Appendix 8**.

34 **12.1.5 Ascertained non-injurious price**

35 Customs ascertained NIP as described above in Section 11. The ascertained
36 NIP is lower than the ascertained normal values. Customs will therefore use

1 the ascertained NIP as the basis of interim dumping duties. Calculation of the
2 ascertained NIP forms **Confidential Appendix 7**.

3 **12.1.6 Amount of interim dumping duty**

4 The interim dumping duty is an amount equal to the sum of:

- 5 • the difference between the ascertained export price and the ascertained
6 normal value; and
- 7 • if the export price is lower than the ascertained export price, the difference
8 between the two.

9 An interim dumping duty may be ascertained:

- 10 • as a proportion of the export price; or
- 11 • by reference to a measure of the quantity; or
- 12 • by a combination of these methods.

13 Customs will recommend to the Minister that the interim dumping duty be
14 ascertained by reference to a measure of quantity (number of units).

15

13 RECOMMENDATIONS

On 21 January 2001 Customs made a preliminary affirmative determination that there appeared to be sufficient grounds for the publication of a dumping duty notice. Customs also imposed provisional measures (in the form of securities) on all imports of split systems from Italy from that date.

Section 269TG(1) of the Act provides that the Minister may take action against dumped goods that have already been exported to Australia and like goods exported after Customs has published a preliminary affirmative determination. This action is normally limited to the latter situation.

Section 269TG(2) of the Act provides that the Minister may take action against like goods that may be exported to Australia in the future at dumped prices. This applies where such goods have already been exported to Australia at dumped prices and have been causing or are causing or are threatening material injury to an Australian industry producing like goods. This action may be imposed on like goods exported to Australia after the date of publication of an appropriate notice.

Customs is satisfied that exports to Australia of split systems from Italy have been sold at dumped prices and that these have caused material injury to the Australian industry. Customs is also satisfied that future exports of split systems from Italy may be at dumped prices. Customs recommends that the Minister not accept any price undertaking offered. Customs will therefore recommend the Minister take anti-dumping action under subsections 269TG(1) and (2) of the Act against exports of split systems from Italy.

Subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* provides that the Minister must direct that the interim dumping duty be ascertained as a specific duty, a proportional duty or some combination of these forms of duty. In this case, Customs will recommend that the Minister direct that the interim dumping duty be ascertained by reference to the quantity of the goods (units).

Customs recommends that the Minister be satisfied that:

- in accordance with paragraph 269TAC(2)(a) of the Act, because of the absence of sales of like goods in Italy that would be relevant for the purpose of determining a price under subsection 269TAC(1), the normal value of goods exported to Australia by EL cannot be ascertained under subsection 269TAC(1).

Customs recommends that the Minister direct that:

- in accordance with subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, interim dumping duties in respect of split system caravan airconditioners the subject of a notice under subsection 269TG(1) of the Customs Act be ascertained by reference to a measure of the quantity (in number of units) of those particular goods.

1 Customs recommends that the Minister determine:

- 2 • in accordance with paragraph 269TAA(3)(b) of the Act, amounts for the
3 costs necessarily incurred in the importation and sale of the goods
4 exported to Australia from Italy;
- 5 • in accordance with paragraph 269TAB(1)(c) of the Act, having regard to all
6 the circumstances of exportation, for the purpose of determining export
7 price for exports by EL to Australia from Italy;
- 8 • in accordance with paragraph 269TAC(2)(c) of the Act, for the purpose of
9 determining normal values for exports by EL, amounts for the cost of
10 production of the goods in Italy, amounts for the administrative, selling and
11 general costs associated with the sale of the goods (assuming that the
12 goods, instead of being exported had been sold in Italy) and amounts for
13 the profit on those sales; and
- 14 • in accordance with subsection 269TACB(1) of the Act, that dumping has
15 occurred in respect of exports of the goods from Italy by EL.

16 Customs recommends that, in accordance with subsection 269TG(1) of the
17 Act, the Minister:

- 18 • be satisfied that in respect of the goods exported from Italy by EL, the
19 amount of the export price is less than the amount of the normal value and
20 because of that material injury to the Australian industry producing like
21 goods has been caused (or in the case where a security has been taken
22 under section 42 – material injury to the Australian industry producing like
23 goods might have been caused); and
- 24 • declare, by public notice, that section 8 of the *Customs Tariff*
25 (*Anti-Dumping*) *Act 1975* applies to those goods where a security has
26 been taken under section 42 and like goods that were exported to
27 Australia from Italy after Customs made a preliminary affirmative
28 determination, but before publication of the notice.

29 Customs recommends that, in accordance with subsection 269TG(2) of the
30 Act, the Minister:

- 31 • be satisfied that in respect of the goods exported from Italy by EL, the
32 amount of the export price is less than the amount of the normal value and
33 the amount of the export price of like goods that may be exported to
34 Australia in the future may be less than the normal value and because of
35 that material injury to the Australian industry producing like goods has
36 been caused; and
- 37 • declare, by public notice, that section 8 of the *Customs Tariff*
38 (*Anti-Dumping*) *Act 1975* applies to like goods that are exported to
39 Australia from Italy after the date of publication of the notice.

40 To give effect to these recommendations, Customs recommends that the
41 Minister sign the Attachments.

14 APPENDICES

- 1 Glossary
- 2 Evidence relied upon by Customs
- 3* Export prices, normal values and dumping margins
- 4* Analysis of price effects, profits and profitability
- 5* Analysis of volume effects
- 6* Analysis of return on investment
- 7* Calculation of non-injurious price
- 8* Ascertained export prices and normal values

* Confidential appendix – not included in the report that is available to the public.

15 LIST OF ATTACHMENTS

List of documents recommended for the Minister's signature:

- an instrument under subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* directing that interim dumping duties in respect of split system caravan airconditioners the subject of a notice under subsection 269TG(1) of the *Customs Act* be ascertained by reference to a measure of the quantity (in number of units) of those particular goods; and
- acceptance of the recommendations contained in Trade Measures Report No. 32 and determinations under different provisions of the *Customs Act 1901*.