

**CONSIDERATION OF AN APPLICATION LODGED UNDER  
SUB-SECTION 269TB(1) OF THE CUSTOMS ACT 1901**

I, Graham Edward Cruttenden, have considered, in terms of sub-section 269TC(1) of the *Customs Act 1901*, an application lodged under sub-section 269TB(1) for the publication of a dumping duty notice in respect of domestic refrigerators exported from the Republic of Korea. The application was lodged by Electrolux Home Products Pty Ltd.

Having regard to the matters contained in the application and to other relevant information, I am satisfied that:

the application complies with sub-section 269TB(4);

there is an Australian industry in respect of like goods; and

there appear to be reasonable grounds for the publication of a dumping duty notice in respect of exports of domestic refrigerators exported from Korea.

The attached report details the consideration of the application and other relevant information and provides the reasons relied on in making these decisions.

Graham Cruttenden  
Delegate of the Chief Executive Officer  
Position Number 23

31 December 2004



Australian Government  
Australian Customs Service

## MINUTE PAPER

Central Office  
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Director  
Trade Measures Operations 3

### **CONSIDERATION OF AN APPLICATION LODGED UNDER SUB-SECTION 269TB(1) OF *THE CUSTOMS ACT 1901* – DOMESTIC REFRIGERATORS FROM THE REPUBLIC OF KOREA**

#### **Summary**

I have examined the application for publication of a dumping duty notice on domestic refrigerators exported from the Republic of Korea. The attached report concludes that:

- the application complies with subsection 269TB(4) of the Act;
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

#### **Recommendations**

That:

- you decide not to reject the application;
- the investigation period to determine whether dumping has occurred be from 1 January 2004 to 31 December 2004; and
- the Australian market and the economic condition of the industry be examined from 1 January 2001 for the purposes of injury analysis.

If you decide not to reject the application, an instrument in accordance with subsection 269TC(4) is attached for your signature. The decision whether to reject the application must be made by 4 January 2005.

Andrew Mumberson  
Customs Manager  
Operations 3  
Trade Measures Branch  
24 December 2004



**Australian Government**  
**Australian Customs Service**

**DOMESTIC REFRIGERATORS**

**THE REPUBLIC OF KOREA**

**CONSIDERATION OF AN APPLICATION FOR A  
DUMPING DUTY NOTICE**

**REPORT NO. 94**

31 December 2004

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## 1 RECOMMENDATION TO THE DELEGATE

Based on my examination of the application, as well as confirmation through Customs records of the information contained therein, I consider that the application meets the requirements of s. 269TC of the Act and that there appear to be reasonable grounds to initiate an investigation in respect of the alleged dumping of certain refrigerators from the Republic of Korea (Korea).

### 1.1 Introduction

On 9 December 2004 Electrolux Home Products Pty Ltd (EHP) submitted an application requesting the Minister for Justice and Customs (Minister) publish a dumping duty notice in respect of certain refrigerators exported to Australia from Korea.

Under s. 269TC(1) of the *Customs Act 1901* (the Act), the Chief Executive Officer of Customs must reject the application unless satisfied that:

- (1) the application complies with subsection 269TB(4) of the Act;  
and
- (2) there is, or is likely to be established, an Australian industry in respect of like goods; and
- (3) there appear to be reasonable grounds:
  - for the publication of a dumping duty notice in respect of the goods the subject of the application; or
  - for the publication of such a notice upon the importation into Australia of such goods.

This report addresses the above criteria. If the CEO is not satisfied in respect of any of the three matters set out in s. 269TC(1) the application must be rejected.

The goods covered by the application are compression type domestic refrigerators from the Republic of Korea, with a gross internal capacity not exceeding 800 litres.

The applicant claimed that it suffered injury caused by dumped imports in the form of:

- price undercutting;
- price suppression;
- price depression;
- reduced utilisation of capacity;
- reduced employment;
- loss of profits leading to reduced profitability; and
- reduced return on investments.

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## 1.2 Compliance

Section 269TC(1) requires that there is, or is likely to be established, an Australian industry producing like goods.

Section 269TB(4) requires that the application:

- be in writing;
- be in an approved form;
- contain such information as the form requires;
- be signed in the manner indicated in the form; and
- be supported by a sufficient part of the domestic industry.

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections), is signed in the manner indicated in the form and is supported by a sufficient part of the Australian industry.

Procedural arrangements in respect of the initiation of this investigation, in terms of s. 269TC(4) are detailed in Australian Customs Dumping Notice 2005/02.

## 2 PART A – AUSTRALIAN INDUSTRY

### 2.1 Australian production

EHP is a limited private company and is a member of the EHP Group of companies controlled by AB Electrolux of Sweden. AB Electrolux is a public listed company. EHP's refrigerator business is a business unit within the EHP Group and is managed from the company's premises located at Riverwood in Sydney.

EHP's business in Australia is centred on the manufacture of home appliances from three factories in Adelaide and one in Orange. The Orange factory is a major manufacturing facility (one of the largest in NSW) which manufactures all of EHP's Australian made refrigerators and freezers.

EHP identifies the Australian industry as consisting of itself and Fisher and Paykel (F&P). The applicant submits that, as there is no other Australian producer of like goods, the entire Australian refrigerator sector supports the application. EHP provided evidence that F&P supports the application.

The application is taken to be supported by a sufficient part of the Australian industry when the person(s) who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 percent of the total production or manufacture of like goods by that part of the Australian industry that have commented; and
- account for not less than 25 percent of the total production or manufacture of like goods in Australia.

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From the data submitted by EHP, the application is supported by a sufficient part of the Australian industry.

EHP provided details of its production process in its application. It claimed that the main processes are:

- roll forming of sheet steel;
- polyurethane foaming;
- injection moulding;
- plastic sheet extrusion;
- vacuum forming; and
- complex assembly.

EHP provided quarterly production data from 1 October 2003 to 30 September 2004. For the purpose of the application, EHP submitted that production quantity in a period is the same as the sales quantity.

From the information provided in the application it appears that at least one substantial process in the manufacture of refrigerators is carried out in Australia. Therefore, I am satisfied that the applicant has demonstrated that there is an Australian industry producing like goods.

At Appendix A-6 to the application EHP provided its cost to make and sell and profit information, from 1 January 2000 to 30 June 2004, in respect of its like goods. Production volumes provided at Appendix A1 agree with volumes reported in Appendix A-6.

### 2.2 Conclusion – Australian production

I am satisfied that the application complies with s. 269TB(4).

### 2.3 The imported and locally produced goods

EHP described the goods the subject of the application and like goods in section A-3 of the application.

The tariff classifications are:

Tariff item	Statistical key	Description
8418.10.00		Combined refrigerator-freezers, fitted with separate external doors – compression type
	1	Less than 200 L gross internal capacity
	2	200 L and over but less than 300 L gross internal capacity
	3	300 L and over but less than 400 L gross internal capacity
	4	400 L and over but less than 500 L gross internal capacity
	5	500 L and over gross internal capacity
8418.21.00		Refrigerators, household type – compression type
	9	Less than 200 L gross internal capacity
	10	200 L and over but less than 300 L gross internal capacity
	11	300 L and over but less than 400 L gross internal capacity
	12	400 L and over but less than 500 L gross internal capacity
	13	500 L and over gross internal capacity

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The duty rate applicable to goods exported from Korea is 5%.

Refrigerators the subject of the application are in one of four different configurations:

- top/bottom Mounts;
- side by side;
- one/single Door; and
- bar

### Top/Bottom Mounts

Refrigerators with a separate freezer compartment, either positioned at the top or the bottom with a separate door, are termed “Two Door” refrigerators and are generally referred to as “Top Mount” or “Bottom Mount” (depending on where the freezer is situated).

### Side by Side

Side by side refrigerators also contain both a refrigerator and a freezer compartment, but the compartments are located side by side.

### One/Single Door

All refrigerators with a single door (except for “bar” refrigerators) that do not contain a freezer compartment. Also called “Larder” refrigerators.

### Bar

Bar refrigerators technically also have one door, but are termed and grouped into “bar” refrigerators because of their smaller capacity - less than 200 litres. Some bar refrigerators contain a small freezer box within the refrigerator but are only rated at -9°C (for short-term food storage).

For the purpose of injury analysis and the possible setting of measures, the issue of whether the above four configurations of refrigerators should be considered like goods to each other will be examined over the course of the investigation.

EHP produces a range of refrigerator freezers and refrigerators, including top/bottom mount, side by side, single door and bar.

EHP provided evidence that it produces refrigerators as described above. Locally produced and imported domestic refrigerators must meet AS/NZS 4474.1.1 titled ‘Performance of Household Electrical Appliances – Refrigerating Appliances’. Evidence supplied with the application indicates that refrigerators produced by the Australian industry and refrigerators the subject of the application compete in the same market in that they are both sold through the same retail chains.

Australian produced and imported refrigerators have a wide range of sizes and specifications. The Australian industry does not produce refrigerators that are identical in all respects to imported refrigerators. Refrigerators

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produced by the Australian industry and imported goods of comparable capacity and type have similar physical characteristics such as size, shape and appearance, the same end-use and are substitutable for each other. Therefore, the Australian industry produces refrigerators that have characteristics closely resembling those of refrigerators the subject of the application, and for that reason I consider it to produce like goods to the imported goods.

A description of the range of Electrolux products that are like goods to the imported products are contained in confidential attachment A-3.1&3 to the application. A comparison of specific Electrolux refrigerators to specific imported refrigerators, showing similarities in type and capacity is also shown in this attachment.

### **2.4 Company information**

EHP provided names and contact details of relevant contact people within the company. Company information, as required by the application form, was provided in sections A1 and A2, and the body of the application.

### **2.5 Australian market**

A description of the uses and functions of domestic refrigerators was provided in the application. Domestically produced refrigerators are sold through distributors for retail sale to the customer or sold through what the applicant described as commercial channels, the identity of which are considered confidential by EHP. From the information provided by EHP, the majority of its sales are to distributors.

No comment was made in the application in respect of the supply arrangements of Korean refrigerators, but presumably, those arrangements are similar to those of the Australian industry. At the retail level, imported and domestically produced refrigerators compete in retail chains such as Harvey Norman and Betta Electrical.

The applicant supplied data that supports its view that the sales volumes of refrigerators undergoes an annual cycle, with the peak selling season occurring in the warmer months – October to January.

EHP also notes that there has been a shift away from automatic cyclic and manually defrosting refrigerators to frost-free or no-frost refrigerators in recent years.

The applicant submitted that in recent years, a feature of the Australian market has been an increase in the presence of Korean refrigerators, which is particularly noticeable, in particular segments such as two door top mount refrigerators.

At appendix 2 to the application, EHP provided sales data in respect of the volume and value of EHP's and F&P's like goods over the investigation period. Evidence of sales volume and value of imported goods, obtained from

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market research and the Australian Bureau of Statistics was also provided at appendix 2 for the purpose of calculating the Australian market.

Appendix 2 information was used to calculate an index of sales quantities for the purpose of the public version of the application.

### **2.6 Applicant's sales**

EHP provided, at appendix 4 to the application, details of its sales for the period 1 October 2003 to 30 September 2004. Supporting documents, as required by the application form, were also provided. For the purpose of initiation, the sales data provided at appendix 4 (in conjunction with other information in the application) gives sufficient basis to determine that there are reasonable grounds to establish that the applicant has suffered injury.

### **2.7 General accounting/administration information**

EHP provided the general accounting information required by the application form, including audited accounts for the two most recently completed financial years (2002 and 2003). Divisional information in respect of the production and sale of white goods was also provided.

### **2.8 Cost information**

After consultation with the Dumping Liaison Unit, EHP submitted that it was difficult to provide cost to make and sell information for all like goods because of the wide range of products that it sold. Instead, it provided cost to make and sell information for 14 of its more popular models, in terms of volumes sold, out of a total model range in excess of 200. This represented about 30% of production volume. It also provided cost to make and sell and profit information for its total production of refrigerators.

The cost data provided included a range of refrigerators in terms of capacity. It also covered the range of configurations.

EHP used standard costings, (support by bills of material for two models), including selling, general and administrative expenses, to present its cost to make and sell tables. Sales volumes and revenues provided in these tables were matched to appendix 4 for particular models.

For the purpose of initiation, I am satisfied that EHP's cost to make and sell information (in conjunction with other information in the application) provides reasonable grounds to establish that the industry has suffered injury.

### **2.9 Material injury**

EHP submitted that it was suffering injury in the following forms:

- price undercutting;
- price depression;
- price suppression;
- reduced utilisation of capacity;
- reduced employment;

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loss of profits leading to reduced profitability; and  
reduced return on investments.

From the information contained in the application, EHP is by far the larger of the two Australian producers of refrigerators. Any injury suffered by EHP is representative of injury suffered by the Australian industry as a whole.

### 2.9.1 Price undercutting

EHP provided evidence in respect of particular market segments where it submitted that price undercutting by refrigerators exported from Korea had occurred.

The evidence in respect of price undercutting in respect of like goods is based on pricing at the retail level obtained by a market researcher. Ideally, Customs would compare prices to the retailer or distributor, as this is the point where any injury to the Australian industry would occur. However Customs recognises the difficulty in obtaining such information, as competitor's prices to the retailer/distributor are not publicly available. For indicative purposes, Customs examined the price data for refrigerators sold at the retail level in order to draw conclusions as to whether any injury from price undercutting was likely.

An examination of the data shows is price undercutting of up to 40% at the retail level. Because of this level of the price undercutting at the retail level, it is likely that price undercutting occurred in respect of sales to the retailer/distributor.

For the purpose of initiation, price undercutting has been demonstrated. However, this injury factor will need to be re-examined when wholesale price data becomes available if the investigation is initiated. The analysis of price undercutting is at **confidential appendix 1**.

### 2.9.2 Price depression

Price depression occurs when an industry, for some reason, lowers its prices.

The data provided by EHP indicated that price depression was not occurring in respect of 2 door top mounted refrigerators.

However, when the data was examined in respect of capacity ranges for all refrigerators (eg 200 to 299 litres) price depression by about 10% had occurred in the injury examination period. The analysis of price depression is at **confidential appendix 2**.

Price depression has been demonstrated.

### 2.9.3 Price suppression

Price suppression may be described as when an industry cannot raise prices to meet costs.

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In general, EHP's costs have risen over the injury period and prices have declined.

An examination of cost to make and sell data, in confidential appendix 6, for individual models and overall, indicates that EHP has not been able to recover its costs in the investigation period.

For the purpose of initiation, price suppression has been demonstrated.

### 2.9.4 Reduced utilisation of capacity

Data provided at appendix 7 to the application shows that for the period 2001 to 2003, EHP's utilisation of capacity in the manufacture of like goods has declined by about 15%, although overall production had increased. The data shows that EHP's theoretical capacity increased for 2001 to 2003 and on a pro rata basis for the 1<sup>st</sup> nine months of 2004. Overall capacity for the production of like goods has increased by about 10% over the injury period.

In percentage terms, there was a reduction in capacity utilisation since 2001 because of the increase in the plant's theoretical capacity. Some of this spare capacity was transferred from the production of like goods to production of 'other' goods.

Injury in the form of a reduction in utilisation of capacity is marginal.

### 2.9.5 Reduced employment

Data provided at appendix 7 to the application shows that for the period 2001 to 2003, the number of people employed in the production of like goods has remained steady, but declined sharply in the first nine months of 2004. Insufficient data was provided with the application to consider whether this reduction of employment in 2004 was due to seasonal or other factors.

A reduction in employment has not been demonstrated.

### 2.9.6 Loss of profits and reduced profitability

EHP provided cost to make and sell data in respect of selected models of refrigerators and in respect of refrigerators generally at appendix 6 of its application.

In respect of individual models, some models did not make a profit over the injury period, others were marginally profitable, and other models that were profitable in the first part of the injury period became unprofitable in the latter part.

So far as refrigerators generally were concerned, the data shows that EHP's sales of refrigerators were profitable in 2001 to 2003, but were unprofitable for the first nine months of 2004. It is not clear whether seasonal factors are an element in considering whether profit is an injury factor as the relevant data is on annual basis (and for the first nine months of 2004).

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However, because of the level of losses in 2004 it appears, on balance, that the industry has suffered profit related injury. This has had the consequential effect of reducing profitability.

### **2.9.7 Reduced return on investments**

EHP submitted that its return on investment declined over the period 2001 to 2003. In those years there was a positive return on investment. In the first nine months of 2004, the return on investment as calculated by EHP was negative. Again there may, or may not, be seasonal factors involved. Pending further investigation into EHP's financial statements, a reduced return on investment has been demonstrated.

### **2.9.8 Volume related injury**

EHP did not claim any volume related injury. The data presented in the application does not support any claim of such injury.

### **2.9.9 Conclusion**

There is sufficient information in the application to conclude that the Australian industry has suffered injury.

## **3 PART B - DUMPING**

### **3.1 Source of exports**

The source of the refrigerators the subject of the application is South Korea.

Major Korean exporters identified by EHP are:

LG Electronics Inc (LG);  
Samsung Electronics Co Ltd (Samsung); and  
Daewoo Electronics Corp.

These companies also manufacture and sell refrigerators in Korea.

EHP identified twenty-three other minor Korean manufacturers and exporters of refrigerators to Australia.

EHP also identified exports of refrigerators to Australia from China, New Zealand, Thailand, USA and a number of other countries.

### **3.2 Export Price**

Direct evidence of export price was not available to the applicant. It submitted that export price could not be calculated from import statistics as such statistics lacked sufficient detail to identify particular capacities except with in the broad range as specified by the statistical key.

The applicant provided export prices based on a deductive basis. It did not provide export prices for all models exported to Australia because of the large

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number of different models. It did, however, construct export prices for those models exported by LG and Samsung that it considered to be large volume sellers in Australia. No information was supplied in respect of Daewoo.

Amounts representing costs and margins from the point of ex factory (Korea) were deducted from retail prices in Australia. The Australian retail selling prices were obtained from an independent research company.

EHP has previously been an importer of some types of refrigerators from Korea. It based its estimates of the cost of importing goods from Korea on actual costs it had previously incurred (attachment B.2.1 to its application). Its estimate of margins and other cost items (such as warranty) in respect of Korean refrigerators sold in Australia was based on EHP's experience in selling refrigerators in the Australian market.

The margins and costs estimated by EHP were similar to margins and costs incurred by importers, and examined by Customs, in respect of another white goods product exported from Korea

Export prices calculated by EHP for particular models were compared to export price data obtained from Customs' commercial database. It must be noted that the utility of such a comparison is limited because of the range of capacities within a particular statistical key. That said, the deductive export prices calculated by EHP appear reasonable in that some were higher than the aggregated Customs data and some lower.

For the purpose of initiation, I conclude that sufficient evidence has been provided in respect of the export price of the goods.

### **3.3 Normal Value**

Direct evidence of normal value was not available to the applicant. It calculated normal values for goods exported to Australia based on retail sales information in respect of comparable goods sold in Korea and deducting the adjustments described in the following section.

The retail sales information that formed the basis of the normal value calculation was gathered from the web-sites of LG and Samsung (no information was supplied in respect of Daewoo). Therefore, the claimed normal value is price-based.

Ideally, the starting point for normal value calculation should be the first arms length sale from the manufacturer. However, Customs recognises the difficulty in obtaining such data due to its commercial sensitivity.

For the purpose of initiation, I conclude that sufficient information has been provided in respect of the domestic selling price of like goods sold in the Korean market.

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### 3.4 Adjustments

EHP submitted that it researched the Korean domestic market and has used that information as the basis for the claimed adjustments to the retail selling prices.

EHP submitted that the following deductions should be made from the Korean retail selling price to derive a normal value:

- promoter staff and warranty;
- retailer margin;
- domestic freight and installation; and
- VAT.

The VAT component is a known quantity (10%) and appears to be included in the retail pricing information provided by EHP. The amounts for the other adjustments in respect of refrigerators are not known and the evidence that EHP provided in support is largely anecdotal. However, similar inclusions in the retail selling price of goods in Korea were found in a previous investigation into a white goods product.

On that basis I conclude that the claimed adjustments are reasonable.

### 3.5 Dumping Margin

EHP compared export prices to price based normal values. This is a basis for calculating dumping margins under s. 269TACB.

The applicant established dumping margins based on its calculation of export prices and normal values at the same point – ex factory. Some of the cost elements for the normal values are likely to be overstated as there are possible rebates and discounts from the manufacturer to the wholesaler (based on a previous investigation into another white goods product from Korea). Export price calculation are based on the best available information that EHP could obtain. The dumping margins were all positive and up to 70%.

A comparison of EHP's normal values as submitted to export price data extracted from Customs' commercial database and also found dumping margins of up to 70%. **Confidential appendix 3** refers

Based on the above, I believe there are reasonable grounds to conclude that the goods have been sold to Australia at dumped prices.

### 3.6 Non-injurious price

EHP constructed a non-injurious price and compared that to export prices for particular models at appendix B1 to its application. It calculated an unsuppressed selling price, as the starting point for the non-injurious price by adding to its cost to make and sell an amount for profit. The amount for profit was based on the company's objective return on investment. From the calculated unsuppressed selling price, EHP deducted the costs and expenses used in its calculation of export price to arrive at an FOB amount.

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In each case, the non-injurious price was above the export price by approximately 5% to 50%. This indicates, for the purpose of initiation, that dumping margins generated by normal values will not be negated by non-injurious prices as per the 'lesser duty' provision of the legislation.

### **4 LINK BETWEEN INJURY AND DUMPED IMPORTS**

EHP submitted that it has suffered material injury since the early 1990's. I believe EHP has sufficiently demonstrated that injury has been suffered by Australian industry and that refrigerators exported from Korea have been sold to Australia at dumped prices.

Included in the application was import data showing an increase of market share by Korean refrigerators, which, in EHP's view, occurred at the same time that it suffered price and profit related injury from allegedly dumped goods. Customs data confirmed that there has been an increase in imports of Korean refrigerators since 2001. In the injury period, Korean refrigerators have also taken market share from imports from other countries.

The increase in market share by allegedly dumped imports from Korea has occurred at the same time as a reduction of prices in some segments of the Australian refrigerator market.

EHP submitted that there are no factors, other than dumping, that have caused it to suffer material injury. However, it should be noted that there is one other member of the industry that sells refrigerators in Australia – F&P, which could be a possible cause of 'other' injury to EHP. Information concerning F&P in the application is limited. Nevertheless, F&P supports the application, so it is reasonable to presume that this company also believes that it is suffering material injury caused by dumped imports, rather than competition from the applicant.

For the purpose of initiation I conclude that sufficient evidence has been provided to demonstrate causal link between dumping and injury.

### **5 PART C – SUPPLEMENTARY SECTIONS**

EHP did not make any submission in respect of the supplementary section of the application. None of the questions in this part of the application form are relevant to EHP's submission.

Andrew Mumberson  
Operations 3  
Trade Measures Branch