

ELECTRICALLY POWERED ABSORPTION-TYPE REFRIGERATORS, IN FINISHED
OR KNOCKED DOWN CONDITION, WITH A REFRIGERATION CAPACITY OF
2 CUBIC FEET OR LESS, ORIGINATING IN OR EXPORTED FROM POLAND

Finding of the Canadian International Trade Tribunal
in Inquiry No. NQ-89-001
under Section 42 of the *Special Import Measures Act*

Place of Hearing: Ottawa, Ontario

Public Hearing: July 24 to 27, 1989

Participants: John D. Richard, Q.C.
for Atlantic Mini-Fridge Co. Ltd.
Moncton, N.B.
E1C 8N8

(Manufacturer)

Donald A. Kubesh
Martine M.N. Band
for Sylcraft Importing Ltd.
Concord, Ontario
L4K 1C5

(Importer)

August 15, 1989

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Panel:

Presiding Member:	Robert J. Bertrand, Q.C.
Member:	Sidney A. Fraleigh
Member:	W. Roy Hines

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Inquiry No.: NQ-89-001

Tuesday, the 15th day of August 1989

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
SIDNEY A. FRALEIGH, MEMBER
W. ROY HINES, MEMBER

INQUIRY UNDER SECTION 42 OF
THE *SPECIAL IMPORT MEASURES ACT* RESPECTING:

ELECTRICALLY POWERED ABSORPTION-TYPE REFRIGERATORS, IN FINISHED
OR KNOCKED DOWN CONDITION, WITH A REFRIGERATION CAPACITY OF
2 CUBIC FEET OR LESS, ORIGINATING IN OR EXPORTED FROM POLAND

FINDING

The Canadian International Trade Tribunal, pursuant to paragraph 57(2)(a) of the *Canadian International Trade Tribunal Act*, has conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* consequent upon the issue by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated April 19, 1989, and of a final determination of dumping dated July 18, 1989, respecting electrically powered absorption-type refrigerators, in finished or knocked down condition, with a refrigeration capacity of 2 cubic feet or less, originating in or exported from Poland.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping in Canada of the aforementioned goods from Poland have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Sidney A. Fraleigh
Sidney A. Fraleigh

Member: W. Roy Hines
W. Roy Hines

Witnessed: Robert J. Martin
Robert J. Martin
Secretary

The Statement of Reasons will be issued within 15 days.



Inquiry No.: NQ-89-001

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THE *SPECIAL IMPORT MEASURES ACT* RESPECTING:

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ERRATUM

The last paragraph in the August 15, 1989, finding concerning the above-mentioned goods should have read as follows:

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping in Canada of the aforementioned goods from Poland has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

By order of the Tribunal,

Robert J. Martin,
Secretary

August 30, 1989

Statement of reasons to accompany the finding issued on August 15, 1989.

Ottawa, August 30, 1989

Robert J. Martin,
Secretary

INQUIRY UNDER SECTION 42 OF
THE *SPECIAL IMPORT MEASURES ACT* RESPECTING:

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PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
SIDNEY A. FRALEIGH, MEMBER
W. ROY HINES, MEMBER

STATEMENT OF REASONS

The Canadian International Trade Tribunal (the Tribunal), pursuant to paragraph 57(2)(a) of the *Canadian International Trade Tribunal Act*, has conducted an inquiry under the provisions of subsection 42(1) of the *Special Import Measures Act* consequent upon the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated April 19, 1989, and a final determination of dumping dated July 18, 1989, respecting electrically powered absorption-type refrigerators, in a finished or knocked down condition, with a refrigeration capacity of 2 cubic feet or less, originating in or exported from Poland.

The Secretary of the Tribunal was given notice of the preliminary determination in a letter from the Director General, Assessment Programs Division, National Revenue for Customs and Excise, dated April 19, 1989, and received the same day. The notice was published in Part I of the *Canada Gazette* of May 6, 1989.

The Deputy Minister's investigation was initiated as a result of a complaint filed by Atlantic Mini-Fridge Co. Ltd.

Upon receipt of the Notice of Preliminary Determination of Dumping, the Secretary sent a Notice of Commencement of Inquiry to the Deputy Minister, the Government of Poland, the Canadian manufacturer, the importers and exporters of the subject goods, and others on the Tribunal's mailing list. The notice was published in Part I of the Canada Gazette of May 13, 1989.

On July 18, 1989, the Tribunal received the Notice of Final Determination of Dumping dated the same day. The notice was made available to participants at the commencement of the hearing and was published in Part I of the Canada Gazette of August 5, 1989.

Public and *in camera* hearings were held in Ottawa, Ontario, starting on July 24, 1989.

THE PARTICIPANTS

The complainant, Atlantic Mini-Fridge Co. Ltd. (Atlantic), which was represented by counsel at the hearing, filed public and confidential briefs, submitted evidence and called witnesses who testified in support of its claim of material injury caused by the dumping of the subject goods.

The importer, Sylcraft Importing Ltd. (Sylcraft), which was also represented by counsel at the hearing, filed public and confidential briefs, submitted evidence and argument and called witnesses to refute the claim of material injury to the Canadian producer caused by the dumped goods.

The Tribunal also called a witness, Mr. Roy M. Hunt of Dometic Distribution Inc. (Dometic), a large distributor of the subject mini-refrigerators, to testify on the past and present state of the Canadian market for mini-refrigerators.

THE PRODUCT

The product which is the subject of the inquiry is defined in the preliminary determination of dumping as electrically powered absorption-type refrigerators, in finished or knocked down condition, with a refrigeration capacity of 2 cubic feet or less, originating in or exported from Poland. These refrigerators are commonly known as mini-fridges.

There are basically two types of refrigerators: the compression-type, which is not part of this inquiry, and the subject absorption-type. The compression-type refrigerator, found in most households, uses a compressor to circulate a refrigerant such as freon while the absorption-type uses a "generator/evaporator," which is basically an assembly of tubing with no moving parts, as the cooling system.

In an absorption-type refrigerator, the cooling system uses, in place of freon, an ammonia-water-hydrogen mixture, with a small heating element to act as a catalyst for the cooling process. As liquid ammonia is heated, it is converted to gas which rises through steel tubing to the condenser where it begins to cool and liquify. The ammonia then falls to an evaporator where hydrogen gas brings the evaporation point of the solution down. As the ammonia evaporates, it cools by absorbing the heat from the refrigerator's interior compartment. The evaporated ammonia then cools and falls back to the heating element area to begin the cycle once again.

The subject refrigerators are used primarily in hotels or motels as "minibars," i.e. an in-room facility stocked with miniature liquor bottles, wine, soft drinks, etc., for purchase by the room occupant. They are also used in recreation vehicles and in homes, cottages and offices.

The absence of a compressor in the subject goods ensures a noiseless operating unit, an important consideration in a small hotel room setting. Because of their higher noise level, compressor-type refrigerators are not considered, in the trade, as competition for absorption-type models in the hotel minibar business. However, the compressor-type refrigerators do compete with the absorption-type refrigerators in other submarkets such as the recreation vehicle market and the retail market for residential or commercial use.

THE DOMESTIC INDUSTRY

The complainant, Atlantic of Moncton, New Brunswick, is the sole Canadian manufacturer of absorption-type refrigerators. Its entire output consists of absorption-type refrigerators with a refrigeration capacity of less than 2 cubic feet and is sold entirely for hotel use.

The company was incorporated in 1984 and production began in December of that year. The establishment of the company followed a feasibility study which indicated that the Canadian market had a potential of approximately 12 000 minibars per year in its 250 000 hotel/motel rooms, 100 000 of which are found in 3- to 5-star hotels and can realistically be targeted as potential sales. At that time, although they were quite common in the European hotel industry, the minibars were relatively new products in Canada; the majority of minibars were being supplied by Elektrolux of West Germany and Elektrosuisse Valentini of Italy, with a few being supplied from Polar of Poland.

Atlantic was set up specifically to produce hotel minibars for the "Minibar franchise system" developed by Minibar AG of Switzerland. In Canada, Atlantic supplies the subject products to four Canadian franchises of Minibar AG. The four franchises, which are involved mainly in the leasing, but also in the sale of the subject products to hotels and motels, are located in Moncton, for the Atlantic market; Montréal, for the Quebec market; Toronto, for the Ontario, Manitoba and Alberta markets; and Vancouver, for the British Columbia and Saskatchewan markets.

THE COMPLAINT

In argument, counsel for Atlantic claimed that the dumping of mini-fridges from Poland has caused, is causing, and is likely to cause material injury to its production in Canada of like goods.

Counsel alleged that the models sold to hotels by the importer, Sylcraft, are directly competitive with Atlantic's mini-fridges, are intended for the same use, and generally serve the same purpose. Atlantic competes directly with Polar imports with its models, either sold as a built-in or as a stand-alone unit, and, by offering to either sell or lease the units to customers, with or without a service program, offers a greater range of options and is able to fully meet the needs of the market.

Counsel argued that with no quality problems, a good distribution system, a sales force cumulatively greater than Polar's and Dometic's, Atlantic was only vulnerable to one thing:

Polar's aggressive behavior in the hotel/motel trade starting in late 1987. It was, counsel contended, a "cold blooded attack" with low prices made possible by large margins of dumping that enabled Polar to increase its share of the market during 1988, in a declining market. This price competition is such that Atlantic, although an efficient producer, has been unable to adjust its prices to meet that competition.

Counsel submitted that Polar has been actively seeking to sell product to both up-scale and medium or low-end hotels, and has tried to make its products more suitable for the hotel trade. It was also submitted that although minimal price increases have been projected, Polar fully intends to import at dumped prices if allowed to do so; if Polar had to increase its prices to cover the margin of dumping, it would be unable to sell.

Counsel explained that the profitability reported by Atlantic on its domestic sales did not give the true picture of profitability on such sales. Considering that domestic sales absorbed a far greater share of fixed costs than sales in the export market, a reconstructed profit and loss statement for domestic sales would still show an unsatisfactory level of profitability.

Counsel rejected any possible exclusions from a positive finding. Models TA60 (the Sears model) and TA60CL, a 12 volt/110 volt mini-fridge, could be diverted to the hotel trade and any enforcement would be difficult to implement by Revenue Canada. Regarding model TA71KA, a 12 volt/110 volt/propane system, counsel contended that this model was covered by the preliminary and final determinations of dumping, that the addition of the propane option is a question of cost, and, with the gross profit margins realized, the importer could absorb additional costs and, without the payment of dumping duties, sell these units to the hotel market.

With regard to the evidence of the exporter to the effect that exports would not increase to Canada, counsel submitted that the evidence of the case was of price competition, regardless of the number of units.

THE RESPONSE

Counsel for Sylcraft claimed that the dumping of mini-fridges from Poland has not caused, is not causing, and is not likely to cause material injury or retardation to the production in Canada of like goods.

Counsel disputed Atlantic's allegation that Sylcraft's aggressive marketing approach and price cutting were responsible for the complainant's misfortune; instead, counsel pointed out that Atlantic showed a net positive income before taxes for both domestic and total sales for the period under review. Furthermore, 1989 appears to be a good year for the mini-fridge business and Atlantic's principal competitive threat will come from Dometic, not Polar. As of now, and for the future, Sylcraft will be limited to total imports of 4500 units a year in total, of which less than 2000 will be destined for the hotel market.

Counsel argued that any problems experienced by Atlantic were due to its inability to respond quickly to market changes such as the desire for built-in models and the switch from leasing to sales as the favored means of acquiring mini-fridges; to currency fluctuations that increased costs; and to the fact that the franchise system was not responsive to Canadian market demands because its thrust was more European than Canadian.

Counsel submitted that sales to the retail and recreation vehicle sectors should be excluded in the event of a positive finding. These models, TA60, TA60CL and TA71KA, have not caused any injury to Atlantic and cannot be substituted for hotel models.

CONSIDERATION OF MATERIAL INJURY

Before the Tribunal addresses the issue of injury to Canadian production, it is necessary to comment on the scope of the Tribunal's inquiry.

In the statement of reasons attached to the preliminary and final determinations of dumping, the Deputy Minister described the subject goods in the following manner:

...electrically powered absorption-type refrigerators, in finished or knocked-down condition, with a refrigeration capacity of 2 cubic feet or less...

...

Absorption-type mini-fridges in the subject size range can be used in the home, in recreation vehicles or for commercial uses. However, their major use is as a hotel minibar... As a consequence, it is important that they be completely silent while operating and the absence of a compressor ensures a noiseless operating unit. Because of their higher noise levels, compressor-type mini-fridges are not considered competition for absorption-type models in the hotel minibar business....

Mini-fridges are sold to hotels, recreation vehicle users and individuals through retail outlets. The hotel market is, by far, the largest user of these products, accounting for over 60 percent of all mini-fridges sold in Canada during the period of review. Recreation vehicle users and retail customers share, more or less evenly, the remainder.

Atlantic's activities are exclusively focused on the hotel market. It does not produce models for the recreation vehicle market, where a mini-fridge powered solely by 110 volt electrical power is not desirable, nor does it intend to in the future due to the limited size of that market and a lack of a dealer/service network. Atlantic has not tried to penetrate the retail market principally because this market is supplied mainly by lower priced compressor-type mini-fridges, and the noiseless operation provided by absorption-type mini-fridges is not a characteristic for which the consumer would pay a premium.

The importer of the Polish product, Sylcraft, is active in the three markets. The vast majority of its sales are made to the retail and hotel markets, while a small number of units are sold to the recreation vehicle market. What is sold to the hotel market is a product comparable to the units sold to consumers: both have the same size but differ somewhat in their internal configuration. However, the consumer model bears a crest that identifies Sears as the mass merchandiser marketing the product in Canada. The evidence available to the Tribunal indicates that it is incidental that the unit destined to the consumer market is of the absorption-type. For years, Sylcraft has been supplying Sears with a line of compressor-type refrigerators sourced in Poland and, to round-off the line, has sold an absorption-type mini-fridge in the absence of an available compressor model in this size range. This unit is advertised by Sears as a "super silent" refrigerator, but no mention is made of its absorption system. On the other hand, mini-fridges sold to recreation vehicle users differ significantly from those sold in the other two markets. These models are either 2-way (12 volt/110 volt) or 3-way systems (12

volt/110 volt/propane), necessitate a dealer network for servicing, carry a higher price tag, especially in a 3-way configuration, and are not sold in the other two markets.

Before determining whether a causal link can be established between any material injury suffered by a domestic industry and the presence of dumped imports in the marketplace, the Tribunal must define in precise terms the nature of the industry in question. The first issue that the Tribunal must address is whether there is, in Canada, production of goods that are like those found to have been dumped. The *Special Import Measures Act* states that the production of like goods refers to those goods that are identical to the dumped goods, or, in the absence of identical goods, to those goods whose uses and other characteristics closely resemble those of the dumped goods. The Deputy Minister's product description covers electrically powered absorption-type refrigerators with a refrigeration capacity of 2 cubic feet or less. The complainant is the sole producer in Canada of electrically powered absorption-type refrigerators with a refrigeration capacity of 2 cubic feet or less. Admittedly, there are some minor differences in appearance and construction of the outer shell between the dumped and the domestically produced mini-fridges. The differences may render the two non-identical, but in the view of the Tribunal, they are certainly alike since both share their essential features, uses and characteristics. The fact that some of the mini-fridges imported from other countries, both at dumped and undumped prices, may have additional features that convert basic 110-volt units into 2- or 3-way systems, does not make them so different from the domestically produced mini-fridges as to fall outside the class of goods as described by the Deputy Minister. However, the Tribunal is fully aware that there are markets where the domestic producer is not presently active. Such is the case with the units destined for the recreation vehicle and retail markets. The irrefuted evidence is that Atlantic's sole business objective is to sell mini-fridges to the hotel market and, consequently, any allegation of material injury suffered by the firm must be analysed in the context of events that took place in that market alone. In that context, the issue of whether mini-fridges destined for the recreation vehicle and retail markets imported at dumped prices should be excluded from a potential finding of material injury should be addressed subsequently, but only if a finding of material injury is made. For the time being, suffice it to say that the record shows that neither 2- or 3-way systems were sold in the hotel market during the period of review.

Although absorption-type refrigerators have been available worldwide for a long time, it is only in the past 11 years or so that a new market in Canada has been found for them in a small size configuration such as a hotel minibar used primarily for the storage of liquor, soft drinks and snack foods. In the hotel market and at the size at which these units are installed (i.e. less than 2 cubic feet), the weaknesses inherent to an absorption-type refrigerator are not so apparent. The fact that these mini-fridges may be less energy efficient and have lesser cooling capability than compressor-type refrigerators does not really distract from the units' principal feature, the noiseless nature of their operation.

From modest beginnings in 1978 when 2 units were sold by Dometic, the market for the subject mini-fridges has grown to 8000-9000 units a year. In 1984, a new firm, Atlantic, set up operations to supply this growing market by joining a Swiss group, Minibar AG, which already controlled distribution in Canada of mini-fridges sourced from Italy. By contractual agreement, Atlantic produces mini-fridges that meet the group's requirements and that are exclusively distributed through the four Minibar AG franchises, serving the Maritimes, Quebec, Ontario and Western markets. Atlantic secures its supply of cooling units from Italy and markets its export sales in the United States through the Minibar AG group.

By the end of 1986, Atlantic was enjoying considerable success in the marketplace. Its sales accounted for a sizeable share of the overall market (confidentiality requirements prevent the disclosure of actual figures) and its level of profitability was acceptable. The competition consisted of imports from West Germany and, to a lesser extent, from Poland. The complainant was also successful the following year; although domestic sales and market share were down, profits were higher than the previous year. All of the market share lost that year was to imports from non-subject countries, principally from West Germany whose products are distributed by Dometic. Sales of mini-fridges originating in Poland increased marginally on a unit basis, but decreased in terms of market share.

It is during 1988 that Atlantic experienced significant decreases in sales and profits. The Tribunal attaches crucial importance to events that unfolded in the marketplace during that year, not all of which were under Atlantic's control.

While all participants at the hearing agreed that the market experienced a severe decline in volume in 1988, none could identify precisely why this happened. What is known is that suppliers such as Dometic and Atlantic admitted to meeting additional price resistance and that some potential buyers, mostly larger hotel chains, postponed or extended out deliveries of units already contracted for. Additionally, it appears that two of the tenets of Minibar AG group's franchise marketing approach were no longer meeting the needs of the market. Whereas the franchisees' objective was to lease 80 percent of the units distributed, the market was telling them that it preferred to buy the units rather than lease them. Furthermore, the service arrangement, that had proved profitable to the four Canadian franchisees in the past, was no longer as popular as more hotel operators had become familiar with managing a minibar operation and could do without the franchisees' assistance.

Of added significance in 1988 was Dometic's less than full marketing effort in the hotel market following the loss of one of its two salesmen. Filling the gap left by Dometic were imports principally from Poland, and to a lesser extent, the United States. Sales of Polish mini-fridges were effected at prices comparable to previous years' level and the importer did not, in the view of the Tribunal, aggressively market its units. Atlantic did not benefit from Dometic's problems, and, as the hotel market declined, so did its sales and profits. This reversal of fortune was a major setback for the company, but the Tribunal is not persuaded that it amounted to material injury under the Act, nor that it was caused by the dumped imports.

The Tribunal notes that Atlantic's predicament in 1988 was not as bleak as the sales and profit figures for its 1987-88 fiscal period indicate. Atlantic had solid orders booked in mid-summer 1988 for delivery late in the year or early in 1989. One of these contracts, calling for the supply of a very large number of units in November, was ultimately delayed for shipment to early 1989. Because the company's sales and profits data were submitted on the basis of its fiscal year ending October 31, and that sales are only recorded when shipments are completed, a large number of units delivered late in 1988 (or which would have been delivered in 1988 had it not been for a delay in the construction of the hotel to which these units were destined) were left out of the market table prepared by the Tribunal for the year 1988. A market table based solely on the calendar year, the basis on which import data were computed, would have yielded a very different picture. Decreases in sales and profits would still have been larger than the market decline, but not sufficiently so, in the judgment of the Tribunal, to support a finding of material injury.

Counsel for the Polish importer argued that Atlantic was not cognizant of real market needs when it was offering stand-alone models to a market that more and more was demanding built-in units. In the Tribunal's view, it is unclear whether there is a demand for a true built-in model that cannot be used as a stand-alone. The evidence adduced during lengthy cross-examination of Atlantic, Dometic, Sylcraft and a witness from the hotel industry leads the Tribunal to conclude that, although a large number of units sold to hotels are incorporated into furniture pieces such as armoires or custom-designed cabinets, all of these could be used as stand-alone units. The Tribunal, therefore, attaches little importance to the fact that Atlantic did not aggressively market a truly built-in model. In any event, such a model is built by Atlantic and is available for sale.

The Tribunal, however, attaches a great deal of importance to the fact that Atlantic did not suffer from price suppression due to dumped imports from Poland. Average selling prices provided to the Tribunal show that not only was Atlantic able to increase its prices during the period of review, but its increases were slightly superior to increases in the general industrial price index.

The Tribunal also looked at the financial performance of the complainant. Atlantic's liquidity position and its long-term solvency expressed respectively in terms of its "current" and "debt to shareholders' equity" ratios improved in 1988 over the previous year. In the same vein, Atlantic's gross margin on sales ratio was better in 1988 than in 1987 and its ratio of "net income after tax to sales," although showing a decrease, did not do so significantly.

Consequently, in light of the evidence, the Tribunal finds that Atlantic did not suffer material injury due to dumped imports from Poland, neither in the past nor in the present.

Regarding the future, the Tribunal believes that the ability of the exporting country to supply the subject mini-fridges in Canada is severely limited. Testimony by a representative of the exporter was to the effect that the Polish plant is old and somewhat inefficient, that the production of absorption-type mini-fridges in Poland is given low priority, and that there is no intention to expand the plant and/or increase shipments to Canada. Poland has a number of countertrade agreements with Eastern bloc countries to honour, and whatever product is left afterwards is divided among six industrialized countries, one of which is Canada, whose allocation of 4500 units has been fixed for some time, and is not expected to change in the near future.

Of the units allocated to Sylcraft, approximately 2000 are earmarked for the hotel market in Canada and for Moviebar Co. (Moviebar), a company to whom Sylcraft gave marketing rights to sell mini-fridges in Canada and in the United States. There is no magic in this number as it represents the number of units left over from the allotment once Sylcraft's obligations to Sears and the recreation vehicle market are met. Evidence adduced at the hearing shows that Moviebar is targeting the United States as its principal market and that this country should absorb a significant proportion of the total units allocated to this firm.

Consequently, the Tribunal finds that the dumping of mini-fridges originating in or exported from Poland, will not likely be materially injurious to the production in Canada of like goods.

CONCLUSION

Based on the evidence before it, the Tribunal concludes that the dumping of electrically powered absorption-type refrigerators, in finished or knocked down condition, with a refrigeration capacity of 2 cubic feet or less, originating in or exported from Poland, has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

Presiding Member: Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.

Member: Sidney A. Fraleigh
Sidney A. Fraleigh

Member: W. Roy Hines
W. Roy Hines

Witnessed: Robert J. Martin
Robert J. Martin
Secretary