COUNCIL REGULATION (EC) No 1289/2006

of 25 August 2006

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain side-by-side refrigerators originating in the Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the 'basic Regulation') and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) On 2 June 2005, the Commission published a notice [2] initiating an anti-dumping proceeding on imports into the Community of certain side-by-side refrigerators originating in the Republic of Korea. On 1 March 2006, the Commission, by Regulation (EC) No 355/2006 [3] ('the provisional Regulation') imposed a provisional anti-dumping duty on the same product.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain side-by-side refrigerators originating in the Republic of Korea and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations on the basis of which definitive measures are imposed.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(6) The same exporting producer as referred to under recitals 11 and 12 of the provisional Regulation reiterated and elaborated further its arguments on the issue of the product scope.

(7) In particular, this exporter claimed that the product scope should have covered all large capacity combined refrigerator-freezers ('CRF') with a capacity above 400 litres since a segmentation of those refrigerators would be inconsistent with the past practice of the Community institutions, would disregard evidence from other interested parties and would ignore market reality (claim (i)).

(8) This exporter further claimed that should claim (i) be rejected, any attempt to segment the CRF market should exclude three-door side-by-side models (as described in recital 12 of the provisional Regulation) from the scope of the product concerned. In essence, this exporter argued that it is not the external characteristics (notably the doors) of the models which are relevant, but the internal configuration. In particular, the exporter considered that the alignment of the fresh food and freezer compartments was the essential basic distinguishing characteristic of a side-by-side refrigerator (claim (ii)).

1. Claim (i)

(9) It is the standing practice of the Community institutions when defining the product concerned to consider primarily the basic physical and technical characteristics of the said product. Furthermore, models classified in different product segments are usually considered to form one single product unless clear dividing lines exist between the various segments.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 135, 2.6.2005, p. 4.
[3] OJ L 59, 1.3.2006, p. 12.

(10) Having paid careful attention to all the submissions made by all the interested parties to this proceeding, the investigation has identified that the CRF market is traditionally divided into three segments: the segment of the bottom-mount refrigerators (i.e. fresh-food compartment placed on top of the freezer compartment), the segment of the top-mount refrigerators (i.e. freezer compartment placed on top of the fresh-food compartment) and the segment of the side-by-side refrigerators (i.e. two doors side-by-side opening on two compartments placed side-by-side). This market categorisation into three distinct segments is undisputed and is familiar to all operators in this particular business. It has even been acknowledged by the said exporter in several written submissions. Furthermore, the claim based on the 'evidence from other interested parties' reflects in fact selective reading by this exporter of a fragment of a submission from a white goods producer that supports measures but does not manufacture the like product (see recitals 10 and 104 of the provisional Regulation). In this submission, the manufacturer of white goods indicates that it has faced negative knock-on effects on its sales of non-like products in the Community due to dumped imports. However, the fact that this manufacturer has allegedly suffered such a knock-on effect is not in itself conclusive evidence that all large capacity CRFs with a capacity above 400 litres should be considered to be the product concerned regardless of the segments as described above into which they fall. Indeed, it was established that the technological and physical characteristics underlying these two products are totally different.

(11) It is therefore considered that there exists a clear dividing line between the three segments constituting the universe of the CRF market. It is concluded that there is no justification for expanding the scope of the product concerned in order to encompass all CRFs as requested by the exporter concerned. As a consequence, claim (i) had to be rejected.

2. **Claim (ii)**

(12) In claim (ii), the same exporter seeks the exclusion from the scope of the product concerned of a particular model of CRF (hereafter referred to as 'the three-door model') which has already been described in recital 12 of the provisional Regulation.

(13) Since the start of this proceeding, the Commission had defined the scope of the product on the basis of external characteristics, namely the presence of at least two separate swing doors, placed side-by-side. This approach was deemed appropriate on both grounds of physical characteristics and consumer perception. As to physical characteristics, the presence of the two swing doors placed side-by-side was considered the most immediately visible feature. As to consumer perception, a key element was the fact that the claimant itself had repeatedly marketed and advertised the three-door model as a side-by-side refrigerator. The Commission was informed that inner compartments were placed differently in a typical side-by-side refrigerator and in a three-door model, but this distinction was not considered decisive for the exclusion of three doors side-by-side refrigerators from the product definition since no conclusive evidence had been submitted in this respect. On the basis of the information available at that time, the Commission had indicated in recital 14 of the provisional Regulation that 'there is no commonly used definition of side-by-side refrigerators'.

(14) This issue continued to be examined after provisional measures. Additional evidence supporting a definition of the segment of side-by-side refrigerators on the basis of the inner configuration of the compartments and not on the basis of the position of the doors was submitted by the above-mentioned exporter. After definitive disclosure, in the light of further evidence provided by the same exporter, the positions expressed by some leading research institutes and classification bodies, most of which classify side-by-side refrigerators on the basis of the inner configuration and not on the basis of the position of the doors, were further assessed. This lead to the conclusion that, from the point of view of physical characteristics, the three-door model cannot be considered as part of the side-by-side segment, as referred to under recital 10 above. As to consumer perception, both the claimant and the Community industry submitted consumer surveys supporting their respective views and contradicting each other. In this respect, therefore, no clear conclusion could be drawn in one direction or the other.

(15) It stems from the above that the three-door model should be regarded as belonging to the segment of the bottom-mount refrigerators and not to the segment of the side-by-side refrigerators. Claim (ii) was therefore accepted.

(16) As a consequence, it was deemed appropriate to revise the product scope definition as determined in the provisional Regulation. Therefore, the product concerned is definitively defined as combined refrigerator-freezers with a capacity exceeding 400 litres and with the freezer and refrigerator compartments placed side-by-side, originating in the Republic of Korea, currently classifiable within CN code ex 8418 10 20.

D. **DUMPING**

1. **Normal value**

(17) In the absence of any comments, the content of recitals 18 to 22 of the provisional Regulation concerning normal value is hereby confirmed.

2. **Export price**

(18) As stipulated in recital 23 of the provisional Regulation, the export price for sales into the Community made via related importers was constructed on the basis of the resale price to the first independent customer in accordance with Article 2(9) of the basic Regulation. In this export price construction, a profit margin of a company which was considered to be an independent importer of the product concerned had been used. After final disclosure was made to the interested parties, one exporting producer submitted that the company used for establishing this profit margin was not an unrelated importer but a first independent customer of one of its related importers. The claim was duly investigated and it was concluded that the company concerned indeed did not qualify as an unrelated importer. Consequently, it was decided that its profit margin could not be used in the construction of the export prices. Therefore, an alternative source had to be found to establish a reasonable margin for profit as required under Article 2(9) of the basic Regulation. No alternative independent importer's profit information could be acquired within the framework of this investigation. Therefore, in view of the fact the two products pertain to the same white goods sector and the Korean exporting producers concerned being the same, it was considered reasonable to revert for this purpose to the 5 % profit margin used in the microwave ovens anti-dumping proceeding [1].

(19) In the absence of any further comments, the contents of recitals 23 to 24 of the provisional Regulation concerning the determination of the export price are hereby confirmed.

3. **Comparison**

(20) As indicated in recital 26 of the provisional Regulation, in cases where no direct comparison between exported models and domestically sold models could be made and in order to establish the normal value as much as possible on the domestic sales of the exporting producers, adjustments were made to the normal values established for some models to reflect the market value of the different physical characteristics between the model sold domestically and the one exported, pursuant to Article 2(10)(a) of the basic Regulation. Two of the exporting producers contested the adjustment made at the provisional stage.

(21) One exporting producer claimed that no adjustment should have been made because even if there were differences in physical characteristics between the exported models and the domestically sold models proposed for comparison, these differences would have no impact on the market price. This claim had to be dismissed as the number of differences found between the exported models and those sold domestically and proposed for comparison ranged up to seven features and these differences often included important features like ice and water dispenser, door finishing and temperature control system. Therefore, following a normal economic logic, such differences should have an impact on the market value of these models.

(22) The other exporting producer for which, in order to properly reflect the market value of the differences in physical characteristics, an adjustment to the submitted values for these differences had been made by the Commission at the provisional stage, contested the resulting calculation. Subsequent to the final disclosure, the company pointed at some elements in the Commission's approach which might lead to distortions in the normal value thus calculated and requested that the normal value for exported models without corresponding domestic sales be constructed. This claim was investigated and it was found that certain adjustments made by the Commission to the physical characteristics claim of the company might have led to distorted normal values. It was therefore decided to construct normal values for this company in cases where no direct comparison between exported models and domestically sold models could be made, in accordance with Article 2(3) of the basic Regulation.

(23) All three exporting producers contested the provisional determination not to grant an adjustment, claimed under Article 2(10)(g) of the basic Regulation, for credit costs allegedly incurred on their domestic sales. The three exporters substantiated that the credit terms used had been contractually agreed and enforced by the companies. It was also demonstrated that invoices could be linked to payments. In view of the foregoing, the domestic credit costs were found to have an impact on price comparability as required by Article 2(10) of the basic Regulation and it was consequently decided to grant adjustments for these costs.

(24) One exporting producer requested the exclusion of its related importers' sales of damaged and/or malfunctioning products from the dumping calculation. These sales, which constituted a very minor part of the company's sales on the Community market, had been reported separately and had been verified during the on the spot verifications. It had been evidenced that these sales related indeed to malfunctioning or damaged products and that customers and prices of these products were entirely distinct as compared to customers and prices of regular sales. In view of the absence of comparable sales on the company's domestic market, no meaningful comparison could be made with regard to these sales. Therefore, this claim was accepted.

[1] See Council Regulation (EC) No 2041/2000 (OJ L 244, 29.9.2000, p. 33, recital 26).

(25) The same exporting producer contested the Commission's provisional determination to reject the reported ocean freight costs for the purpose of adjusting the export price pursuant to Article 2(10)(e) of the basic Regulation. The reported ocean freight costs were rejected because they were invoiced to the exporter by a related company. The exporting producer now demonstrated that the related company was a logistics entity that contracted the transport services to independent shipping companies. It was further proven that the related company invoiced to the exporter the actual cost of the freight as invoiced to it by the independent shipping companies plus a reasonable mark-up for its services. Therefore, it was decided that the reported ocean transport costs could be considered reliable and the calculations were amended accordingly.

(26) Apart from the adjustments made, as set out in recitals 22 to 25 of this Regulation, the contents of recitals 25 to 30 of the provisional Regulation in relation to the comparison of normal value and export prices, are hereby confirmed.

4. **Dumping margin**

(27) All three companies contested the methodology the Commission had used for calculating the dumping margin. As explained in recitals 31 to 34 of the provisional Regulation, in order to reflect in the calculation of the dumping the significant differences of export prices which constituted a pattern among different regions and because a comparison of either weighted average normal values with weighted average export prices or of individual export and domestic sales transactions would not have reflected the full degree of dumping being practiced, the weighted average normal value was compared to the prices of all individual export transactions to the Community. For all three exporting producers, it was confirmed that significant differences in sales prices amongst regions existed and that, for the reasons already set out in recitals 31 to 34 of the provisional Regulation, it was indeed warranted to compare the weighted average normal value to the prices of all individual export transactions to the Community. The claims of the exporting producers are therefore dismissed.

(28) In the light of the above adjustments, and after correction of some calculation errors, the amount of dumping finally determined, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, is as follows:

Daewoo Electronics Corporation	3,4 %
LG Electronics Corporation	12,2 %
Samsung Electronics Corporation	*de minimis*

E. **COMMUNITY PRODUCTION AND COMMUNITY INDUSTRY**

(29) In the absence of any new and substantiated information or argument in this particular respect, recitals 37 to 40 of the provisional Regulation are hereby confirmed.

F. **INJURY**

(30) After provisional measures the definition of the product scope was revised as explained at recital 16. Accordingly, data relating to the three-door model have been excluded from the injury analysis. In any event, it should be noted that, during the IP, the Community industry was not producing this type of product and the volume of imports of the three-door model from the Republic of Korea into the Community were negligible.

Imports from the country concerned

(31) Since it was found that Samsung Electronics Corporation ('Samsung') had a *de minimis* dumping margin during the IP (see recital 28), it is necessary to distinguish those imports from the remainder of the imports originating in the Republic of Korea. The latter is referred to as 'dumped imports' hereafter. Recitals 44 to 47 of the provisional Regulation are therefore superseded by the following considerations. In order to preserve confidentiality, data concerning the imports from the two remaining Korean producers are presented in an indexed format.

	2002	2003	2004	IP
Volume of dumped imports from the Republic of Korea (pieces)	cannot be disclosed			
Index (2002 = 100)	*100*	*183*	*336*	*366*
Market share of dumped imports from the Republic of Korea	cannot be disclosed			
Index (2002 = 100)	*100*	*121*	*164*	*170*
Prices of dumped imports from the Republic of Korea (EUR/piece)	cannot be disclosed			
Index (2002 = 100)	*100*	*92*	*95*	*95*

(32) On this basis, the volume of dumped imports increased sharply (by 266 %) between 2002 and the IP. It rose by 83 % between 2002 and 2003, by a further 153 percentage points in 2004 and by a further 30 percentage points in the IP. During the IP, the volume of dumped imports stood between 180 000 and 250 000 pieces.

(33) The corresponding market share held by dumped imports increased by around 20 percentage points between 2002 and the IP, to reach a level between 42 and 50 % during the IP. In terms of indices, the market share grew by 21 % in 2003, by a further 43 percentage points in 2004 and by 6 percentage points in the IP. Overall, the rise in market shares was 70 % between 2002 and the IP.

(34) Finally, average prices of dumped imports decreased by around 5 % between 2002 and the IP, and on a model-to-model comparison, dumped imports undercut the Community industry's prices by between 34,4 % and 42 %, depending on the exporter concerned.

(35) Similarly, recital 68 of the provisional Regulation is superseded as follows. The volume of dumped imports of the product concerned originating in the Republic of Korea increased significantly by 266 % between 2002 and the IP and the corresponding market share held by dumped imports increased by around 20 percentage points between 2002 and the IP. The average prices of dumped imports were consistently lower than those of the Community industry during the period considered. On a model-to-model weighted average comparison, dumped imports undercut the Community industry's prices by between 34,4 % and 42 %, depending on the exporter concerned, while for some models, price undercutting was even larger.

(36) In the absence of any further new and substantiated information or argument on the aspect of injury, recitals 41 to 71 of the provisional Regulation are hereby confirmed, with the exception of recitals 44 to 47 and recital 68 which have been addressed above.

G. **CAUSATION**

1. **Effects of the dumped imports**

(37) As stated above, it was found that Samsung had a *de minimis* dumping margin during the IP. However, the significant increase in the volume of dumped imports by 266 % between 2002 and the IP, the increase of the corresponding market share by around 20 percentage points, as well as the undercutting found coincided with the deterioration of the economic situation of the Community industry.

2. **Effects of other factors**

Imports of the product concerned manufactured by Samsung

(38) Since Samsung had a *de minimis* dumping margin during the IP, it was necessary to examine whether imports from Samsung could, nevertheless, have caused any injury to the Community industry. In order to preserve confidentiality, data concerning Samsung are presented below in an indexed format.

	2002	2003	2004	IP
Volume of imports from Samsung (pieces)	cannot be disclosed			
Index (2002 = 100)	*100*	*156*	*183*	*188*
Market share of imports from Samsung	cannot be disclosed			
Index (2002 = 100)	*100*	*103*	*90*	*88*
Prices of imports from Samsung (EUR/piece)	cannot be disclosed			
Index (2002 = 100)	*100*	*87*	*86*	*86*

(39) The volume of imports originating from Samsung increased by 88 % between 2002 and the IP. Specifically, it rose by 56 % between 2002 and 2003, by a further 27 percentage points in 2004 and by a further 5 percentage points in the IP. During the IP, the volume of imports originating from Samsung stood between 100 000 and 170 000 pieces.

(40) The corresponding market share held by imports originating from Samsung decreased by around 5 percentage points between 2002 and the IP, to reach a level comprised between 28 % and 36 % during the IP. In terms of indices, the market share grew by 3 % in 2003, but then declined by 13 percentage points in 2004 and by a further 2 percentage points in the IP. Overall, the decline in market shares was 12 % between 2002 and the IP.

(41) Finally, average prices of imports originating from Samsung decreased by around 14 % between 2002 and the IP, and on a model-to-model comparison, imports originating from Samsung undercut the Community industry's prices by 34,1 %.

(42) Given the rise in the volume of imports originating from Samsung and the undercutting found, it cannot be excluded that those imports contributed to the injury suffered by the Community industry. However, it is also observed that: (i) imports originating from Samsung increased at a far slower pace than other imports originating in the Republic of Korea during the period 2002 to the IP; (ii) in contrast to other Korean imports, imports originating from Samsung lost around 5 percentage points of market share between 2002 and the IP; (iii) the resulting presence, during the IP, of imports originating from Samsung on the Community market in terms of both volume and market share was substantially smaller than that of other Korean imports; and (iv) the model-to-model price comparison showed that Samsung's prices, albeit lower than those of the Community industry, were consistently higher than those of the other Korean imports.

(43) As a consequence, it is concluded that imports originating from Samsung contributed to the injury caused to the Community industry, but to a substantially lesser degree than that of dumped imports from the remaining two Korean producers. The impact linked to imports originating from Samsung is therefore considered not sufficient to break the causal link between dumped imports and the resulting injury experienced by the Community industry.

(44) In the absence of any further new and substantiated information or argument, recitals 72 to 96 of the provisional Regulation are hereby confirmed, with the exception of the first sentence of recital 73 as seen above.

H. **COMMUNITY INTEREST**

(45) In the absence of any new and substantiated information or argument in this particular respect, recitals 97 to 114 of the provisional Regulation are hereby confirmed.

I. **DEFINITIVE MEASURES**

(46) In view of the conclusions reached with regard to dumping, injury, causation and Community interest and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin presented in recital 119 of the provisional Regulation and confirmed in the present Regulation. As the injury margins were always higher than the dumping margins, the measures should be based on the latter.

(47) The definitive duties will therefore be as follows:

Company	Injury margin	Dumping margin	Proposed anti-dumping duty
Daewoo Electronics Corporation	98,5 %	3,4 %	3,4 %
LG Electronics Corporation	74,8 %	12,2 %	12,2 %
Samsung Electronics Corporation	66,3 %	*de minimis*	0 %
All other companies	98,5 %	12,2 %	12,2 %

J. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(48) In view of the magnitude of the dumping margins found for the exporting producers in the Republic of Korea and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the three-door model is now excluded from the product definition (see recitals 12 to 16) and definitive duties are lower than the provisional duties, amounts provisionally secured on imports of the three-door model or in excess of the definitive rate of anti-dumping duties shall be released.

(49) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(50) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with the freezer and refrigerator compartments placed side-by-side, falling within CN code ex 8418 10 20 (TARIC code 8418 10 20 91) and originating in the Republic of Korea.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Anti-dumping duty (%)	TARIC additional code
Daewoo Electronics Corporation, 686 Ahyeon-dong, Mapo-gu, Seoul	3,4 %	A733
LG Electronics Corporation, LG Twin Towers, 20, Yeouido-dong, Yeong-deungpo-gu, Seoul	12,2 %	A734
Samsung Electronics Corporation, Samsung Main Bldg, 250, 2-ga, Taepyeong-ro, Jung-gu, Seoul	0 %	A735
All other companies	12,2 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with at least two separate external doors fitted side-by-side, produced by Samsung Electronics Corporation falling within CN code ex 8418 10 20 shall be released.

2. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of combined refrigerator-freezers of a capacity exceeding 400 litres, with two doors on the refrigerator compartment above and one door on the freezer compartment below, falling within CN code ex 8418 10 20 and originating in the Republic of Korea shall be released.

3. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 355/2006 on imports of side-by-side refrigerators, i.e. combined refrigerator-freezers of a capacity exceeding 400 litres, with the freezer and refrigerator compartments placed side-by-side, falling within CN code ex 8418 10 20 and originating in the Republic of Korea shall be definitively collected. The amounts secured in excess of the definitive duties as set out in Article 1(2), shall be released.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 August 2006.

For the Council
The President
E. TUOMIOJA