

DUMPING AND COUNTERVAILING DUTIES ACT 1988

DUMPING INVESTIGATION

**NON-CONFIDENTIAL
PROVISIONAL MEASURES REPORT**

WASHING MACHINES FROM KOREA

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ABBREVIATIONS

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Amendment Act (the)	Dumping and Countervailing Duties Amendment Act 1994
Anti-Dumping Agreement (the Agreement)	WTO Agreement on Implementation of Article VI of the GATT 1994
AUD	Australian Dollars
Chen Palmer	Chen Palmer & Partners
Chief Executive (the)	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
Daewoo	Daewoo Electronics Co Limited
EBIT	Earnings Before Interest and Tax
EIAK	Electronic Industries Association of Korea
Electrolux	Electrolux Home Products (NZ) Limited
Email	Email Appliances (NZ) Ltd
Eurolife	Eurolife Ltd
Davenports	Davenports West
F&P	Fisher & Paykel Ltd
FOB	Free on Board
INFOS	Information for Official Statistics
LDC	Less Developed Countries
LG	LG Electronics Inc.
LLDC	Least Developed Countries
LMR	L M Rankine Trading Co Limited
Ministry (the)	Ministry of Economic Development
NZCS	New Zealand Customs Service
NZSM	New Zealand Sales & Marketing (Division of F&P)
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Co-operation Agreement
PRG	Pacific Retail Group
Radiola	Radiola Corporation Ltd
Samsung	Samsung Electronics Co Limited
VFD	Value for Duty
WTO	World Trade Organisation
YEM	Year Ended March
	Confidential Information

1. PROCEEDINGS

1.1 PROCEEDINGS

1.1.1 On 12 December 2000, the Chief Executive of the Ministry of Economic Development (hereinafter referred to as the Chief Executive), acting pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (hereinafter also referred to as “the Act”) formally initiated an investigation into the dumping of *household fully automatic washing machines* on being satisfied that sufficient evidence had been provided that:

- (a) The goods imported or intended to be imported into New Zealand were being dumped; and
- (b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

1.1.2 In accordance with section 10 of the Act the purpose of the Ministry’s investigation is to determine both the existence and effect of the alleged dumping of the subject goods.

1.1.3 In its application for the initiation of an investigation, Fisher and Paykel Limited (F&P), representing the New Zealand industry requested that provisional duties be imposed as early as the Act allowed.

1.1.4 Section 16(1) of the Act provides as follows:

16. PROVISIONAL MEASURES – (1) If, at any time after 60 days from the date on which an investigation has been initiated by the [Chief Executive] under section 10 of this Act (not being an investigation that has been terminated under section 11 of this Act) -

(a) The Minister has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that -

- (i) The goods are being dumped or subsidised; and
- (ii) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and

(b) The Minister is satisfied that action under this section is necessary to prevent material injury being caused during the period of investigation, - the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996, except that the rate or amount of duty to be secured shall not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.

1.1.5 The purpose of this Report is to provide a basis for a determination to be made under s.16 of the Act as to whether or not provisional measures should be imposed. In particular, the report addresses the issues of whether there is reasonable cause to believe that the subject goods are being dumped and by reason thereof material injury to an industry has been or is being caused or is

threatened; and whether provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.

Basis for Request for Provisional Measures

1.1.6 In its application, F&P claimed that as a result of the alleged dumping, material injury was arising from:

- increased volume of the allegedly dumped imports;
- price undercutting, price depression, and price suppression,

resulting in:

- decline in market share; and
- decline in profits;

leading to:

- declines in output and sales;
- decline in return on investments; and
- possible adverse effect on employment.

1.1.7 Based on the information available to date, the investigating team has provisionally assessed these claims and where they have been found to be justified has examined the extent to which provisional measures are necessary to prevent material injury being caused during the investigation period.

1.2 INTERESTED PARTIES

New Zealand Industry

1.2.1 The application was lodged by F&P, the only producer of household automatic washing machines in New Zealand. F&P is a wholly owned subsidiary of the listed company Fisher & Paykel Industries Ltd.

Exporters

1.2.2 Due to the number of companies identified from New Zealand Customs Service (NZCS) information as exporting the subject goods over the period of investigation (the year ending 31 October 2000), and in accordance with Article 6.10 of the WTO Agreement on the Implementation of Article VI of the GATT 1994 (the Agreement) the investigation has been limited to those exporters representing the top 99 percent of imports by volume over the period of investigation. These exporters are:

Samsung Electronics Co Limited (Samsung),
LG Electronics Inc (LG), and
Daewoo Electronics Co Limited (Daewoo)

All other exporters of the subject goods from Korea during the period of investigation have the opportunity to provide submissions but these have not been directly solicited.

- 1.2.3 None of the exporters identified above has provided the investigating team with a response to its questionnaire. A joint submission was received from Davenports West (Davenports) an Auckland based firm of solicitors acting on behalf of all three exporters, in which various matters of interpretation and process are addressed.
- 1.2.4 The submission made by Davenports is also on behalf of the Electronic Industries Association of Korea (EIAK). No further information regarding this organisation has been provided.
- 1.2.5 The tenor of the submission by Davenports is that, due to the factors they have identified, the investigation itself is invalid and should be immediately terminated. Where relevant, these matters are discussed in this report.

Importers

- 1.2.6 The companies identified from the NZCS information as importing the subject goods from the above 3 exporters over the period of investigation are:

LM Rankine Trading Co Ltd (LMR)
Email Appliances (NZ) Ltd (Email)
Radiola Corporation Ltd (Radiola)
Eurolife Ltd (Eurolife)

- 1.2.7 Submissions have been received from each of these importers and their content is, as appropriate, reflected in this report.

L M Rankine Trading Co Ltd

- 1.2.8 LMR is a 100 percent New Zealand-owned importer and wholesaler of whiteware. The company is located in Wellington and sales are made by a [REDACTED]. LMR sources its Korean produced washing machines from LG.

- 1.2.9 LMR's major customer is the [REDACTED] and it also supplies [REDACTED] and [REDACTED]. [REDACTED]

- 1.2.10 LMR provided a full submission in response to the importers questionnaire and is represented in this investigation by Chen Palmer and Partners (Chen Palmer) a Wellington based firm of barristers and solicitors.

- 1.2.11 In addition to the questionnaire response, the LMR submission raises a number of queries regarding aspects of the initiation of this investigation and of the information contained in the F&P application. Where they are germane, these matters are addressed in this report.

Email Appliances (NZ) Ltd

- 1.2.12 Email is a subsidiary of Email Limited (Major Appliances) of New South Wales Australia. At an early stage of the investigation the parent company Email Limited (Major Appliances) was purchased by Electrolux Home Products Pty Limited and Email is now known as Electrolux Home Products (NZ) Limited (Electrolux).

- 1.2.13 Electrolux is a manufacturer and distributor of major household appliances in New Zealand. The company is headquartered in Auckland and its production facility is located in Christchurch. Electrolux does not produce washing machines in New Zealand.
- 1.2.14 Whiteware is [REDACTED] and is sold through retail electrical appliance stores and outlets, nation-wide. The company's Korean sourced washing machines are purchased from LG and sold in New Zealand under the Westinghouse brand.
- 1.2.15 Outlets available to [REDACTED] are the same as those serviced by [REDACTED].
- 1.2.16 Electrolux provided a full submission in response to the importers questionnaire and has provided additional information and clarification as required.

Radiola Corporation Ltd

- 1.2.17 Radiola is headquartered in Porirua where its Consumer Appliances division acts as an importer and wholesale distributor of Samsung branded whiteware. Its customers are retail chains and independent retailers throughout New Zealand. Imports by Radiola [REDACTED] during the period under investigation.
- 1.2.18 Radiola's major customer for whiteware is the PRG, the only retail chain in New Zealand which remains outside the F&P EDA arrangement (see discussion below on the EDA in section 4.4).
- 1.2.19 Radiola provided a full submission in response to the importers questionnaire and has provided additional information and clarification to the investigating team as required.
- 1.2.20 A submission was also made on behalf of Radiola by Chapman Tripp, a Wellington based firm of barristers and solicitors. This submission deals with various aspects of the initiation of this investigation and with information contained within the F&P application. Where they are pertinent, the points raised by Chapman Tripp are addressed in this report.

Eurolife New Zealand Limited

- 1.2.21 Eurolife [REDACTED] importers identified and sells only to The Warehouse chain of retail outlets. Eurolife is a privately owned New Zealand company and over the period of investigation has imported only one model of washing machine from Daewoo in Korea.
- 1.2.22 Eurolife provided a response to the importers questionnaire and has indicated that as the model it has previously imported has been [REDACTED], [REDACTED] [REDACTED]. The company is however [REDACTED] of washing machines meeting the required specifications.

1.3 IMPORTED GOODS

- 1.3.1 The goods which are subject to investigation, hereinafter referred to as washing machines, washers or "subject goods", are:

Household fully automatic washing machines with a dry linen capacity not exceeding 10kg, the capacity determined by standard AS/NZS2040.

1.3.2 The allegedly dumped goods consist of both top loading and front loading models. F&P refers to capacity measures for washing machines in terms of standard AS/NZ2040, which requires machines to meet a number of wash performance and energy consumption standards at the claimed capacity.

1.3.3 Information provided in several of the importers submissions indicates that the imported subject goods are, for the most part manufactured to the AS/NZ2040 standard.

1.3.4 The NZCS has advised that washing machines enter under the following tariff classification and statistical keys:

- 84.50 Household of laundry-type washing machines which both wash and dry:
 - Machines, each of a dry linen capacity not exceeding 10kg:
 - 8450.11 - - Fully-automatic machines:
 - 8450.11.01 - - - Household
 - Of a dry linen capacity not exceeding 6kg:
 - 02H Top loading machines
 - 05B Front loading machines
 - Other:
 - 07J Top loading machines
 - 11G Front loading machines

1.3.5 Applicable duty rates are:

Normal	7%
Australia	Free
Canada	3%
LDC	5.5%
LLDC	Free
Pac	Free

1.3.6 In this report, unless otherwise stated, years are March years and dollars values are NZ\$. Year to date (YTD) figures refer to the period April to December 2000. In tables, column totals may differ from individual figures because of rounding.

1.3.7 The period for considering claims of dumping is from 1 November 1999 to 31 October 2000. This was the period for which NZCS data as close as practicable to the date of initiation was available.

1.3.8 In its application F&P claimed that injury had occurred in the April to July 2000 period and that ongoing injury was likely. The period over which evidence of injury has been considered is 1 April 1997 to 31 December 2000. For the purposes of this report and the consideration of the necessity for the imposition of provisional measures, import forecasts have been obtained from

each of the importers concerned. F&P has provided some financial forecasts and has quantified certain of its injury claims over the remaining period of investigation.

- 1.3.9 It should be noted that this report deals with material injury only insofar as a prerequisite of the imposition of provisional measures under section 16(1) of the Act is that the Minister has reasonable cause to believe that material injury due to dumped imports of the subject goods has been or is being caused or is threatened. The report also deals with whether and the extent to which the imposition of provisional measures would prevent injury being caused during the remainder of the investigation period.

1.4 EXCHANGE RATES

- 1.4.1 Article 2.4.1 of the WTO Agreement provides as follows:

When the comparison under paragraph 4 [of Article 2] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale⁸, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

⁸ Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

- 1.4.2 In this report Normal Values are expressed in Korean Won, export transactions take place in US and Australian dollars, and any injurious effect is reflected in New Zealand dollars. The investigating team used the invoice date to establish the date of sale and export transactions have been converted into Korean won as at the date of sale. The exchange rates used are the interbank rates listed by the OANDA currency conversion site on the Internet (<http://www.oanda.com/converter/classic>).

1.5 DISCLOSURE OF INFORMATION

- 1.5.1 The Ministry of Economic Development makes available all non-confidential information to any interested party through its Public File system.

- 1.5.2 Article 6.8 of the Agreement provides as follows:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

- 1.5.3 Section 6, subsections (1) and (2) of the Act reflect this and state in relation to export prices and normal values:

(1) Where the [Chief Executive] is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4 of this Act, or the normal value of goods to be ascertained under section 5 of this Act, the normal value

or export price, as the case may be, shall be such amount as is determined by the [Secretary] having regard to all available information.

(2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable

1.5.4 As noted in paragraph 1.2.3 above, information was requested, but not received or not received to the extent required, from Samsung, LG, and Daewoo. In view of the failure to provide all of the necessary information, decisions regarding these companies have been made having regard to all available information, that is, on the basis of the best information available, in accordance with section 6 of the Act. Details of the information used and the conclusions drawn are shown in sections 3 and 4 of this report.

2. NEW ZEALAND INDUSTRY

Section 3A provides the definition of “industry”:

3A. Meaning of “industry”—For the purposes of this Act, the term ‘industry’, in relation to any goods, means—

- (a) The New Zealand producers of like goods; or
- (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

“Like goods” is defined in section 3 of the Act:

“Like goods”, in relation to any goods, means—

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 LIKE GOODS

2.1.1 In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

2.1.2 The subject goods have been identified in section 1.3 of this Report as:

Household fully automatic washing machines with a dry linen capacity not exceeding 10kg, the capacity determined by standard AS/NZS2040.

New Zealand Production

2.1.3 F&P produces the following washing machines in New Zealand:

- GW509 Smart drive 5.5kg, top loader with stainless steel bowl and delay start time.
- GW709 Smart drive 7.5kg, top loader with stainless steel bowl and delay start time.
- MW059 “Pride” 5.5kg, top loader with stainless steel bowl.
- Intuitive 7.5kg, top loader with stainless steel bowl, delay start time and fabric sensing.

- Intuitive 5.5kg, top loader with stainless steel bowl, delay start time, fabric sensing.

Like Goods Considerations

- 2.1.4 In reaching its decision at the time of initiation that the washing machines produced by F&P were like goods to those imported from Korea the Ministry applied its normal framework of taking account of the following considerations:
- a. Physical characteristics, including appearance, size and dimensions, components, production methods and technology.
 - b. Function/usage, including consumer perceptions/expectations, end uses, and substitutability where relevant.
 - c. Pricing structures.
 - d. Marketing issues such as distribution channels and customers advertising.
 - e. Other, including the stated capacity of the respective washing machines and the tariff classification into which washing machines fall.
- 2.1.5 Davenports, on behalf of the Korean exporters, does not accept that the top loading washing machines produced by F&P are like goods to the front loading washing machines imported from Korea. Similar concerns have been raised in submissions made by or on behalf of each of the importers.
- 2.1.6 The question of whether or not the goods produced by F&P are like goods to the subject goods is central to the question of whether or not a New Zealand industry exists to be injured by reason of the dumping of washing machines from Korea. The points that have been raised by Davenports and others are therefore briefly discussed below.
- Comments by Davenports*
- 2.1.7 Referring to the terms of section 3 of the Act, Davenports states “In applying these principles to the facts of this case, MED is not dealing with like goods, when comparing the products manufactured by F&P with those by Samsung and LG. F&P’s approach to the issue of “like goods” is patently wrong, for the reasons that follow.” Davenports then go on to argue on the general premise that as F&P does not produce front-loading washing machines their inclusion “is unreasonable and unjustified”.
- 2.1.8 Specific comments are made regarding technology, heating and water characteristics, environmental considerations and tariff classification. Both “technology” and “heating and water characteristics”, relate to physical characteristics, while “environmental considerations” and “tariff classification” are aspects which fall within part (e), [Other] of the list given above.
- 2.1.9 In respect of technology, Davenports has opined that F&P lacks the necessary knowledge of the ‘complex and sophisticated technology’

required to produce front-loading machines, citing in particular the speed at which horizontal drums rotate.

- 2.1.10 Davenports outlines the temperature sensor and water-heating technology found in front-loading machines, comparing this to the limited, spillover prevention sensor function of top-loading models.
- 2.1.11 In commenting on environmental considerations, Davenports notes the popularity of front-loading machines in the European market and attributes this to lower water consumption than top-loading machines.
- 2.1.12 Davenports has noted that the two types of washing machines are separated in the Tariff of New Zealand at the statistical key level, citing also the statistical level split found in the US and EU tariff documents.
- 2.1.13 Also noted by Davenports is the fact that F&P itself, whilst claiming the substitutability of one for the other, import front-loading machines from Italy. Davenports consider that this detracts from F&Ps like goods claim.
- 2.1.14 Drawing together the above points, Davenports questions the appropriateness of the pricing comparisons made by F&P between front-loading and top-loading machines, concluding that the differing characteristics render this comparison “fallacious” and result in “serious distortion”. These distortions are held to be unfairly prejudicial.

Comments by Radiola

- 2.1.15 In its substantive submission, Radiola has identified a number of differences between the Samsung washing machines it imports and the F&P range. Radiola considers that these differences have a material effect on the basis of any comparison made between the product ranges. Radiola also identifies one specific model (the 6.5kg top loading machine) for which it contends there is no New Zealand manufactured equivalent and therefore against which no claim of material injury can be made.
- 2.1.16 Radiola specifically lists features and physical characteristics found on the F&P range, comparing these to ‘equivalent’ Samsung models and notes that the additional features of the F&P models do not come without a cost. Radiola also notes that its Samsung products are perceived in the market place as being lower featured than F&P products and that the consumer expects a correspondingly lesser price.
- 2.1.17 Radiola notes the low (by international standards) production volumes achieved by F&P and notes that this provides a narrow base over which to recover the ‘high tech’ R & D costs incurred by F&P. Radiola goes on to note the relative production volumes maintained by Samsung and the “low tech” developments and refinements made by Samsung in the models sold to New Zealand.
- 2.1.18 Radiola notes that, as a ‘newcomer’ there is a necessity for it to price at a level appropriate to a market where the F&P brand is well established and strongly promoted. Comment is also made regarding the restrictive effect of the F&P EDA on the range of outlets available to Radiola for its products and the effect that this has on the marketing and distribution of Samsung branded washing machines.

Comment by Electrolux

- 2.1.19 Whilst not commenting further, Electrolux draws attention to the fact that front loading washers are not produced in New Zealand.

Comments by Chen Palmer and Partners

- 2.1.20 Chen Palmer, on behalf of LMR have highlighted the physical differences between the LG washers imported from Korea by LMR and those produced in New Zealand by F&P. In particular they contrast the “Turbo Drum Wash” technology found in LG top loading machines with the agitator technology found in F&P machines, and note the ‘fuzzy logic’ systems said to have been introduced by LG in 1990 and only now added to the F&P range.
- 2.1.21 Chen Palmer also notes differences in energy and water conservation ratings, some differences in appearance and infer some direct effects of relative production volumes of F&P compared to those of the Korean producers.

Consideration by the Ministry***Physical Characteristics***

- 2.1.22 The Initiation Report discussed physical characteristics in respect of the differences which were noted by F&P in their application, noting that;
- apart from some styling differences, New Zealand and Korean top loading washing machines present the same basic appearance,
 - front loading machines differ significantly in appearance from New Zealand top loading machines in terms of placement of access door and controls,
 - the external dimensions of the locally produced and imported washing machines differed slightly but that machines from both sources are offered in a range of capacities.
- 2.1.23 It was also noted in the Initiation Report that production methods used for top loading and front loading machines “are similar as the machines use similar components (motors, tubs (a drum on its side) and cabinets).
- 2.1.24 The Report went on to note that New Zealand washing machines contain a central agitator and that F&P had stated that “most top loading machines do have some type of central agitator” or in its absence a pump [or punch] to force water up from the bottom of the bowl. F&P was noted as having stated that some Korean models do not have a central agitator and that in some models with central agitators, the agitator is not full size. F&P was also noted as having commented that “some top loading machines have a rotating device at the bottom of the bowl to provide the means to move the water to aid the cleaning of articles”.
- 2.1.25 In the Initiation Report F&P was noted to have stated that front loading machines do not have a central agitator. Controls on New Zealand and Korean washing machines allow wash cycle selections and some models of both top loading and front loading machines have an option for a fast wash.

2.1.26 The comments made by interested parties other than F&P and summarised above relate for the most part to differences in components and options between the subject goods and washing machines in the F&P range. The Ministry acknowledges that these differences exist but considers that they do not alter the basic physical characteristics of the products concerned beyond the extent already discussed at initiation. Some of the elements identified by interested parties may however impact on the pricing related comparisons necessary to assess material injury. Further comment on this aspect is made in section 4.2 of this report.

Function and Usage

2.1.27 In this respect the Initiation Report noted that;

- F&P's top loading machines have the same end-use, namely washing of clothes for households, as the imported top loading and front loading machines and that
- F&P considered that front loading machines are substitutable with top loading machines, and
- that F&P was preparing to release a top loading machine which replicates the features of front loading machines. It was noted that F&P considers this development "is a strong indication of the substitutability of these machines".

2.1.28 The Initiation Report noted that F&P had identified no differences between consumer perceptions of New Zealand and Korean washing machines, stating that "consumer preferences indicate that top loading machines are more flexible [than front loading machines] because items can be added to the machine once the washing cycle has commenced. Top loading machines have a shorter washing cycle than front loading machines. F&P was also noted as considering that front loading machines may use less water, depending on user behaviour, and less laundry powder than top loading machines.

2.1.29 The Initiation Report discussed washing action of the two types of washing machines and pointed to F&P's consideration, supported by Consumers Institute testing reports submitted with the application that top loading machines have wash programmes that are as gentle as front loading machines.

2.1.30 The information and comments in this area by other interested parties since initiation, which are summarised above do not provide a basis on which it would be necessary for the Ministry to reconsider its position on the relative function and usage of the products concerned.

Pricing Structures

2.1.31 The Initiation Report noted F&P's comment that there is a perception that front loading machines are more expensive than top loading machines and that this perception may be due to European machines being distributed through specialist outlets for many years prior to The Warehouse securing distribution of the AEG brand.

- 2.1.32 By way of recording F&P's rebuttal of these perceptions, the Initiation Report commented on the retail price comparisons submitted by F&P for a number of machines including LG which are sold in both front loading and top loading versions. These comparisons showed that LG's 6.5kg and 8kg top loading machines were sold at the same prices respectively as LG's lower and higher-priced 7kg models and noted F&P's observation that the retail pricing of imported Korean front loading machines was similar to retail prices of F&P top loading machines. This evidence was held to demonstrate that price is not a barrier to substitutability.
- 2.1.33 None of the submissions summarised above have specifically commented on this aspect but comments by Radiola regarding customer perceptions and pricing expectations and those relating to its pricing policies vis-à-vis market access are noted by the investigating team.

Marketing Issues

- 2.1.34 The Initiation Report noted F&P's observations that top loading machines and front loading washing machines were sold through the same retail outlets and are often placed together on the retail floor. The Report also noted Consumers Institute tests, submitted by F&P in which both front loading and top loading machines feature.
- 2.1.35 The Initiation Report noted F&P's own imports of front loading machines from Italy and their distribution through the same retail outlets as its top loading models, noting F&P's comment that "promotional material from retailers includes both types of machines which is a strong indication that the retailer views a potential buyer of a washing machine making a choice between a top loading machine and a front loading machine".
- 2.1.36 The report recorded F&P's reference to the growth in imports of front loading washing machines as being indicative of the substitutability of the machines.
- 2.1.37 Except in general terms, viz. features comparisons and the like, interested parties have not commented on marketing issues in respect of like goods.

Other Relevant Matters

Standards

- 2.1.38 In this regard the Initiation Report noted F&P's claim regarding washing machine capacities in Korea not being the same as those used on the New Zealand market due to the use of different standards in each market due to the differences in the standards used.
- 2.1.39 Information provided by importers since initiation indicates that while this may be true in regard to washing machines sold in Korea, the goods being exported to New Zealand are in fact manufactured and rated according to the same Australia/New Zealand standard as those produced by F&P.

Tariff Classification

- 2.1.40 The Initiation Report noted the separation within the relevant tariff item of the two types of washing machines at the statistical key level. This aspect was also noted in Davenports submission.

- 2.1.41 The Initiation Report noted F&P's concern that if as a result of this investigation an anti-dumping remedy were to be imposed on top loading machines only, any material injury being caused by front loading machines would be exacerbated, particularly in respect of price depression.
- 2.1.42 The structure of the Tariff of New Zealand follows that of the internationally used Harmonised System, which standardises goods classification to the six digit level. The remaining 2 digits used are country specific and *inter alia* provide a means of differentiating between tariff rates. Beyond this level, statistical keys are used, as the name suggests, for the most part for the purpose of collecting import statistics.
- 2.1.43 Criteria for classification of goods are internationally agreed and relate to the placement of goods down to the six digit, generic level. For anti-dumping purposes, due to their relatively generic nature tariff classifications by themselves do not provide a sufficiently specific basis for the description of goods and at least in New Zealand are used for convenience of duty collection and Customs purposes only.
- 2.1.44 The differing statistical keys relating to top loading and front loading washing machines within the same tariff classification do not therefore provide a sufficient basis to necessitate a re-evaluation of the like goods question.

Conclusion

- 2.1.45 The investigating team has examined the points raised by Davenports and others and for the most part, these do not differ from the like goods aspects discussed at some length in the Initiation Report. Additional information relating in particular to the aspect of top loading vs. front loading has been requested from and supplied by F&P. This information comprises;
- Performance testing reports by the New Zealand Consumers Institute in which no differentiation is drawn between the two types and in which direct performance and feature comparisons are made.
 - An extract from the Australian/New Zealand Standard relating to energy consumption and performance which again does not distinguish between washers with horizontal and vertical axis.
 - A non-attributed generic comparison of major components and manufacturing requirements, and
 - A similarly non-attributed overview/evaluation of "The Laundering Process" which discusses the washing cycle itself.
- 2.1.46 F&P and all other parties have also had the opportunity, through their access to the public file, to comment on the matters summarised above.
- 2.1.47 It is clear that differences in physical appearance, performance and technology do exist between the washing machines imported from Korea and those produced in New Zealand by F&P. This fact was acknowledged by F&P at the time of lodging its application. Little information beyond that which was considered at the time of initiation has become available in the interim. In the absence particularly of technical information from the Korean suppliers the Ministry does not consider that the information submitted and comments

made by the importers etc provides a sufficient basis on which to reconsider its like goods decision.

- 2.1.48 Should further relevant information come to hand during the period leading up to the release of essential facts and conclusions in early May 2001, this aspect may be revisited by the investigating team.

2.2 **NEW ZEALAND INDUSTRY**

- 2.2.1 The present investigation was initiated on the basis that F&P was the sole New Zealand producer of fully automatic household washing machines and that those washing machines were like goods to the subject goods imported from Korea. The application was therefore considered to meet the requirements of s.10 (3) of the Act.

Submission by Davenports

- 2.2.2 In its submission to the investigating team, Davenports has questioned whether in fact F&P can be considered to be a New Zealand industry for the purposes of the Act. The points raised by Davenports are discussed below.

- 2.2.3 As summarised above, Davenports (and other interested parties) have questioned whether or not the washing machines produced by F&P are like goods to those being imported. As noted in paragraph 2.1.23 above, the points raised by these parties are not considered to provide a sufficient basis for the Ministry to alter its current position.

- 2.2.4 Davenports has noted that F&P has itself imported washing machines from Australia and Korea. Davenports has estimated that F&P's imports of washing machines in 1999 and 2000 from Korea amount to 10 percent of all washing machines imported from Korea which it submits is "not a negligible amount". Davenports has noted that in the Initiation Report, in considering importations of dumped goods by the New Zealand industry in terms of section 8(2)(f) of the Act, the Ministry excluded F&P's imports from Australia on the basis they are not subject goods (not being from Korea). Davenports has opined that "To adopt such an approach in this context is unfairly discriminatory, and contrary to the tenor and effect of article 4.1 of WTO Anti-Dumping Agreement".

Consideration by the Ministry

- 2.2.5 As noted above under "Like Goods" F&P has advised that it imports washing machines from Korea for evaluation purposes only. On this basis F&P's imports of dumped goods appear to be for sound commercial reasons. The investigating team consequently considers these imports do not constitute sufficient reason to exclude F&P from consideration as the domestic industry.

- 2.2.6 Section 8(2)(e) of the Act, however, requires the Ministry to have regard to the effects of non-dumped imports when considering injury. By definition, imports by any party (including F&P) from any source other than Korea would fall within the ambit of this requirement and are considered later in this report.

- 2.2.7 In addition, section 8(2)(f) of the Act requires consideration by the Ministry of the nature and extent of imports of dumped goods by the New Zealand

industry and F&P's imports of dumped goods from Korea are dealt with in this context later in this report.

- 2.2.8 The investigating team notes that the injury considerations of section 8(2) of the Act should not be confused with the standing and industry definition considerations of Articles 4.1 and 5.4 of the Anti-Dumping Agreement via sections 3A and 10(3) of the Act. The investigating team also notes that imports from countries other than Korea are taken into account when considering whether import volumes of the dumped goods are negligible in terms of Article 5.8 of the Anti-Dumping Agreement (see paragraphs 3.4.8 and 3.4.9 below).

2.3 IMPORTS OF WASHING MACHINES

- 2.3.1 Import data relating to the tariff items and statistical keys in section 1.3 above and sourced from the Statistics New Zealand INFOS database for the years ending March 1998, 1999, 2000 and the four months to July 2000 was provided in the application. For the purposes of this and subsequent reports on this investigation the Ministry has obtained and analysed import information from NZCS. The NZCS figures for the years ending March 1998, 1999 and 2000 differ slightly from the Statistics New Zealand (INFOS) figures used in the initiation report. The following table shows the updated import volumes of washing machines, imports from Australia have been isolated as they are subject to further discussion elsewhere in this report.

Table 2.1: Import Volumes of Subject Goods
(March Years)

	1998	1999	2000 Apr-Dec 2000	2000
Imports from Korea	9	698	5,731	9,625
Imports from Australia	29,416	32,261	38,841	29,742
Other Imports	13,063	6,862	9,198	4,925
Total Imports	42,488	39,821	53,770	44,292

2.4 NEW ZEALAND MARKET

- 2.4.1 The following table shows the New Zealand market for washing machines and was prepared from NZCS information on imports plus F&P information on domestic production. Once again Australian imports have been isolated for reference purposes in later discussion.

Table 2.2: New Zealand Market
(March Years)

	1998	1999	2000 Apr-Dec 2000	2000
Imports from Korea	9	698	5,731	9,625
Imports from Australia	29,416	32,261	38,841	29,742
Other Imports	13,063	6,862	9,198	4,925
Total Imports	42,488	39,821	53,770	44,292
NZ Industry Sales				
NZ Market				

3. DUMPING

Section 3(1) of the Act states:

“Dumping”, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and ‘dumped’ has a corresponding meaning.”

3.1 INTRODUCTION

3.1.1 In the absence of a response to the manufacturers questionnaire from Daewoo, LG and Samsung, the New Zealand legislation provides for a decision to be made having regard to all available information, that is, on the basis of the best available information. In this case, the Ministry has used information provided by F&P in its application and a subsequent submission, information provided by the importers, and information from a previous investigation involving Korea¹.

3.1.2 In using this information as the basis for its provisional considerations, the Ministry has borne in mind the commercial context in which the information has been provided.

3.2 EXPORT PRICES

3.2.1 In the normal course of events, when considering provisional measures, export prices would be determined in accordance with section 4 of the Act using information provided in submissions made by the relevant overseas producers in response to a questionnaire.

3.2.2 Section 4 provides:

Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be-

- (a) Where the purchase of the goods by the importer was an arm's length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents-
 - (i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
 - (ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export;

¹ Review Investigation; Automotive Lead Acid Batteries From Indonesia, Korea, Singapore and Taiwan: Completed 15 December 1999

- 3.2.3 In certain circumstances, export prices can be established under s.6 of the Act. The provisions of section 6 are shown in paragraph 1.5.3 above.

Base Prices

- 3.2.4 The actual transaction values for all shipments made by LG, Samsung and Daewoo over the period of investigation were used as the base price for export price calculations. This information was provided by the importers in their respective submissions.

- 3.2.5 Samsung's sales to its importer Radiola were invoiced in [REDACTED] on a Free On Board (FOB) basis. [REDACTED], Daewoo invoiced its sales to Eurolife in US dollars on a FOB basis. LG's sales to LMR and Electrolux were invoiced in US dollars on an [REDACTED] and in [REDACTED] basis respectively. The exchange rates used are the interbank rates at the date of the invoice as listed by OANDA (see paragraph 1.4.2).

Adjustments

Ocean Freight

- 3.2.6 LG's sales to Electrolux were in [REDACTED]. Electrolux provided information on its combined [REDACTED] charges but did not separately identify the cost of [REDACTED]. To establish the cost of [REDACTED], an amount for [REDACTED], based on information provided by F&P, was deducted from the combined [REDACTED] cost.

Inland Freight

- 3.2.7 A deduction of [REDACTED] percent, based on information provided by F&P in its application, was made to the base price to account for cost of inland freight from factory to wharf.

Port Services Charge

- 3.2.8 F&P did not provide any information relating to port services charges in Korea and this information is not known to the New Zealand importers. An adjustment of [REDACTED] percent was therefore made based on verified information obtained from Korean suppliers in the recently completed Lead Acid Batteries review. The port services charge includes wharfage, brokerage, fumigation and terminal handling charges.

Total Adjustments

- 3.2.9 The adjustments noted above for inland freight and port services charges have been deducted from the [REDACTED] base prices established for Samsung, LG and Daewoo. The adjustment noted above for ocean freight, inland freight and port services charge have been deducted from the [REDACTED] base prices established for LG.

3.3 NORMAL VALUES

Introduction

3.3.1 As noted in relation to export prices, in the normal course of events provisional normal values would be determined in accordance with section 5 of the Act using information provided in the relevant producer submissions.

3.3.2 Section 5 provides, *inter alia*:

(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the Chief executive of the Ministry of Economic Development-

(a) At the same level of trade; and

(b) In respect of sales made at as nearly as possible the same time; and

(c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

(5) Where-

(a) The actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and

(b) The Chief Executive of the Ministry of Economic Development is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,-

the Chief Executive of the Ministry of Economic Development may direct that the normal value of the goods shall be so ascertained.

3.3.3 In certain circumstances, normal values can be established under s.6 of the Act, which is quoted at paragraph 1.5.3 above.

3.3.4 In the absence of appropriate information from the Korean producers, provisional normal values have been established in accordance with section 6 of the Act having regard to all available information.

Base Prices

3.3.5 F&P in its application and a subsequent submission provided the Ministry with retail prices for a sample of front and top loading washing machines sold in the Korean domestic market, which it considered were equivalent to a selection of the models exported to New Zealand. This information was based on research conducted by F&P in Korea during May/June and December 2000. The investigating team used the May/June 2000 retail prices to establish normal values in relation to all export transactions between November 1999 and July 2000, the retail prices in May/June 2000 being as

near as possible to the export sales from November 1999 to July 2000. Similarly, the December retail prices were used to establish base normal values in relation to all export transactions between August and October 2000.

- 3.3.6 For those washing machines where retail price information was unavailable, the investigating team estimated the base price by selecting a model, as near as possible in capacity and features, for which a retail price was available. The percentage difference in the FOB US\$ or AUD C&F export prices for these two models was calculated. This percentage difference was then applied to the available retail price in order to estimate the previously unknown base price.

Adjustments

Value Added Tax (VAT)

- 3.3.7 F&P in its application advised that Korea currently has a 10 percent VAT on whiteware products and that base retail prices are inclusive of VAT. An adjustment was made to deduct the VAT included in the retail price.

Retailer's Margin

- 3.3.8 In its initial application, F&P estimated a [redacted] percent adjustment for retailer's margin based on a discussion with [redacted], a Korean retailer, during its independent research carried out in May 2000. The report on the December 2000 research noted that:

" [redacted]
[redacted].
[redacted]
[redacted]."

F&P has now stated that its estimate of the retailer's margin of [redacted] percent in its application was excessive and have submitted that an adjustment of [redacted] percent, which is based on the most recent information, should be used to deduct the retailer's margin included in the VAT exclusive selling price. At this point in the investigation, an adjustment of [redacted] percent has been made.

Wholesaler's Margin

- 3.3.9 F&P has submitted that an adjustment should be made to the base retail price to take into account a wholesaler's margin as its December research shows that the [redacted] are made through wholesalers. F&P has also submitted that sales from domestic manufacturers (Daewoo, LG and Samsung) in Korea to wholesalers who then on-sell to retailers are at the equivalent level of trade to the Korean manufacturers' sales to NZ importers who also on-sell to retailers. An adjustment has been made to deduct a [redacted] percent wholesaler's margin included in the wholesale selling price.

Warranty

- 3.3.10 F&P stated in its submission that there is likely to be a warranty cost in the domestic price which is not included in the export price. F&P has further

stated that the accepted figure for warranty in the whiteware business is █ percent. An adjustment of █ percent of the wholesaler's price has been made to take into account the warranty cost.

Internal Freight

3.3.11 F&P submitted in its application that an adjustment be made to cover freight from the distributor/wholesaler to the retailer in Korea. F&P stated that information obtained by it suggests that washing machines are delivered to the end consumer either direct from the manufacturing site or through regional warehouses belonging to the manufacturer.

3.3.12 F&P has estimated the internal freight cost on the basis of the costs it incurs in Australia. These costs are █ percent for delivery from warehouse to retailer plus a █- percent loading to cover delivery into the home and installation. An adjustment of █ percent on the wholesaler's price has been made to take into account the internal freight costs.

Normal Value Calculation

3.3.13 The adjustments outlined above have been deducted from base normal values.

3.4 COMPARISON OF EXPORT PRICE AND NORMAL VALUE.

Margins of Dumping

3.4.1 A comparison of provisional export prices, as established in section 3.1 of this report, and provisional normal values, as established in section 3.2 has been made. Provisional dumping margins have been calculated on a transaction-to-transaction basis and are expressed as a percentage of provisional export prices.

Daewoo Electronics Co. Ltd

3.4.2 There were a total of █ transactions relating to the subject goods from Daewoo to Eurolife in the period 1 November 1999 to 31 October 2000. Of these transactions, 100 percent were dumped. Provisional dumping margins ranging from 61 to 68 percent and a weighted average of 63 percent have been calculated.

3.4.3 The range of normal values and export prices was as follows:

Normal Values █ won

Export Prices █ to █ won

LG Electronics Inc.

3.4.4 A total of █ transactions relating to the subject goods from LG to Electrolux and LMR during the period 1 November 1999 to 31 October 2000 were examined. Of these, 100 percent were found to have been dumped with a weighted average dumping margin of 72 percent. Individual provisional dumping margins range from 42 to 97 percent.

3.4.5 The range of normal values and export prices was as follows:

Normal Values [redacted] to [redacted] won

Export Prices [redacted] to [redacted] won

Samsung Electronics Co. Ltd

3.4.6 There were a total of [redacted] transactions relating to the subject goods from Samsung to Radiola in the period 1 November 1999 to 31 October 2000. Of these transactions 100 percent were dumped with a weighted average dumping margin of 80 percent. Provisional margins on individual transactions ranged from 64 to 105 percent.

3.4.7 The range of normal values and export prices was as follows:

Normal Values [redacted] to [redacted] won

Export Prices [redacted] to [redacted] won

Volume of Dumped Goods

3.4.8 Section 11(1) of the Act provides that where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence of dumping or injury to justify proceeding with the investigation then it shall be terminated. Section 11(2) of the Act provides that evidence of dumping shall be regarded as insufficient if the volume of imports of dumped goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the WTO Agreement. The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the Anti-Dumping Agreement"), deals with negligibility of dumped imports under Article 5:8 as follows:

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

3.4.9 All of the subject goods were found to have been dumped. The volume of dumped goods is therefore equal to the volume of imports of the subject goods. The volume of dumped goods has therefore been taken from table 2.1 above. The volume of dumped goods and the volume of other imports, for

March year 2000 and April – December 2000, and the percentage of total imports represented by the dumped goods, are shown in the table below.

Table 3.1: Volume of Dumped Goods

	2000	%	Apr - Dec 2000	%
Dumped Imports	5,731	11%	9,625	22%
Other Imports	48,039	89%	34,667	78%
Total Imports	53,770		44,292	

3.4.10 On the basis of this information, imports of the dumped goods are not negligible.

3.5 **CONCLUSIONS RELATING TO DUMPING**

3.5.1 The investigating team provisionally concludes that washing machines from Korea are being dumped at weighted average margins ranging from 63 to 80 percent.

4. MATERIAL INJURY

The basis for considering material injury is set out in section 8(1) of the Act:

8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine—

- (a) The volume of imports of the dumped or subsidised goods; and
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

4.1 IMPORT VOLUMES

Section 8(2)(a) of the Act provides that the [Chief Executive] shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

4.1.1 The F&P application provided Statistics New Zealand import volume figures for the March years 1998 to 2000, and the year-to-July 2000. Statistical keys for imports were amended in 1998 and comparative statistical keys are not available for 1997. Subsequent to initiation, the investigating team has updated the import volume figures to the year-to-December 2000 using NZCS import information.

4.1.2 The following table shows the volume of imports of the subject goods provisionally found to have been dumped into New Zealand over the period 1998 to 2000 and for the nine months to December 2000, and compares them with the New Zealand industry's production and consumption in the New Zealand market. Imports from Australia are separately identified for reference purposes in later discussion.

Table 4.1: Import Volumes
(March Years)

	1998	1999	2000 Apr-Dec	2000
Dumped Imports	9	698	5,731	9,625
Imports from Australia	29,416	32,261	38,841	29,742
Other Imports	13,063	6,862	9,198	4,925
Total Imports	42,488	39,821	53,770	44,292
NZ Industry Sales	█	█	█	█
NZ Market	█	█	█	█

Change in:			
- Dumped Imports		689	5,033
- Imports from Australia		2,845	6,580
- Other Imports		-6,201	2,336
- Total Imports		-2,667	13,949
- NZ Industry Sales			
- NZ Market			
Dumped Imports as % of:			
- NZ Industry Sales		%	%
- NZ Market		%	%
- Total Imports		0.02%	2%
			11%
			22%

4.1.3 This analysis shows that during the period examined, imports of dumped subject goods from Korea increased significantly in absolute terms and relative to production and consumption in New Zealand.

Imports during the Remainder of the Investigation Period

4.1.4 The terms of section 16(1) of the Act require that provisional measures only be imposed where they are necessary to prevent material injury being caused during the investigation period. In respect of import volumes, this leads to consideration of the likely volumes of dumped imports during that period and the consequent impact of those imports.

4.1.5 Information regarding forward orders and projected import volumes for the period until the end of June 2001 was requested from each of the importers identified in paragraph 1.2.9. Of these, information was received from LMR, Radiola and Electrolux.

4.1.6 The investigating team would normally have had some corroborating information contained within submissions from the relevant Korean suppliers. As noted elsewhere however, no submissions in response to the Ministry's questionnaire have been received from the suppliers concerned.

4.1.7 Certain of the importers have stated in their submissions that the imposition of an anti-dumping duty would lead to their immediate withdrawal from the market. In the main these statements have been made in the context of definitive anti-dumping duties but it is reasonable to assume that the imposition of provisional measures would have a similar effect and that imports of dumped goods other than those currently in transit or subject to irrevocable purchase contracts may not occur.

4.1.8 Chapman Tripp, on behalf of Radiola, _____, has stated that any imposition of provisional measures would require (Radiola) _____

4.1.9 The investigating team notes that it is not the purpose of anti-dumping measures (whether provisional or definitive) to disrupt international trade by restricting or halting the importation of products, but rather to remedy any material injury which may be caused by the dumping of those products. In the case of provisional measures, the effect is intended to be preventative and is strictly time limited.

4.1.10 The information provided by the importers regarding forward orders and projected import volumes during the remaining period of investigation is summarised in table 4.2 below.

L M Rankine

4.1.11 LMR had provided forward order (production) information through to July 2001. In response to a request to indicate likely importation volumes during the remaining period of investigation based on those forecasts, LMR advised that due to a) [REDACTED] it was not possible to clarify the likely import volumes.

4.1.12 The investigating team has therefore assumed, for the purposes of this report that the volume of washing machines 'ordered' by LMR for production in the months of February to May 2001 represents the maximum number which will in fact be imported from LG during the remainder of the investigation period.

4.1.13 In selecting these months the investigating team has assumed production and shipment no later than mid May 2001 and has added an approximate transit period of 18 days from Pusan to Auckland plus a further 3 to 5 days to take account of pre-shipment requirements and loading. These estimates are based on information obtained from P&O Nedlloyd regarding its vessels travelling between Pusan and Auckland. On this basis any washers produced in the latter part of May would not arrive in New Zealand during the remaining period of investigation. A total of [REDACTED] washers fall into this conditional category, and represent [REDACTED] percent of the projected LMR/LG total.

Radiola

4.1.14 Radiola has commented in its response to the request for updated forward order/imports information, that the volumes provided are ". . . [REDACTED] [REDACTED]", reinforcing the comments made on its behalf by Chapman Tripp and referred to above. These imports are therefore also somewhat conditional.

4.1.15 In its submission, in respect of inventory levels (of dumped goods) as at 10 January 2001, Radiola also stated its intention to [REDACTED]. This [REDACTED] is in part due to the increased difficulty it has experienced in [REDACTED] commented on elsewhere.

Eurolife

4.1.16 Eurolife noted in its submission that it had no current intentions [REDACTED] [REDACTED] as Daewoo had [REDACTED] [REDACTED] previously imported. Eurolife is [REDACTED]

Electrolux

4.1.17 Electrolux provided forward order information showing that it intended importing a total of [REDACTED] washing machines over the remaining period of investigation.

Total Imports During the Remaining Investigation Period

- 4.1.18 Based on these responses, the following maximum import volumes over the remainder of the investigating period have been estimated.

Table 4.2
Projected Import Volumes April to June 2001

Radiola ex Samsung	■
LMR ex LG	■
Electrolux ex LG	■
Total Projected Imports	■

- 4.1.19 The investigating team has compared the projected import volumes to which any provisional measure would apply, to the actual import volumes recorded by Statistics New Zealand for the period April to June (inclusive) 1997, 1998, 1999 and 2000. That comparison is shown in the chart below. Recorded volumes for the first three of these years (0, 3 and 1 units respectively) have been disregarded for the purposes of the chart.

The chart is confidential in its entirety.

- 4.1.20 The figures shown in the table and chart indicate that projected import volumes of washing machines, whilst considerably higher than the equivalent period in 1999 are significantly (■%) below those recorded for that period in 2000.
- 4.1.21 The significance of the reduction in volumes between April and June 2000 and the current projections may indicate that the volumes recorded in March – June 2000 were an aberration brought about by the need to establish initial stockholdings in New Zealand rather than an indicator of any future trend or intentions. Imports of the subject goods during the period April – June 2000 represented ■ percent of the subject goods imported in the nine months ending December 2000.
- 4.1.22 The investigating team also notes the seasonality of washing machine imports whereby the next few months would be expected to be a period of higher import volumes than those in the immediate past few months. This is due to the increased demand for washers during the winter months and the

consequent need to build-up / maintain stocks to cover these sales. This may be a further factor contributing to the large volumes recorded for the April – June 2000 period.

- 4.1.23 F&P has expressed some concern regarding the veracity of the forecasts made by importers citing the commercial context in which they are made and import patterns in previous years. F&P also alleges a recent change to the product mix for one importer claiming that this alters the focus of material injury. The Ministry notes that F&P's comments are themselves made in a particular commercial context.
- 4.1.24 The Ministry recognises that it is possible that the projections provided by the respective importers have been affected by the initiation of this investigation, previously reported comments on behalf of [redacted] would certainly indicate this. It is however considered that the information provided by the importers is the best indication of the likely volume of imports over the remaining period of investigation.
- 4.1.25 Comparison of forecast levels of domestic production with forecast imports allows the analysis of imports in comparison to production and consumption in New Zealand over this period. This comparison is shown below in table 4.2. The "Other Imports Projection" figure has been calculated using the average monthly rate of imports recorded by the NZCS during the nine months ended December 2000 inclusive of imports during that period by F&P.

Table 4.3: Import Volumes
(April - June)

Dumped Imports Projection	[redacted]
Other Imports Projection	11,556
NZ Industry Projection	[redacted]
Total Market Projection	[redacted]
Dumped Imports as % of	
NZ Industry Projection	[redacted]%
Total Market Projection	[redacted]%

- 4.1.26 This analysis indicates that during the remaining period of investigation dumped imports will be significant in relation to both the projected domestic production and the projected New Zealand consumption. These proportions will however be considerably reduced on those that would have been found in the equivalent period of the 2000-year.
- 4.1.27 The investigating team notes that the arrival of a proportion ([redacted]%) of the projected subject goods imported by LMR during the remainder of the investigation period are conditional on the actual date of production. However, even if these washing machines were not to be imported the remaining projected volume ([redacted]) is still significant.

Conclusion

- 4.1.28 The investigating team has concluded that during the period up until December 2000, and on a projected basis to the end of the March year 2000/2001, imports of dumped subject goods from Korea increased

significantly in absolute terms and relative to production and consumption in New Zealand.

- 4.1.29 The information available to the investigating team, at this point in the investigation indicates that import volumes of dumped goods during the remaining period of investigation are likely to be considerably reduced from those of the previous equivalent period but are likely to still be significant relative to production and consumption in New Zealand.

4.2 PRICE EFFECTS

4.2.1 Price Undercutting

Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.

Introduction

- 4.2.1.1 In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.
- 4.2.1.2 Radiola has submitted that differences in features between F&P washing machines and imported washing machines mean that the cost of manufacture differs and this cost difference should be taken into account when carrying out a price comparison for price undercutting purposes. For the purpose of considering the need for provisional measures, any difference in prices arising from different costs of production relating to differing features has not been taken into account. Little information regarding this aspect is currently available and the need for any such adjustment will be considered for the essential facts and conclusions report. As a general point, the investigating team notes that any difference in costs would be taken into account only if it could be demonstrated that they have affected the selling price.
- 4.2.1.3 Radiola advised that it is invoiced by Samsung on a [REDACTED] dollars. Radiola stated that "Up to 1 October 2000, for internal accounting purposes, Radiola costed all product imports using a "padded" FX [REDACTED] rate which partly reflected the more favourable exchange rates in forward exchange contracts purchased by Radiola. From 1 October we changed this accounting policy to cost all imports at the exchange rate on the date of import." Radiola went on to state "For the purposes of this exercise the relevant rate is the actual rate on the date of import. Any forward FX contracts Radiola may or may not have purchased must be ignored to enable a fair comparison with Fisher & Paykel costs calculated on the same basis." For the purpose of considering the need for provisional measures, Radiola's imports have been costed at the exchange rate applying on the date of import. The need to use any forward exchange rate will be considered in the essential facts and conclusions report.
- 4.2.1.4 F&P and some importers have provided details of their credit terms. For the purposes of considering the need for provisional measures, any difference in credit terms has not been taken into account because of the limited

information available at the time this report was prepared. The need for any such adjustment will also be considered in the essential facts and conclusions report. As noted above, an adjustment would only be made if it could be demonstrated that differences in credit terms has affected the price.

4.2.1.5 F&P has provided details of the Samsung and LG models which it considers are comparable to each of its models for price undercutting purposes (this information was not provided for Daewoo models). For the purposes of considering the need for provisional measures, this information has been used to select the Samsung and LG models for comparison against the relevant F&P models. In the case of those models not shown on this list, the investigating team has selected the most comparable washing machine based on capacity and features.

4.2.1.6 Other information provided by the importers and F&P relevant to price undercutting is summarised below, the importers being listed under the name of the Korean producer from whom they import.

Fisher & Paykel Ltd

4.2.1.7 F&P transfers finished goods from its factory at [REDACTED]
[REDACTED]
[REDACTED] F&P operate 3 warehouses from which it supplies its customers in all parts of New Zealand.

4.2.1.8 F&P has provided its average selling prices for selected models, which it considers are directly comparable to the imported goods, over the period of investigation (the year ended 31 October 2000) on a free-into-store, ex-F&P warehouse and into F&P warehouse basis.

4.2.1.9 The F&P application provided information that was considered by the Ministry to be sufficient for the purposes of initiation. This information, in-so-far-as it relates to F&P's ex-factory costs has subsequently been verified by the investigating team.

Samsung Corporation

Radiola Corporation Ltd

4.2.1.10 Radiola advised that it purchases direct from Samsung and that [REDACTED] percent of its sales are to the PRG. Radiola said that approximately [REDACTED] percent of all imports are cleared through the port of Auckland and [REDACTED]. Radiola added that the balance of its imports are landed in Wellington and distributed to various southern North Island and South Island stores from its warehouse in Seaview (Hutt Valley). Radiola stated that "Product is invoiced to Pacific Retail Group on delivery [REDACTED]" Radiola advised that the [REDACTED] applies to deliveries made direct to the PRG warehouse in Auckland or from its Seaview warehouse.

4.2.1.11 F&P has submitted that the relevant price comparison is between Radiola's into PRG warehouse price and F&P's into warehouse price. The cost build up to selling price provided by Radiola includes warehouse-operating costs. The investigating team therefore considers that the appropriate point of

comparison is between F&P ex-warehouse and Radiola's ex-warehouse prices.

4.2.1.12 Radiola has provided cost build up to selling price information on a quarterly basis for the year ended 31 October 2000 together with details of its imports in each quarter. The cost build up includes an amount for freight under costs after store and this has been deducted to establish an ex-warehouse/wharf price. For the purposes of comparing prices with F&P models, the investigating team has calculated weighted average prices, weighting each quarterly price by the volume of imports in that quarter.

4.2.1.13 On the basis set out above, the following table shows a comparison of F&P prices with those of Radiola.

Table 4.4: Price Undercutting: Samsung Imports by Radiola

<i>Samsung Model</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
SW65ASP 5.5 kg Top loader	██████████	GW509 5.5kg Top loader	██████████	██████████	██████████
SW55ASP 6.5 kg Top loader	██████████	GW509 5.5kg Top loader	██████████	██████████	██████████
SWFP10 5kg Front loader	██████████	GW509 5.5kg Top loader	██████████	██████████	██████████

4.2.1.14 The table shows that the Samsung models are undercutting the equivalent F&P model in 2 out of 3 cases. The Samsung model that does not undercut the equivalent F&P model accounts for only █ percent of Radiola's imports. In the one case where there is no undercutting, the equivalent F&P model (██████████) is undercut by the 2 other Samsung models imported by Radiola.

4.2.1.15 It should be noted that F&P instituted a price increase in October ██████████ in both November and December 2000. These ██████████ which are not reflected in the above analysis will clearly have an effect on the incidence of price undercutting.

LG Electronics Ltd

LM Rankine Trading Co Ltd

4.2.1.16 LMR advised that it markets ██████████ and that distribution is carried out by ██████████. The investigating team considers the point of comparison is between F&P ex-warehouse and LMR ex-warehouse prices.

4.2.1.17 LMR has provided cost build up to selling price information at November 1999, April 2000 and October 2000. LMR advised that because it is a small importer, there was no single month during the period of investigation that an accurate breakdown of all the price elements could be produced and noted

that in some months no imports were made. LMR considered that if it had attempted to reconstruct a single build-up for the entire period of investigation, the figures would be distorted. LMR said that in the interests of providing the Ministry with a clear and balanced picture it has provided cost build up information for 3 typical months evenly spread over the period of investigation.

4.2.1.18 For the purposes of comparing prices with F&P models, the investigating team has calculated weighted average prices, weighting each price by the volume of imports in November 1999, December 1999– April 2000, and May – October 2000. The costs after store include distribution and freight costs, so these costs have been deducted from the invoice price to customer to establish an ex-warehouse price.

4.2.1.19 On the basis set out above, the following table shows a comparison of F&P prices with those of LMR.

Table 4.5: Price Undercutting: LG Imports by LMR

LG Model	Ex-Warehouse Price	F&P Model	Ex-Warehouse Price	Undercutting	% F&P Price
WF-T 452 4.5kg Top loader	██████	GW509 5.5kg Top loader	██████	██████	██████
WF-T 652 6.5kg Top loader	██████	GW709 7.5kg Top loader	██████	██████	██████
WF-T 852 8.5kg Top loader	██████	GW709 7.5kg Top loader	██████	██████	██████
WD 1021W 7kg Front loader	██████	GW709 7.5kg Top loader	██████	██████	██████
WD 8050FH 7kg Front loader	██████	GW709 7.5kg Top loader	██████	██████	██████

4.2.1.20 The table shows that the LG models are undercutting the equivalent F&P model in all but one case, although in the case of the ██████ the amount of undercutting is negligible. The LG model that does not undercut the equivalent F&P model accounts for only █ percent of LMR's imports. In the one case where there is no undercutting, and in the case where the undercutting is negligible, the equivalent F&P model (██████) is undercut by 2 other LG models imported by LMR.

Electrolux Home Products (NZ) Limited

4.2.1.21 Electrolux has advised that it operates as a wholesale distributor marketing its products through established retail appliance stores nation-wide. The cost build up information provided by Electrolux indicates that it distributes its product through a warehouse system. The investigating team considers the appropriate point of comparison is between F&P's and Electrolux's ex-warehouse prices.

4.2.1.22 Electrolux has provided cost build up to selling price information for each model imported over the year ended 31 October 2000. The information shows that its ex-store selling prices [redacted] November 1999 – September 2000 and [redacted] October 2000. For the purposes of comparing prices with F&P models, the investigating team has calculated weighted average prices, weighting the 2 prices by the volume of imports in November 1999 – September 2000 and in October 2000.

4.2.1.23 On the basis set out above, the following table shows a comparison of F&P prices with those of Electrolux.

Table 4.6: Price Undercutting: LG Imports by Electrolux

LG Model ¹	Ex-Warehouse Price	F&P Model	Ex-Warehouse Price	Undercutting	% F&P Price
LF700B 7kg Front loader	[redacted]	GW709 7.5kg Top loader	[redacted]	[redacted]	[redacted]
LF708B 7kg Front loader	[redacted]	GW709 7.5kg Top loader	[redacted]	[redacted]	[redacted]

¹ Sold under Westinghouse brand

4.2.1.24 The table shows that only one of the 2 LG models are undercutting the equivalent F&P model, and where there is price undercutting, it is by a relatively small amount. The LG model that does not undercut the equivalent F&P model accounts for [redacted] percent of Electrolux's imports. In the case of the model where there is no undercutting, the equivalent F&P model (GW709) is undercut by the other LG model imported by Electrolux.

Daewoo Electronics Co Ltd

Eurolife NZ Ltd

4.2.1.25 Eurolife has advised it sells directly to The Warehouse Ltd. The cost build up to selling price information provided by Eurolife refers to costs into store and selling prices ex-store, so it has been assumed that goods are distributed through a warehouse system. The investigating team considers the undercutting comparison should be made between F&P's ex-warehouse price and Eurolife's ex-warehouse price.

4.2.1.26 Eurolife has imported only one model of washing machine and has provided cost build up to selling price information for each of its [redacted] importations over the year ended 31 October 2001. Freight to customer is shown as a separate item and has been deducted to obtain an ex-warehouse price. The investigating team has calculated a weighted average ex-warehouse price by weighting the ex-warehouse price for each importation according to the volume of goods in each importation.

4.2.1.27 On the basis set out above, the following table shows a comparison of F&P prices with those of Eurolife.

Table 4.7: Price Undercutting: Eurolife Imports from Daewoo

Daewoo Model ¹	Ex-Warehouse Price	F&P Model	Ex-Warehouse Price	Undercutting	% F&P Price
Rapid 7 7kg Top loader	████████	GW709 7.5kg Top loader	████████	████████	████████

¹ Sold under Advanced Appliances brand

4.2.1.28 The table shows that the Daewoo model is undercutting the equivalent F&P model, although as noted above the Rapid 7 has been ██████████

Price Undercutting During the Remainder of the Investigation Period

4.2.1.29 Pricing information during the remainder of the investigation period was not requested from either importers or the New Zealand industry. The likelihood of price undercutting by dumped product during this period can therefore to a large extent only be implied from the results shown above.

4.2.1.30 The information examined by the investigating team indicates that the majority of the models of washing machines imported from Korea have undercut F&P prices for equivalent goods. It is noted that price increases by both F&P and ██████████ in late 2000 have not been reflected in the analysis completed so far. These increased prices may have the effect of reducing the incidence of price undercutting and therefore material injury by the Samsung range during the remainder of the investigation period.

Conclusion

4.2.1.31 On a provisional basis, there is price undercutting by a large proportion of the subject goods, the volume of imported models found to be undercutting the equivalent F&P model representing ██████ percent of all imports of the subject goods.

4.2.1.32 The investigating team notes that in some cases the particular models of washing machine which have been compared differ with respect to their rated capacity (e.g. Samsung SW55ASP @ 6.5 kg was compared to the F&P GW509 @ 5.5 kg) and that in several cases the comparison has been made between a top loading and a front loading machine. Comment is made in the introduction to this section regarding additional work which is required in order to quantify any adjustments which may be necessary to provide a more precise comparison in these respects.

4.2.1.33 In the absence of information to the contrary it is reasonable to assume that the pricing of any imports made during the remaining period of investigation which are subsequently released into the market will undercut to some degree those of the equivalent F&P products.

4.2.2 **Price Depression**

Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

4.2.2.1 Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period.

4.2.2.2 At the time of initiating this investigation the Ministry did not consider the information provided by F&P in its application was sufficient to show price depression for the purposes of initiation. F&P have subsequently provided additional and verified information regarding price depression.

4.2.2.3 Based on the updated financial data provided by F&P at a late stage in the preparation of this report, the following table has been prepared showing average prices for F&P washing machines since financial year 1998 and including F&P's own projection for the full year 2001.

4.2.2.4 F&P transferred its production of 6.5kg machines to Australia in February 1999. In order to provide a more meaningful comparison, Table 4.8 below is exclusive of the reported data in respect of F&P's 6.5kg washing machines.

Table 4.8: Price Depression
Average Price (March Years)

	1998	1999	2000	2001 to Dec	2001 Projection
5kg					
7kg					
7kg Quantum					
O/All Average					

4.2.2.5 F&P's sales mix has altered over the period under investigation. The following is the percentage of F&P's total sales (excluding 6.5kg machines) represented by 5kg machines and 7kg machines (inclusive of the Quantum series since its introduction):

	5kg	7kg
1998		
1999		
2000		
2001		

4.2.2.6 The increase in the proportion of sales represented by [redacted] machines will, even in the absence of any price changes, [redacted] the overall average price per unit because of the [redacted] per unit value of these machines. Changes in the average selling prices of each size of machine (5kg, 7kg and 7kg Quantum) are therefore more likely to be indicative of any price depression than overall average selling prices.

4.2.2.7 The price of 5kg machines fell [redacted] in April – December 2000 (the period from when injury is claimed to have commenced) to a price below that achieved in each of the three previous years. The price of 5kg machines is

projected to [REDACTED] in the year ended March 2001, but will still be [REDACTED] the prices in each of the three previous years.

4.2.2.8 The price of 7kg machines fell in April – December 2000 to a level below that achieved in 1998 and 2000, but still above the price achieved in 1999. The price of 7kg machines is projected to [REDACTED] in the year ended March 2001, but will still be [REDACTED] the prices achieved in 1998 and 2000.

4.2.2.9 The price of 7kg Quantum machines also fell in April – December 2000 below the price achieved in 2000. The price of 7kg Quantum machines is projected to [REDACTED] in the year ended March 2001, but will still be [REDACTED] the price achieved in 2000.

Price Depression During the Remainder of the Investigation Period

4.2.2.10 At a late stage of the preparation of this report, F&P provided updated financial information including forecasts covering the remainder of the investigation period.

4.2.2.11 This forecast shows that prices in April – June 2001 are estimated to be at the same level as that projected for the year ended March 2001. It is reasonable to assume that the price depression projected for the year ended March 2001 will remain over the remainder of the investigation.

Conclusion

4.2.2.12 Prices have been depressed in April – December 2000. While prices are projected to recover slightly in the year ended March 2001, those prices will still be depressed when compared to prices achieved in 2000.

4.2.2.13 It is likely that the price depression projected for the year ended March 2001 will remain over the remaining period of the investigation.

4.2.3 Price Suppression

Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

4.2.3.1 The Ministry generally bases its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not able to be recovered by price increases will be reflected by an increased ratio of costs to sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression. While the inability to recover cost increases in prices is the main indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression.

4.2.3.2 The F&P application included information, which has subsequently been verified, showing that price suppression due to dumped subject goods was occurring.

4.2.3.3 Subsequent to verification and prior to the completion of this report, F&P has provided financial data showing its actual performance over the current

financial year to December 2000 plus forecasts covering the remainder of the current financial year to March and through the remainder of the investigation period. This updated information is shown in table 4.9 below (data relating to 6.5kg machines has been excluded to allow a valid comparison between years).

Table 4.9: Price Suppression
(March Years; \$NZ/unit)

	1998	1999	2000	Apr-Dec 2000	2001 Projection	Estimate to June 2001
Ave Selling Price	█	█	█	█	█	█
Cost of Production	█	█	█	█	█	█
S&A Expenses	█	█	█	█	█	█
Total Costs	█	█	█	█	█	█
As % of Sales						
-Cost of Production	█	█	█	█	█	█
-S&A Expenses	█	█	█	█	█	█
-Total Costs	█	█	█	█	█	█

4.2.3.4 The table above shows that total costs in relation to sales increased slightly between March years 1998 and 1999, decreased significantly in 2000 and increased sharply in 2001 to a level slightly higher than that in 1998 and 1999. This suggests that the price suppression found at the time of initiation has continued during the period examined to date.

Price Suppression During the Remainder of the Investigating Period

4.2.3.5 The forecast information shown in table 4.9 above suggests that price suppression, as measured by the relationship between cost and revenue will decline further during the remaining period of investigation.

Conclusion

4.2.3.6 Prices were suppressed in April – December 2000 and are projected to remain suppressed in the year ended March 2001.

4.2.3.7 It is likely that price suppression will occur over the remaining period of the investigation.

Conclusion on Price Effects

4.2.3.8 Based on the information summarised above, the investigating team considers that there is reasonable cause to believe that price undercutting, price suppression and price depression have occurred during the period of investigation.

4.2.3.9 It is likely that price effects will continue during the remaining period of investigation.

4.3 ECONOMIC IMPACT

Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—

- (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
- (ii) Factors affecting domestic prices; and
- (iii) The magnitude of the margin of dumping; and
- (iv) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

Output and Sales

- 4.3.1 Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.
- 4.3.2 The information provided in the application made by F&P was not considered sufficient to demonstrate a decline in industry sales either in terms of volume or revenue. Subsequent to initiation F&P has provided additional submissions on this aspect and information has been verified by the investigating team. Financial data provided at a late stage in the preparation of this report included forecasts covering the remainder of the investigation period.
- 4.3.3 As F&P has advised that production closely follows sales, a separate analysis of output has not been carried out.
- 4.3.4 As noted previously, F&P transferred manufacture of its 6.5kg model to Australia in February 1999 and the New Zealand market has been supplied by F&P from Australia with its 6.5kg machine since March 1999. To ensure comparability of data over all of the period under review, sales of New Zealand produced 6.5kg machines have been excluded.
- 4.3.5 The following table shows sales volume and revenue, excluding sales of New Zealand-produced 6.5kg machines.

Table 4.10: Sales of Washing Machines
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000	Forecast to March 2001
Sales Volume	████████	████████	████████	████████	████████
- Change on Previous Year		████████	████████		████████
- % of 1998	████████	████████	████████		████████
Ave Sales per Month	████████	████████	████████	████████	████████
- Change on Previous Year		████████	████████	████████	████████
- % of 1998	████████	████████	████████	████████	████████
Sales Revenue (\$000)	████████	████████	████████	████████	████████
- Change on Previous Year		████████	████████		████████
- % of 1998	████████	████████	████████		████████
Ave Sales Revenue per Month	████████	████████	████████	████████	████████
- Change on Previous Year		████████	████████	████████	████████
- % of 1998	████████	████████	████████	████████	████████

- 4.3.14 The forecast information provided by F&P for April – June 2001 shows an increase in monthly sales volume and revenue compared to the year ended March 2001. Some of this forecast increase may be due to seasonal factors but in the absence of comparative data for the same period in previous year it is unclear to what extent this is a factor. The investigating team also notes that the F&P forecast may be based on a belief that there will be a higher level of dumped imports during the period to June 2001 than has been indicated by importers.

Conclusion

- 4.3.15 There will be a decrease in sales volumes and revenue in the March 2001 financial year. There is no evidence of decline before this period.
- 4.3.16 It is unclear whether there will be a reduction of sales volume and revenue over the remaining period of the investigation.

Market Share

- 4.3.17 The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing.
- 4.3.18 Table 4.11 below shows the market share situation as at 31 December 2000 and projected for the full 2000/2001 financial year. New Zealand industry sales are as advised by F&P, dumped import volumes are as calculated in section 3.3 above, F&P imports from sources other than Australia are as advised in the original application and other imports are taken from NZCS information. In respect of the full year 2001 forecast, industry sales are as shown in F&P's latest financial data, dumped imports have been calculated according to importer information and both F&P imports from sources other than Australia and other imports have been extrapolated at the same monthly rate as indicated for the nine months ending December 2000. Imports from Australia have once again been isolated for reference purposes in later discussion.

Table 4.11: Market Share
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000	Forecast to March 2001
NZ Market					
NZ Industry Sales					
Dumped Imports	9	698	5,731	9,625	10,747
F&P Other Imports					
Other Imports*	13,063	6,862	9,198	4,925	6,567
Imports From Australia	29,416	32,261	38,841	29,742	39,656
Change in Volume:					
- NZ Market					
- NZ Industry Sales					
- Dumped Imports		689	5,033		5,016
- F&P Other Imports					

- Other Imports*	-6,201	2,336	-2,631
- Imports from Australia	2,845	6,580	815
% Share Held By:			
- NZ Production			
- Dumped Imports			
- F&P Other Imports			
- Other Imports			
- Australian Imports			

Note 1 the above table includes F&P sales of NZ made 6.5kg machines

Note 2 "Imports From Australia" includes F&P imports

* For the purposes of the non-confidential report F&P other imports have been added into the "Other Imports" figure

4.3.19 The figures in the table show that market share held by the New Zealand industry fell significantly in the year ended March 2000, continued to decline in the nine months to December 2000 and, on the basis of F&P's estimated full year recovered slightly in YEM 2001. The Ministry notes that F&P transferred manufacture of its 6.5kg washing machines from New Zealand to Australia in February 1999, and a decline in New Zealand industry sales and market share in the year ended March 2000 was to have been expected. Table 4.11 also shows the increased market share gained by dumped imports since 1998 and in particular the increases in years ending March 2000 and 2001.

4.3.20 F&P's updated market share for machines other than 6.5kg is shown in the following table.

Table 4.12: Market Share F&P Excluding 6.5kg
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000	Forecast to March 2001
F&P Sales					
F&P Market Share					

4.3.21 The table shows that F&P's market share increased slightly in 1999, decreased significantly in 2000, and thereafter held at about the same level.

Market Share During the Remaining Period of Investigation

4.3.22 Projected imports of the subject goods from Korea have been provided by importers and the NZ industry has now provided its production/sales projections. Imports from other sources may be estimated by extrapolating NZCS information up to and including December 2000. Using this mix of data the investigating team has constructed the following table showing projected market shares in the remaining period of investigation.

Table 4.13 Market Share March - June 2001

F&P Projected Sales	
F&P Projected Market Share	
Projected Dumped Imports	
Dumped Imports Projected Market Share	

4.3.23 In the absence of specific comparative New Zealand sales information for equivalent periods in preceding years these figures are of course of limited value beyond reinforcing the conclusions regarding their significance already made in respect of import volumes.

Conclusion

4.3.24 There has been a significant loss of the market share held by the New Zealand industry since 1999.

4.3.25 There is unlikely to be a further loss of the market share held by the New Zealand industry over the remaining period of the investigation.

Profits

4.3.26 Changes in net profits reflect changes in prices, sales volumes or costs. Dumped or subsidised imports can impact on any or all of these. If possible, the extent of any decline in profit will be measured against the level achieved in the period immediately preceding the commencement of the dumping.

4.3.27 In an investigation, the Ministry’s assessment of the impact of dumped imports is based on an examination of trends in actual profits in order to establish whether or not there is an actual or potential decline in profits. In some circumstances it may be possible to determine that injury is being caused where profits are not declining, but that would depend on the circumstances of the case, and would need to be based on positive evidence. Such an impact would also need to be attributable to the dumping of imports.

4.3.28 The table below shows an analysis of the earnings before interest and tax achieved for washing machines. The EBIT from 6.5kg machines has been excluded to ensure comparability of data over all of the period.

Table 4.14: Earnings Before Interest and Tax
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000	Forecast to March 2001
EBIT (\$000)	█	█	█	█	█
- Change on Previous Year		█	█		█
- % of 1998	█	█	█		█
- % of Revenue	█	█	█	█	█
EBIT per Unit	█	█	█	█	█
- Change on Previous Year		█	█	█	█
- % of 1998	█	█	█	█	█

4.3.29 The table shows that EBIT reduced between YEM 1998 and 1999, increased sharply in 2000 and is forecast to fall well below 1998 levels in the YEM 2001. On a per unit basis the same pattern is evident.

4.3.30 F&P has noted that, for washing machines other than 6.5kg, EBIT increased in 2000 and this suggests that the allegedly dumped imports did not have an effect in that year. Sales volumes in 2000 were down by █ units on the previous year but F&P has commented that this decline was offset by

improved prices, which contributed significantly to the EBIT increase in 2000. F&P states that “the major contributor to the improvement in EBIT was, however, the result of redesigning the electronics used in the automatic washing machines”. The redesign led to cost reductions of [REDACTED] although these were partly offset by increased overheads. F&P states:

In the absence of the dumped imports the improvement in EBIT would have been higher as the price/volume effects of the dumping margin would not have impacted on F&P. The dumped imports have completely removed from F&P the opportunity to benefit from the cost reductions achieved in YEM 2000. It is reasonable to observe that these cost savings should be contributing to the profits of the business in YEM 2001.

- 4.3.31 In its most recent information F&P has shown a [REDACTED] to that which was originally projected in the application. F&P states that this alteration has come about due to its decision to [REDACTED]. F&P has stated that this decision was made as a direct result of the presence in the New Zealand market of dumped goods. In the absence of this alteration its estimated 2000 EBIT would have been [REDACTED] per unit and [REDACTED] percent of revenue.

Profits During the Remaining Investigation Period

- 4.3.32 F&P has provided projections covering the remaining period of investigation. On the basis of a projected sales volume of [REDACTED] units and sales revenue of [REDACTED] F&P has projected an overall EBIT of [REDACTED] representing [REDACTED] percent of revenue. As noted previously, F&P may have overestimated the likely volume of dumped imports over the remaining period of the investigation in preparing its forecast. The volume of such dumped imports is likely, however, to still be significant relative to consumption and production in New Zealand and are therefore likely to have a significant impact on the New Zealand industry's profitability over the remaining period of the investigation.

Conclusion

- 4.3.33 The significant improvement in EBIT over the YEM 2000 makes it more difficult to reach a conclusion regarding the actual impact of the dumped goods in the following year. It is evident, however, that F&P's profits have declined significantly in April – December 2000, and will reduce significantly in the YEM March 2001 in comparison to all 3 previous years.
- 4.3.34 It is likely that profits will continue to decline significantly over the remaining period of the investigation.

Productivity

- 4.3.35 F&P considers that, because it is seeking to maintain volume market share, “productivity is expected to remain constant but at a cost to F&P”.
- 4.3.36 No additional information regarding this aspect of F&P's financial performance has been provided and no provisional conclusion can therefore be drawn.

Return on Investments

- 4.3.37 A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in

the return on investments affect the ability of the industry to retain and attract investment.

- 4.3.38 No information beyond that contained in the application and commented on at initiation has been provided to date and no provisional conclusion can therefore be drawn.

Utilisation of Production Capacity

- 4.3.39 The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.
- 4.3.40 F&P states that utilisation of production capacity “is not expected to change given F&P’s move to protect volume market share”.
- 4.3.41 Data provided by F&P shows that factory utilisation was fairly static over the 1998, 1999 and 2000 financial years at █% to █%, but declined to █% in the year to July 2001. No additional information regarding this aspect has been provided during the current phase of the investigation.

Other Adverse Effects

- 4.3.42 In considering other adverse effects, the Ministry considers actual and potential effects on cash flow, inventory, employment, wages, growth, ability to raise capital, and investment.
- 4.3.43 Of the listed factors, at the time of initiation F&P had only provided comment regarding employment and noted that effects in the remaining areas would become evident during the investigation.
- 4.3.44 No further information regarding these factors has been provided to date.

4.4 OTHER CAUSES OF INJURY

Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—

- (i) The volume and prices of goods that are not sold at dumped prices; and*
- (ii) Contraction in demand or changes in the patterns of consumption; and*
- (iii) Restrictive trade practices of, and competition between, overseas and New Zealand producers; and*
- (iv) Developments in technology; and*
- (v) Export performance and productivity of the New Zealand producers; and*

the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Introduction

- 4.4.1 In considering whether factors other than dumping have had an adverse impact on the New Zealand industry, the Ministry is of the view that it does not need to be satisfied that factors other than dumping have not been a cause of injury to F&P, it must only be satisfied that dumping has been a cause of material injury to F&P. Dumping does not therefore need to be the only cause of material injury, or even the major cause material injury, just a cause of material injury. Where economic indicators show that an industry has suffered injury, if factors other than dumping have been the real cause of the injury, it is important that such injury not be attributed to dumping.
- 4.4.2 When examining injury, the Ministry normally seeks to review data over a period both before and after the time period when injury due to dumping is alleged to have commenced. Data over a period before the commencement of injury then serves as a baseline against which subsequent performance can be measured. In dumping investigations it is usual that the onset of injury claimed by an industry occurs within a reasonably well-defined time period and this is demonstrated by declines in various economic indicators. If it is claimed that factors other than dumping are the cause of that injury then those other factors could be expected to have had a particular impact within the period when the economic indicators show the onset of injury. If there are factors other than dumping causing injury to an industry, but those other factors have been constant over the period under review, then it is unlikely that the onset of injury could be attributed to those other factors.

Non-dumped Imports

- 4.4.3 Table 2.1 above shows the pattern of imports from sources other than Korea for the March years 1998, 1999, 2000 and 2001 year to December 2000. This table shows that total imports of washing machines from Australia have consistently increased throughout the period examined up to and including December 2000. Extrapolation of these latter figures shows that this increase continued to the end of the March financial year just completed. When F&P's own imports are deducted from the Australian totals, these figures show a pattern of static volumes up until YEM 1999 then a small reduction.
- 4.4.4 Imports from sources other than Korea and Australia have declined overall since YEM 1998 although an apparent recovery is evident in the years ending March 2000 and 2001.
- 4.4.5 LMR has submitted that price pressure from Australian competitors is the major factor impacting on whiteware pricing in New Zealand. In support of this, LMR has cited examples of washing machines from Australia being priced at the retail level below the prices of the equivalent LG models imported by LMR and below the prices of the equivalent F&P models
- 4.4.6 In view of the submissions made by LMR, the investigating team sent a questionnaire seeking information from the only major importer of washing machines from Australia, Electrolux, on the pricing of its Australian imports into the New Zealand market. Shortly before this report was completed, a partial response to this questionnaire was received but did not provide information in a form that could usefully be used in this report.

4.4.7 The investigating team also analysed NZCS data relating to imports of washing machines from both Korea and Australia in order to calculate the average value for duty (VFD) per unit for each of the statistical keys covering the subject goods. This analysis shows that in all but one of the four statistical keys, the average VFD per unit is higher for washing machines imported from Australia. The overall average across all four statistical keys is likewise higher for Australian sourced product.

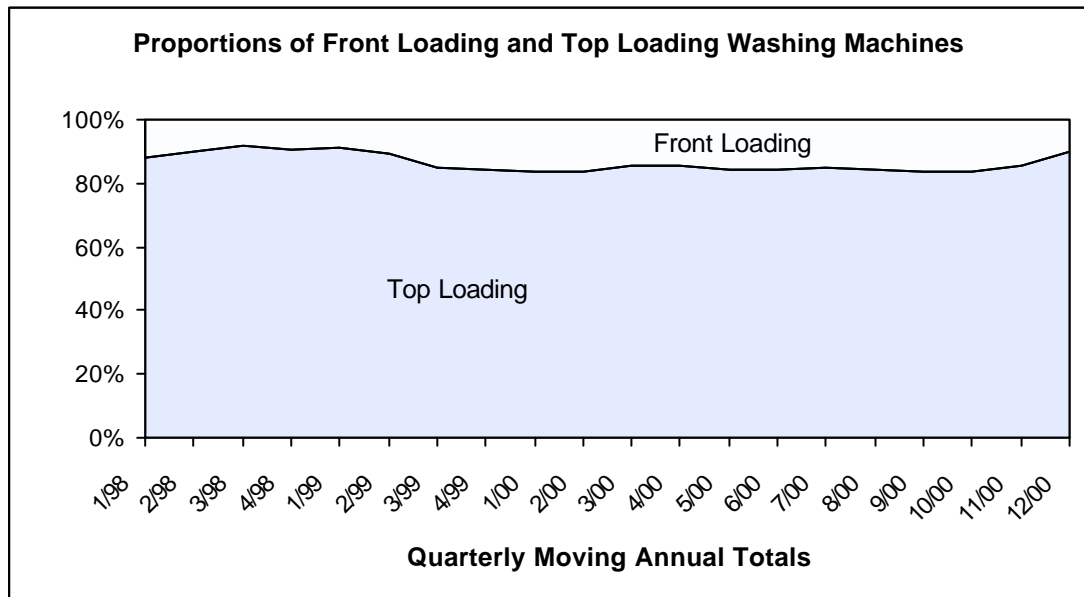
4.4.8 The investigating team is aware that averages of this nature will not necessarily provide an indication on a model specific basis of comparable prices, but the data does indicate that at the time of importation Australian sourced washing machines are on average priced higher than those sourced from Korea.

Changes in Demand or Patterns of Consumption

Demand for Front Loading Washing Machines

4.4.9 F&P noted in its application that demand for front loading machines appeared to be increasing. F&P points to market share for front loading machines increasing from █ percent in the first four months of 1999 to █ percent in the same period in 2000.

4.4.10 The following table shows that the proportion of front loading machines imported from all sources has increased slightly.



Market Sophistication: Diversity and Innovation

4.4.11 LMR has submitted the New Zealand market is undergoing significant change. They state that younger consumers are less impressed by old brand loyalties and are instead motivated by technological options and diversity. LMR goes on to say that consumers are significantly motivated by the much greater and more transparent availability of information in the marketplace due to extensive advertising. LMR submits that consumers are therefore increasingly interested in products such as those imported by LMR from LG and which

they submit have their own unique niche in the market. LMR contends that competition on this basis is extremely valuable for the New Zealand consumer and opines that it would be false logic to co-relate increased consumption in New Zealand of LG product with the pressures described by F&P and assume that damage [material injury] was occurring as a result. LMR believe that what is happening is that consumers are shifting loyalty as a result of conscious decisions about the quality of the product they are purchasing.

- 4.4.12 Without commenting on the validity of the submissions the investigating team considers that any changes of the kind described by LMR will by their nature, have taken place gradually. It is therefore unlikely that changes of these kinds will have materially contributed to the decline in F&P's overall performance, which is evident in the period April to December 2000.

Restrictive Trade Practices and Competition

- 4.4.13 F&P considers there is no evidence that restrictive trade practices of, and competition between, overseas and New Zealand producers are causing injury.

- 4.4.14 Submissions by each of the importers and on behalf the Korean suppliers discuss in some detail the effects on the marketplace of the EDA operated by F&P. The tenor of these comments is that the EDA constitutes a restrictive trade practice on the New Zealand domestic market. The EDA and the comments made are discussed below.

Developments in Technology

- 4.4.15 F&P stated in its application that it considered there to be no evidence of technology developments relevant to the consideration of injury.
- 4.4.16 The comments recorded above regarding aspects of the technology and features available on imported washing machines are considered relevant by importers and allegedly perceived by consumers as important considerations in the purchasing decision. There is no evidence, however, to suggest that the availability of these technological features has adversely affected F&P.

Export Performance and Productivity

- 4.4.17 F&P has excluded its export business from its material injury analysis so that the export business does not impact on figures for its domestic business.
- 4.4.18 The investigating team is satisfied that the financial data on which it has based certain of its provisional conclusions reflects only F&P's operations on the domestic market, i.e. production of washing machines in New Zealand and their subsequent sale into the New Zealand market.
- 4.4.19 Radiola has submitted that by comparison with all its competitors, F&P still operates a regional management structure and that this is an extremely inefficient way of operating in today's competitive environment. Radiola notes that it together with other whitegoods distributors eliminated these types of overheads eleven years ago.
- 4.4.20 Radiola has also noted the announcement by F&P at the time this investigation was initiated that it would be making up to 200 non-

manufacturing staff redundant. Radiola suggests that this is "a staggeringly high level of surplus" to have been carried in sales and administration areas.

4.4.21 Radiola summarises its submission regarding F&P productivity by stating that together with high R&D expenditure and (by world standards) low production volumes it considers excessive overheads to be a prime driver of F&P's pricing and by inference therefore of the material injury claimed by F&P to have been caused by dumped imports.

4.4.22 At this stage of the investigation the investigating team has no evidence to suggest that there has been any change in F&P's productivity over the period from 1998. Any impact from low productivity is therefore unlikely to have contributed to the injury evident in April – December 2000.

Imports by the Industry

4.4.23 F&P imports automatic washing machines from [REDACTED] and [REDACTED] (front loading automatic washing machines) and has imported sample models from [REDACTED] and the [REDACTED]. The Ministry notes that the washing machines F&P imports from [REDACTED] and [REDACTED] are not subject goods (not being from Korea) and consequently do not fall within the scope of section 8(2)(f) of the Act.

4.4.24 The volume of washing machines imported as samples from Korea has not been large and have to the extent possible been excluded from the analysis when considering volume effects and economic impact in this report.

Other Factors

Forward Exchange Contracts

4.4.25 F&P has forward cover on its foreign exchange earnings from its export operation. Several interested parties have pointed to publicly available reports on F&P's results which highlight losses on exports by F&P through forward cover at rates which were higher than the actual value of the NZ dollar at the time the export earnings were repatriated. Various analyst's reports on F&P's first half 2001 results note that lower than expected earnings were partly attributable to the effects of forward cover, estimated to have reduced earnings by \$4.8 million. The same reports note that export sales are covered for 2-3 years at US\$0.50 and there is only limited cover on import costs. Interested parties have therefore submitted that management failure to properly manage forward foreign exchange cover has been a significant cause of injury to F&P.

4.4.26 F&P accounts for its export earnings by converting those earnings at the hedged rate applying at the time those earnings are repatriated. Forward exchange impacts are therefore reflected in a reduction of revenue from export sales. There is consequently no impact from reduced export earnings through the effects of forward cover on the financial data used in the injury analysis which relates solely to product produced in New Zealand and sold on the New Zealand market.

4.4.27 The investigating team notes that Radiola advised, in connection with information related to price undercutting, that it had forward exchange contracts that gave it a more favourable exchange rate. The investigating

team notes that [REDACTED]
[REDACTED] There has not been sufficient time to obtain information from importers on the extent to which forward exchange contracts may have enabled importers to hold their prices against those of F&P, and therefore to consider if this has been a cause of injury to F&P not related to dumping. This matter will be considered during the remainder of the investigation.

Exclusive Dealer Arrangements

Submissions by F&P

4.4.28 In its application F&P stated that it operates Exclusive Dealer Arrangements (EDA) with 259 of the 625 retail outlets known to F&P in New Zealand. In its application for the investigation F&P noted that in 1990 it appealed against a Commerce Commission decision that ruled against the EDA and “was successful in demonstrating that the EDA did have positive competitive effects”. F&P cited the following from the High Court judgement:

F&P is nevertheless significantly constrained by its competitors. It has lost significant share of the market as a result of tariff and import barriers being removed; it is facing fierce competition in the marketplace because normal barriers to entry are low and there are now no longer any artificial barriers to entry, at least for Australian imports.

In the absence of unofficial barriers to entry, EDC (exclusive dealing clause) can have positive pro-competitive effects on the market.

4.4.29 In its application F&P noted that in [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4.30 During the verification visit to F&P the investigating team discussed the operation of the EDA with F&P. That discussion is summarised below.

4.4.31 F&P said that there had been no significant changes to its EDA over the period under review, i.e. since 1 April 1997. F&P noted that EDA's were how white goods were historically distributed in New Zealand, that it has [REDACTED]
[REDACTED]
[REDACTED]

4.4.32 F&P said that if products are marketed outside of an EDA you are at the [REDACTED] By way of example, F&P said that in Australia, where EDA's are illegal, [REDACTED]
[REDACTED] F&P said that with an EDA you have well trained retailers who know the product and who have good presentation and good back up. F&P said that retailers have to meet certain criteria to qualify for an EDA and this is specified in a standard contract (a copy of this contract was provided by F&P). F&P advised that it does [REDACTED]
[REDACTED]
[REDACTED]

4.4.33 F&P said that if it was injuring itself through the use of EDA it would not persist in using it. F&P said that the PRG has tried to break down its EDA, indicating that PRG see it as a competitive advantage to F&P, not a liability. F&P also noted that [REDACTED]

4.4.34 F&P said that CM Research data showed that [REDACTED] percent of New Zealanders have a preference for the F&P brand, but only approximately [REDACTED] percent actually buy the F&P product (this data was sighted by the investigating team). F&P said that research indicates the gap is [REDACTED] not because of the restricted availability of F&P product. F&P said that about 60 percent of all whiteware retail outlets in New Zealand sell brands other than F&P, the remaining 40 percent being F&P EDA dealers, showing that there are ample outlets for other brands.

4.4.35 To show the robustness of its EDA, F&P provided copies of the whiteware marketing division general manager's report for May, June and July 1997 in which comments are made concerning the [REDACTED]

[REDACTED] For example, the report for May 1997 states: '[REDACTED]

”

F&P also provided CM research market share data for the period July 1996 to November 2000 to demonstrate the [REDACTED]

Submissions by Other Parties

4.4.36 A number of interested parties have made submissions on the impact on F&P of its EDA. Those submissions are summarised below.

4.4.37 A joint submission was made on behalf of Samsung Electronics Co. Ltd, LG Electronics Inc., Daewoo Electronics Co. Ltd and Electronic Industries Association of Korea (“the Korean producers”). The Korean producers said that in successfully defending itself in 1990 against allegations of anti-competitive conduct F&P contended that its exclusive dealing network meant it enjoyed the necessary market concentration to remain competitive against imported products. The Korean producers said that, ironically, F&P relied on the constraint provided by importations as one the planks of its defence in this proceeding under the Commerce Act. The Korean producers submit that F&P cannot have it both ways; it has deliberately chosen to sell its product through an exclusive dealer network and, as a result, inevitably is losing sales when competing retailers are unable to stock F&P product and other brands at the same time.

4.4.38 The Korean producers said that the independent retailers have large sales volume potential and F&P has deliberately excluded itself from this potential sales volume by refusing to deal with retailers outside the exclusive dealer network. The Korean producers submit that there is no doubt that the EDA involves additional costs not applicable to imported products. The Korean producers said that there are particular infrastructure costs to meet in monitoring the franchise and distribution costs are likely to be higher when

there are limited economies of scale available. The Korean producers said that these additional costs have nothing to do with the allegedly dumped products.

- 4.4.39 Radiola has submitted that the EDA has enabled F&P to retain market share despite the availability of an increasing number of brands on the New Zealand market over the last 5-6 years. Radiola said there can be no doubt that without EDA other brands, in particular Electrolux would have a much larger share of the market. Radiola now believe, however, that the EDA is beginning to work against F&P and this is also the view of the Pacific Retail Group whose management has publicly expressed this view.
- 4.4.40 Radiola said that its impression is that the major competition for large F&P retailers is other large F&P retailers. Radiola said it often sees retaliatory discounting, including 15 percent off, \$300-\$400 trade-ins and extended free interest terms, by major F&P retailers such as Farmers, Hill & Stewart, Smiths City/Power Stores and Harvey Norman. Radiola said that such major F&P dealers can only grow their market share by taking business off each other, principally because they cannot offer alternative brands to compete with and take market share off the Pacific Retail Group. Radiola has submitted that whilst the EDA has protected F&P's volume market share, price competition between the F&P chains is impacting on their retail prices and dealer profitability and consequently on F&P's ability to improve its own margins.
- 4.4.41 Radiola said that the Pacific Retail Group is growing its business and the total number of its outlets and increasing its market share in whiteware but F&P cannot share in this growth. Radiola said that to protect its market share it has been forced to invest in loss making retailers. Radiola noted that in late 2000 F&P admitted at a meeting of its independent retailers that it was the effective owner of Hill and Stewart. Radiola said Hill and Stewart is a Radiola customer for Samsung brown goods and has made significant losses over the last 5 years.
- 4.4.42 Radiola provided copies of NZ Herald Online reports dated 20 December 2000 in which it is reported that Hill and Stewart has been losing around \$2 million a year. The same reports state that F&P has a floating debenture over the assets of the finance division of retail chain Smiths City and quote F&P as saying that virtually all its dealers have had some sort of assistance but denying virtually owning Hill and Stewart. Radiola has submitted that the extent to which F&P is incurring overhead costs through its involvement in loss making or marginally profitable retailers needs to be assessed by the Ministry as a factor in the financial performance of F&P's whiteware division.
- 4.4.43 Radiola observed that because of the EDA it was forced to enter the market with Samsung whiteware through the Pacific Retail Group and to start with had to set retail prices lower than it wanted in order to win floor space off Electrolux in Pacific Retail Group shops.
- 4.4.44 In a further submission, Radiola submitted that the EDA has adverse effects on overall consumer welfare. Radiola considers there is reason to believe that F&P is providing substantial financial support to many of the dealers within the EDA regime, which is an attempt by F&P to maintain its market share through preventing its EDA dealers from stocking competing brands alongside F&P's own products. Radiola highlighted the findings in 1989 of the Commerce Commission, which found against F&P's EDA. Radiola has

commented that F&P will obviously seek to rebut that finding by reference to the High Court's 1990 decision reversing the Commerce Commission's majority decision. In anticipation of that reliance Radiola has made the following points:

- The High Court's decision has left New Zealand as almost unique in its tolerance of vertical exclusive dealing arrangements involving parties with a substantial market share.
- The rigidity of the EDA regime was not anticipated by the High Court, but subsequent experience has shown that EDA dealers face huge practical (not legal) constraints against departing.
- There have been cogent criticisms of the High Court's analysis of the then prevailing Australian and US case law, and its failure to squarely confront a relevant counterfactual (e.g. Patterson (1996) 17 NZULR 160 at 172 – 184).
- Courts are influenced by the current intellectual climate and the F&P decision was given at the high watermark of local acceptance of "Chicago School" economics.

4.4.45 Radiola has stated that: "In essence the High Court concluded that F&P was entitled to rely on its brand strength, and that the EDA was a valid means of protecting its brand. We suggest that the passage of time has confirmed that this was simply wrong, and that F&P's brand has been protected to a substantial degree by its market share cemented in place by the EDA regime."

4.4.46 LMR said that even though the High Court has upheld F&P's EDA, it wishes to draw attention to the negative implications for the market of the EDA which it considers has distorted the market for many years. LMR has submitted that the EDA has unfairly discriminated against new entrants, has discriminated against consumers and constrained their opportunity to purchase on the basis of free choice and diversity of product, and has acted as a barrier to innovation. LMR has submitted that these negative consequences have produced a significant counter response by retailers, with the formation of multi-brand stores that have marketed very aggressively. LMR has stated: "This aggressive response has, in its own right, now bounced back on Fisher & Paykel and is a major explanation for the pressures they are now encountering."

4.4.47 LMR said that only a small number of multi-branded stores are able to offer a wide range of washing machines. LMR provided a list of its estimate of the number of retail outlets stocking F&P washing machines and those stocking washing machine brands imported from Korea. The list shows ■■■ outlets for F&P washing machines and ■■■ for brands imported from Korea. LMR considers that this estimate more fairly reflects the comparative number of outlets than the numbers provided by F&P.

4.4.48 LMR said that to its knowledge New Zealand is the only country in the world where a substantial portion of the market is controlled under an exclusive dealing arrangement such as that operated by F&P. LMR said that F&P use the EDA to control their dealer network by only letting a set number of outlets in each region.

4.4.49 Eurolife noted that the EDA means access to major retailers such as Farmers, Hill and Stewart, Harvey Norman and Appliance Connection is not available to non-F&P brands. Eurolife said this leaves a small number of retailers available such as Noel Leeming, Bond & Bond, Retravision and Betta Electrical for non-F&P brands.

Ministry's Consideration of the Issues

4.4.50 In considering whether the EDA has been a cause of injury to F&P the investigating team does not believe it is necessary for it to come to a conclusion on the economic efficiency of the EDA. The key question, in the view of the investigating team, is to consider whether the onset of injury can be materially attributed to factors other than dumping. Therefore, even if the EDA is operating to the disadvantage of F&P, if that disadvantage has not materially accelerated in the period when the economic indicators show a significant decline in performance, then it is unlikely that the EDA is the material cause of those declines. The analysis of injury above shows that a significant decline in performance did not commence until the period April to October 2000, although the fluctuating nature of the prior period results somewhat obscures that picture.

4.4.51 The evidence provided by F&P is that there has been no significant change in the operation of its EDA over the period under review. The extensive submissions provided by other parties on the operation of the EDA largely focus on economic efficiency of the EDA and claim that F&P is not able to maximise its sales because the EDA is denying it access to a significant number of retail outlets. None of the submissions by other parties has claimed that there have been changes in the mechanics of the EDA scheme over the period under review.

4.4.52 Radiola has commented that without the EDA other brands would have a larger share of the market. Radiola went on to say, however, that it believes the EDA is beginning to work against F&P. Radiola attributed this to competition between major F&P dealers which has impacted on their profitability and consequently on F&P ability to improve its margins. Radiola has not identified exactly when it considers the EDA began to work against F&P.

4.4.53 The submission by LMR implies that the EDA has only recently begun to work against F&P where it states that a counter response by retailers has now bounced back on F&P. The counter response by retailers referred to by LMR relates to the formation of, and aggressive marketing by, multi-brand stores, and the investigating team notes that such stores have been in place for many years.

4.4.54 The investigating team accepts that the type of change that Radiola and LMR consider have taken place is not by nature something that can be precisely placed in time and is likely to be incremental.

4.4.55 The lack of any change in the EDA over the period under review (i.e. from 1 April 1997) and the likely incremental nature of adverse effects (if any) resulting from the operation of the EDA lead the investigating team to conclude that the sharp deterioration in performance evident in the April to December 2000 period cannot be materially attributed to the EDA.

R & D Expenditure

- 4.4.56 Radiola has submitted that F&P has invested considerable R & D funds in the development of its "Smart Drive" technology. This investment has been publicly acknowledged by F&P as evidenced by a NZ Herald article of June 1999.
- 4.4.57 Radiola goes on to note that F&P "must recover this investment over production volumes which are well below even its Australian rival Email [Electrolux], let alone world players such as Samsung, LG and Electrolux.
- 4.4.58 Information provided to the investigating team by F&P shows that its R&D expenditure, and the way it is accounted for has not changed significantly over the period since 1998. Therefore, even if F&P's R&D expenditure on a per unit basis is high by world standards, it is unlikely to have materially contributed to the injury summarised above.

Other Causes of Injury During the Remainder of the Investigation Period

- 4.4.59 The information available provides no indication that any of the factors considered above will change over the remaining period of the investigation, and therefore any conclusion relating to other causes of injury would also apply to the remainder of the investigation period.

Conclusion on Other Causes of Injury

- 4.4.60 On the basis of the information available, and analysis carried out, at this stage of the investigation, it is concluded that factors other than dumping have not materially contributed to the decline in F&P's performance in April – December 2000.
- 4.4.61 Other possible causes of injury considered above are unlikely to materially impact on F&P's performance over the remaining period of the investigation.

4.5 CONCLUSIONS RELATING TO INJURY

- 4.5.1 The following is a summary of the conclusions reached on injury, on the basis of the information available, and analysis carried out, at this stage of the investigation:
- (a) Imports of dumped washing machines from Korea have increased significantly both absolutely and relative to production and consumption in New Zealand.
 - (b) The majority of the dumped imports are undercutting the prices of equivalent models produced in New Zealand by F&P. The New Zealand industry's prices have been depressed and suppressed in April - December 2000.
 - (c) Consequent upon the volume and price effects found there is evidence of adverse economic effects in the form of reduced sales volume and revenue in YEM 2001, a significant decline in market share since the YEM

1999, and a significant decline in profits in April – December 2000 and in the YEM 2001.

- (d) No provisional conclusion can be drawn in respect of productivity, return on investments, utilisation of production capacity or other adverse effects as listed in section 8(2)(d)(iv) of the Act, and
- (e) Factors other than the dumped imports have not materially contributed to the adverse effects identified in the YEM 2001.

4.5.2 The following is a summary of the conclusions reached on injury during the remaining period of the investigation:

- (a) The absolute volume of imports of dumped goods over the remaining period of investigation is likely to be significantly less than the volume of imports over the same period in the previous year or during the period of investigation already elapsed. Projected import volumes are however likely to be significant relative to both production and consumption in New Zealand.
- (b) It is likely that some of any dumped goods imported during the remaining period of investigation and sold into the New Zealand market will to some extent undercut the prices of New Zealand-produced equivalents. It is likely that such imports will also contribute to a continuation of price suppression and price depression.
- (c) Consequent upon the volume and price effects, there is likely to be an adverse economic impact reflected in a significant decline in profits. There is unlikely to be a further decline in market share. It is unclear whether there will be a reduction in sales volume and revenue.
- (d) No useful conclusions can be drawn regarding the attribution of other aspects of material injury which may arise during the remaining period of investigation.
- (e) Possible causes of injury other than dumping are unlikely to materially impact on F&P's performance over the remaining period of investigation.

5. CONCLUSIONS

- 5.1 On the basis of the information available, it is provisionally concluded that:
- (a) Automatic washing machines from Korea are being dumped; and
 - (b) By reason thereof material injury to the New Zealand industry has been or is being caused.

6. PROVISIONAL MEASURES

The imposition of provisional measures is provided for in section 16(1) of the Act, which is quoted in section 1.1 above.

6.1 NECESSITY FOR PROVISIONAL MEASURES

6.1.1 Section 16(1) of the Act requires that the Minister be satisfied not only that the subject goods are being dumped and are causing or threatening to cause material injury but also that the imposition of provisional measures is necessary to prevent material injury during the investigation period. These same criteria are laid out in Article 7.1 of the Agreement.

6.1.2 As noted in a submission on behalf of Radiola by Chapman Tripp, “The very fact of launching an anti-dumping complaint has an unsettling effect on the market . . .”. The Ministry agrees with this statement and notes that a decision to impose provisional measures and further unsettle the market is therefore not to be taken lightly.

6.1.3 Decisions made under the WTO disputes mechanism make it clear that in order for provisional measures to be correctly imposed a process of investigation must have occurred subsequent to initiation, leading to provisional findings of both dumping and material injury or threat thereof. Similarly, both the Act and the Agreement require that provisional measures only be imposed where they are in fact necessary.

6.1.4 The process of investigation and the provisional conclusions reached has been outlined in the preceding sections. This leaves only the demonstration of a necessity to impose provisional measures to prevent material injury during the remainder of the investigation period.

Injury During the Remaining Investigation Period

6.1.5 Conclusions relating to injury during the remaining period of the investigation is set out in paragraph 4.5.2 above. This part of the report has concluded (in summary) that:

- Dumped imports, although significantly less than in the same period the previous year, will be significant relative to New Zealand production and consumption.
- There is likely to be some degree of price undercutting, price suppression and price depression.
- The volume and price effects are likely to lead to an adverse material economic impact on the New Zealand industry which will be reflected in a significant decline in profits.

6.1.6 The investigating team considers that in the absence of provisional measures, significant imports will continue to undercut, depress and suppress F&P's prices, and profitability will be adversely affected such that material injury will

be caused. Provisional anti-dumping duties are necessary therefore to prevent material injury due to dumping. Whether provisional anti-dumping duties will be effective, depends on the extent, if any, to which retailers pass on anti-dumping duties.

6.2 LEVEL OF PROVISIONAL MEASURES

6.2.1 Section 16(1) requires that the rate or amount of duties to be secured as a provisional measure shall not exceed the difference between the export price of the goods and their normal value, (i.e. the provisionally assessed dumping margin).

6.2.2 The investigating team has reasonable cause to believe that the provisional margins of dumping are as stated in section 3.3 of this report.

6.2.3 Based on the range of sizes of washing machines imported from Korea over the period of investigation and the description of the goods subject to investigation, the investigating team has established the following categories of washing machine in terms of dry linen capacity:

- Less than 4.5 kilograms
- 4.6 – 5.5 kilograms
- 5.6 – 6.5 kilograms
- 6.6 – 7.5 kilograms
- 7.6 to 10 kilograms

6.2.4 It is proposed that provisional measures be imposed on exports of the goods under investigation by producers in the sample based on the provisional weighted average margin of dumping, for washing machines within each of the categories listed above, found for each producer. It is proposed that this duty be applied as an *ad valorem* percentage of the value for duty. It is considered that a separate rate for each of the categories above, rather than a single rate based on the overall weighted average margin of dumping found for each producer, will more fairly reflect the range of dumping margins found.

6.2.5 The weighted average margins of dumping, expressed as a percentage of the weighted average export price, found for each producer in each of the above categories, is as follows:

	Dry Linen Capacity in Kilograms				
	< 4.5 kgs	4.6 – 5.5 kgs	5.6 – 6.5 kgs	6.6 – 7.5 kgs	7.6 – 10 kgs
Samsung					
LG					
Daewoo					

* Indicates that there were no exports in this category over the period of investigation

6.2.6 It is proposed that, where a producer did not export washing machines in a particular category, a rate be set for that producer based on the weighted average dumping margins of the other producers who did export in that category.

6.2.7 It is proposed that the provisional measures to be imposed on imports of the subject goods by any other Korean producers be based on the weighted average margin of dumping calculated across transactions, in each size category, for all 3 Korean exporters actually investigated.

6.2.8 The proposed provisional measures, to be applied as an *ad valorem* percentage of the value for duty, calculated on the basis shown above are as follows:

	Dry Linen Capacity in Kilograms				
	< 4.5 kgs	4.6 – 5.5 kgs	5.6 – 6.5 kgs	6.6 – 7.5 kgs	7.6 – 10 kgs
Samsung	52%	93%	70%	75%	70%
LG	52%	93%	65%	79%	70%
Daewoo	52%	93%	68%	63%	70%
Other Suppliers	52%	93%	68%	75%	70%

6.2.9 The proposed duty rates above have been calculated on the full margin of dumping. Should final measures be imposed the Minister must consider the desirability of ensuring that the amount of anti-dumping duty is not greater than is necessary to prevent material injury. If the any final measures imposed are at an amount less than the provisional measures, importers will be entitled to a refund of the difference if the Minister requires that refunds be given.

7. RECOMMENDATIONS

It is recommended on the basis of the information obtained during the course of the investigation to date into the dumping of washing machines from Korea:

1. That the Minister, pursuant to s.16 of the Dumping and Countervailing Duties Act 1988, agree that in relation to the importation or intended importation of household fully automatic washing machines into New Zealand from Korea:
 - (1) That there is reasonable cause to believe:
 - (a) the goods are being dumped, and
 - (b) by reason thereof, material injury has been or is being caused or is threatened.
 - (2) That the imposition of provisional measures is necessary to prevent material injury during the remaining investigation period.
2. That the Minister give notice as described in paragraph 3 below of the rate of duty to be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996 in respect of those washing machines from Korea that are dumped, and that in accordance with section 17(1)(a) of the Act, such duty shall be payable from the day after the date of the decision of the Minister to give notice of this provisional direction, and
3. That the Minister sign the attached Gazette notice and give notice of the provisional direction to interested parties in accordance with sections 9 and 16 of the Act.

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Investigating Team
Trade Remedies Group