

# DUMPING AND COUNTERVAILING DUTIES ACT 1988

## DUMPING INVESTIGATION




### NON-CONFIDENTIAL FINAL REPORT

## WASHING MACHINES FROM KOREA

1.	PROCEEDINGS	1
	1.1 PROCEEDINGS	1
	1.2 INTERESTED PARTIES	2
	1.3 IMPORTED GOODS	4
	1.4 EXCHANGE RATES	5
	1.5 DISCLOSURE OF INFORMATION	6
	1.6 INVESTIGATION PROCESSES	7
2.	NEW ZEALAND INDUSTRY	15
	2.1 LIKE GOODS	15
	2.2 NEW ZEALAND INDUSTRY	26
	2.3 IMPORTS OF WASHING MACHINES	28
	2.4 NEW ZEALAND MARKET	28
3.	DUMPING INVESTIGATION	31
	3.1 INTRODUCTION	31
	3.2 EXPORT PRICES	31
	3.3 NORMAL VALUES	32
	3.4 COMPARISON OF EXPORT PRICE AND NORMAL VALUE.	35
	3.5 CONCLUSIONS RELATING TO DUMPING	37
4.	INJURY INVESTIGATION	38
	4.1 MATERIAL INJURY CAUSED BY DUMPING	38
	4.2 IMPORT VOLUMES	42
	4.3 PRICE EFFECTS	43
	4.4 ECONOMIC IMPACT	65
	4.5 OTHER CAUSES OF INJURY	75
	4.6 CONCLUSIONS RELATING TO INJURY	89
5.	CONCLUSIONS	91
6.	ANTI-DUMPING DUTIES	93
	6.1 LEVEL OF DUTY	93
	6.2 METHOD OF IMPOSING DUTY	94
	6.3 AMOUNT OF ANTI-DUMPING DUTY	95
7.	RECOMMENDATIONS	107

## 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
ef&c	Essential Facts and Conclusions
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
LM Rankine	L M Rankine Trading Co Limited
Ministry (the)	Ministry of Economic Development
NIP	Non-Injurious Price
NZCS	New Zealand Customs Service
	
OEM	Original Equipment Manufacturer
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 On 3 April 2001 the Minister of Commerce gave a provisional direction under section 16(1) of the Act that payment of duty in respect of the goods should be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996, on the grounds that the Minister had reasonable cause to believe that the subject goods were being dumped and by reason thereof causing material injury to an industry, and was satisfied that action under section 16 was necessary to prevent material injury being caused during the period of investigation.

### **Grounds for Application**

1.1.4 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;
- declines in output and sales;
- decline in return on investments; and
- possible adverse effect on employment.

1.1.5 F&P stated in its application that the material injury resulting from the importation of the allegedly dumped washing machines commenced in the April – July 2000 period.

- 1.1.6 It should be noted that the Ministry approaches investigations on the basis that injury and threat of injury are alternatives, i.e. an industry is either injured or threatened with injury, but both cannot apply at the same time.

## 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 had the opportunity to provide submissions but these were not 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 (LM Rankine)  
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 LM Rankine 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]. LM Rankine sources its Korean produced washing machines from LG.

1.2.9 LM Rankine's major customer is [REDACTED] and it also supplies [REDACTED] and [REDACTED]. [REDACTED]

1.2.10 LM Rankine 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 LM Rankine 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.

1.2.12 LM Rankine also provided a further submission just prior to the issuing of the ef&c that covered a wide range of issues. The issuing of the ef&c was delayed in order to take this submission into account. This submission is also addressed in this report.

*Email Appliances (NZ) Ltd*

1.2.13 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).

1.2.14 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.

1.2.15 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.

1.2.16 Outlets available to [REDACTED] are the same as those serviced by [REDACTED].

1.2.17 Electrolux provided a full submission in response to the importers questionnaire and has provided additional information and clarification as required.

*Radiola Corporation Ltd*

- 1.2.18 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]. Radiola's major customer for whiteware is the PRG.
- 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 [REDACTED], [REDACTED]. The company is however [REDACTED] of washing machines meeting the required specifications.

**Korean Government**

- 1.2.23 The Korean Government provided a submission in response to the ef&c, but this submission was not received by the Ministry until well after the closing date for such submissions. This submission could not therefore be taken into account in this report. However, the submission is largely similar to submissions already made on behalf of the Korean producers, which are addressed in this report.

**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 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.

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 sale<sup>8</sup>, 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.

<sup>8</sup> 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 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.

1.5.4 Section 10A(1) of the Act provides as follows:

Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the Secretary shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

1.5.5 In order to meet this obligation, essential facts and conclusions (ef&c) were provided to interested parties on 10 May 2001, being 149 days after the initiation of the investigation. Comments received from Davenports West, LM Rankine and F&P were taken into account in preparing this Final Report.



## 1.6 INVESTIGATION PROCESSES

### Submission by LM Rankine Ltd

#### *Introduction*

1.6.1 The submission provided by LM Rankine on investigation processes is part of the submission provided at a very late stage in the preparation of the ef&c, referred to in paragraph 1.2.12 above. The submission was received by the Ministry on 1 May.

1.6.2 LM Rankine did not provide a non-confidential version of the submission (by advising that in fact all of the submission was non-confidential) until about midday on 4 May. At the request of Blackburn Croft (acting for F&P) a copy of the submission was provided to it by the Ministry early in the afternoon of 4 May. Blackburn Croft has therefore had very little time to respond to the issues raised by LM Rankine in this submission.

1.6.3 Because the Ministry had agreed to delay the issuing of this report in order to take into account the LM Rankine submission, the Ministry late on 3 May advised other interested parties by facsimile that any submissions to be taken into account in the essential facts and conclusions would need to be received no later than 5pm on 4 May.

#### *Adequacy of Data: Requirements of Natural Justice*

1.6.4 LM Rankine has submitted that the provisional measures report demonstrates a major flaw in the adequacy of the data used in the investigation. LM Rankine consider that unless this flaw is rectified, it could constitute an “unjust and unlawful performance of administrative responsibilities”.

1.6.5 LM Rankine said it stands to be seriously prejudiced by the investigation. LM Rankine said that data which is critical to the investigation has been provided only by F&P, a competitor, who stands to benefit from the investigation.

1.6.6 LM Rankine said it appreciates that the Korean exporters have not provided data. LM Rankine said that while it may be permissible as a matter of international law *vis a vis* foreign interests to proceed in these circumstances in reliance solely on data provided by F&P, it considers that as a matter of New Zealand law, the requirements of natural justice impose on the Crown an obligation *vis a vis* New Zealand companies whose vital interests are at stake, not to rely on information provided by a party with a vested interest.

1.6.7 LM Rankine considers the Crown has a legal obligation to pursue reasonable means to independently verify data either by:

- (a) Sending officials to Korea; or
- (b) Obtaining independent data via New Zealand Government representatives in Korea; or
- (c) Obtaining independent data via consultants in Korea.

1.6.8 LM Rankine said that under section 6 of the Act the Secretary (now the Chief Executive) assumes the administrative responsibility for determining the facts

where there is insufficient information provided by foreign exporters. LM Rankine considers that this provision triggers normal administrative law obligations on the Chief Executive. LM Rankine has submitted that section 6 most certainly does not empower the Chief Executive to limit ascertainment of the facts to information provided by New Zealand producers with vested commercial interests. LM Rankine has submitted that the words “all available information” are not reasonably open to such an interpretation. LM Rankine has submitted that what is “available” must be interpreted to mean what is available from independent sources.

*Access to Information: Requirements of Natural Justice*

- 1.6.9 LM Rankine said that as the provisional measures report demonstrates large volumes of critical data upon which decisions were based were suppressed in the versions of the report available to it. LM Rankine said it is therefore not possible for New Zealand companies whose interests stand to be prejudiced by the investigation to analyse adequately the basis of the decision. LM Rankine noted that it is therefore extremely difficult to provide full submissions at this stage.
- 1.6.10 LM Rankine said that the Act provides for confidentiality of information which would be of “significant competitive” advantage or which would have a “significant adverse effect”. LM Rankine noted, however, that the law is clear that the Chief Executive must determine whether “good cause” has been shown for such confidentiality.
- 1.6.11 LM Rankine considers that, in reaching a decision as to whether good cause has been shown, the Chief Executive must also turn his mind to other relevant principles of law which are relevant in the circumstances. LM Rankine said that the scheme of the Act assumes there will be contestable information presented from all sides. LM Rankine said in circumstances such as the current investigation, when information is only presented by one side with a strong vested interest, it considers that the judgement reached by the Chief Executive must balance also the need to ensure a full and fair factual picture is available to those interests that may be affected before a decision is taken.
- 1.6.12 LM Rankine has submitted that the Chief Executive must consider section 27 of the Bill of Rights Act 1990 in this context. LM Rankine said that natural justice would require, in these circumstances, either that the Chief Executive make available to all parties whose interests were likely to be affected the relevant data so that effective contestable submissions could be made, or that he should take genuine steps to secure independent information on which the decision could be based and which could be made available to affected parties for the purpose of preparing submissions prior to final decisions being made.

*Submission in Response to EF&C*

- 1.6.13 LM Rankine provided a further submission in response to the ef&c. LM Rankine said that the facts on which the ef&c is based are unsound because the process used does not meet natural justice requirements under New Zealand administrative law. LM Rankine said that, moreover, the process used does not meet the requirements of the New Zealand Bill of Rights Act 1990 (“Bill of Rights Act”). LM Rankine said that nor has the Crown taken the

reasonable opportunities suggested as alternatives in order to ensure that the investigation was based on independent facts as opposed to facts collected and submitted by its competitor. LM Rankine submitted that the conclusions, as a result, are fundamentally flawed and must be put aside.

- 1.6.14 LM Rankine said that the Ministry argued [in the ef&c] that section 4 of the Bill of Rights Act states that provisions in other enactments are not affected “by reason only that the provision is inconsistent with any provision of the Bill of Rights”. LM Rankine said it is not arguing that the Bill of Rights Act overrides any express provision of the Act. LM Rankine said it is relying on section 6 of the Bill of Rights Act, which requires that when interpreting any Act a meaning that is consistent with the rights and freedoms in the Bill of Rights Act is to be preferred to any other meaning.
- 1.6.15 LM Rankine said that the Act contains a wide area of discretion as to the process the Crown may employ to ascertain facts. LM Rankine said the Act does not lay down mandatory procedures and it is legally open to the Crown to follow the procedures recommended by it in their previous submission, or other procedures which would assist in meeting the requirements of natural justice.
- 1.6.16 LM Rankine said the Ministry says [in the ef&c] that section 6 of the Act implements the provisions of Article 6.8 and Annex II of the Agreement and implies that somehow this means that the basic rules of administrative law and the requirements of the Bill of Rights Act do not apply. LM Rankine reiterated that the Act is permissive not mandatory and simply requires the Secretary to have regard to all available information. LM Rankine submitted that this provision must, in the words of section 6 of the Bill of Rights Act be given an interpretation which is consistent with section 27 of the Bill of Rights Act and that interpretation must be preferred to any other interpretation.
- 1.6.17 LM Rankine said that contrary to the implication raised in the ef&c, the provisions of the Agreement cannot be invoked as a superior aid to interpretation in this context. LM Rankine said it is important to note that even if Article 6 of the Agreement is used for interpretation, that Article is itself not mandatory. LM Rankine said that the Article is permissive, it uses the word “may” not the word “shall”. LM Rankine said that Annex II of the Agreement reinforces this interpretation where it says “the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry”.
- 1.6.18 LM Rankine said that accordingly, even by virtue of the Agreement itself, it is clear that the words “on the basis of the facts available” cannot be interpreted as being restricted to facts provided by the domestic industry. LM Rankine submitted that what Article 6 means is that while the Ministry may choose in appropriate circumstances to limit its investigation to material provided by F&P, it is not under an obligation to do so and can take a wide approach.
- 1.6.19 LM Rankine said the point of its argument is that this discretion, at least in so far as it affects a New Zealand company, must be exercised in accordance with natural justice and the Bill of Rights Act. LM Rankine said the Ministry is no doubt on strong ground under international law *vis-à-vis* Korea in confining its factual investigation to material provided by F&P. LM Rankine said, however, that it is not a Korean company, it is a New Zealand company and

enjoys rights under the Bill of Rights Act and New Zealand law. LM Rankine said that the Ministry has a discretion as to how it applies section 6 of the Act and in the absence of any express provision to the contrary that discretion must be exercised consistently with the rules of administrative law and the Bill of Rights Act.

- 1.6.20 LM Rankine said, that, as outlined above, section 6 can be interpreted consistently with natural justice and Bill of Rights Act requirements, and indeed the Agreement can also be interpreted consistently with this position. LM Rankine said the problem is that the Ministry has chosen arbitrarily and unreasonably to ignore its legal obligations. LM Rankine submitted that therefore the finalisation of any final determination based on an unfair and unjust process for collection of information is unlawful.

Submission by Fisher & Paykel

- 1.6.21 In responding to the submission by LM Rankine, Blackburn Croft has noted the Ministry advised on 24 April that any further submissions would need to be received by that evening if they were to be included in the essential facts and conclusions. Blackburn Croft has noted it was surprised that the Ministry had extended the deadline when Chen Palmer (representing LM Rankine) had plenty of notice of the Ministry's timetable.
- 1.6.22 Blackburn Croft has referred to a letter to Chen Palmer dated 2 April [in which information relating to credit terms and forward exchange contracts was requested] that advised the Ministry planned to send the essential facts and conclusions to parties no later than 3 May and asked that responses to the letter be received by 18 April in order to be used in the essential facts and conclusions. Blackburn Croft has noted that it has responded to LM Rankine's submission without having the opportunity to fully examine all of the allegations as the F&P executives involved with the investigation were away from the office.
- 1.6.23 Blackburn Croft said that the New Zealand Government is not in the business of protecting the interests of exporters (or importers) when there has been a decision not to supply information despite frequent attempts to obtain the information. Blackburn Croft said that even if the Government took this role, there will be accusations of the New Zealand Government not having the right consultants or not approaching the right people.
- 1.6.24 Blackburn Croft said that the Ministry is aware of the background of the sources for F&P's information, and considers it doubtful if any government agency would be able to better this source. Blackburn Croft said in any event, the Agreement requires the authorities to assess and verify information, not to procure information. Blackburn Croft said the role of authorities is to adjudicate and interpret information provided in an open administrative inquiry, which encourages the participation of interested parties.
- 1.6.25 Blackburn Croft said that "all available information" in section 6 of the Act refers to the establishment of export price and normal value. Blackburn Croft has submitted that available information in the context of the Act is information that has been supplied to the Chief Executive. Blackburn Croft has submitted that to expect the Chief Executive to interpret "available information" as information that exists outside of the information held by

interested parties would be unreasonable and inhibit the operation of an inquiry. Blackburn Croft noted that this provision was clearly explained to exporters. Blackburn Croft said it is not for the Ministry to be put into a position where it must determine the breadth of “all available information”.

- 1.6.26 Blackburn Croft said that LM Rankine should have used its own Korean contacts to obtain information. Blackburn Croft said that if LM Rankine had undertaken its own research in Korea then there would be contestable information. Blackburn Croft said that unfortunately LM Rankine has ignored the Ministry’s often stated timetable, which is surprising given that its advisors are familiar with the processes of government and the Act.
- 1.6.27 Blackburn Croft said that the public file shows the Ministry explained to exporters and importers (and Chen Palmer) the consequences of failing to provide information. Blackburn Croft said these consequences are also contained in the Act. Blackburn Croft said that to raise these issues around day 140 of a 180 day investigation is something that LM Rankine should explain.
- 1.6.28 Blackburn Croft said that LM Rankine’s belief that it has been prejudiced because of not having access to confidential information, is incorrect. Blackburn Croft said LM Rankine knows what the provisional dumping margins are and through the public file is able to follow F&P’s methodology. Blackburn Croft noted that LM Rankine do not appear to have accessed public file documents which would assist its understanding of the findings of the investigation to date.

#### Ministry’s Consideration of the Issues

##### *Available Information*

- 1.6.29 In its Provisional Measures Report, the investigating team relied on the provisions of section 6 of the Act, as referred to in the submissions above, to use information provided by F&P to establish normal values, in the absence of a response from the Korean producers. Section 6 of the Act reflects the provisions of Article 6.8 and Annex II of the Agreement. Article 6.8 of the Agreement states 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.

- 1.6.30 Paragraph 1 of Annex II states in part:

The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

- 1.6.31 Paragraph 7 of Annex II states:

If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so

with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

- 1.6.32 The manufacturers questionnaire sent to the Korean producers, at an early stage in the investigation, stated in part: “It is in your best interests to complete the questionnaire, because in the absence of a response, the New Zealand legislation provides for a decision to be made on the best information available, which is usually that supplied by the applicant”.
- 1.6.33 The investigating team notes that the non-confidential information provided by F&P in its application relating to normal values disclosed the model numbers, the retail prices and final normal values (although not the amount of the intervening adjustments). The same information was disclosed in non-confidential information provided by F&P relating to a later report on normal values in Korea. Information from the application and the later report was used to establish normal values in the Provisional Measures Report. The prices used from both of these sources were not contested by other parties.
- 1.6.34 There were significant adjustments made to Korean retail prices for retailers and wholesalers margins. The investigating team sought information, through researchers in the Ministry’s library, on retailers and wholesalers margins in Korea, either in the whiteware business or margins in the narrowest possible group that included whiteware. The Ministry’s library advised there was no such information publicly available.
- 1.6.35 The provisions of Article 6.8 and Annex II of the Agreement clearly allow for the use of the information available, including that provided in application for an investigation. There is ample international precedent for the use of information provided by an applicant for an investigation. For example, Vermulst and Waer in *E.C. Anti-Dumping Law and Practice*<sup>10</sup> state:
- If all foreign producers/exporters in a country involved in a proceeding refuse to co-operate or provide insufficient information, the Commission will normally base its calculations on the allegations in the complaint . . .”
- 1.6.36 The investigating team is of the view that section 6 of the Act implements in New Zealand law the provisions of Article 6.8 of the Agreement, and therefore section 6 allows the use of information provided by an applicant. The investigating team agrees with Blackburn Croft that it is not the role of investigating authorities to procure information in the manner suggested by LM Rankine, although there is an obligation to check information where practicable against independent sources at their disposal. The investigating team, in the limited time available, was not able to find any international precedent for the proposition that investigating authorities should independently obtain information in the manner suggested by LM Rankine.

<sup>10</sup> Vermulst, Edwin and Waer, Paul (1996) *E.C. Anti-Dumping Law and Practice*, Sweet & Maxwell Ltd, London, UK, p.40 – 41.

- 1.6.37 The investigating team has referred to the provisions of section 27 of the Bill of Rights Act 1990 which relates to the right to natural justice. The investigating team notes that section 4 of the Bill of Rights Act states that provisions in other enactments are not affected “. . . by reason only that the provision is inconsistent with any provision of this Bill of Rights”. The investigating team does not believe that the Bill of Rights Act imposes an overriding requirement such that the Ministry is required to independently obtain information as suggested by LM Rankine.
- 1.6.38 The investigating team also notes that natural justice concerns are dealt with under section 10(6) of the Act, which states as follows:
- The Secretary, after initiating an investigation pursuant to subsection (1) of this section, shall ensure that all interested parties to the investigation are given reasonable opportunity-
- (a) To present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally:
- (b) Unless the information may be withheld under the Official Information Act 1982, to have access to all non-confidential information relevant to the presentation of their case and that is used by the Secretary in the investigation, and to prepare representations on the basis of that information:
- (c) On request being made, to meet those parties with adverse interests in order to present opposing views.
- 1.6.39 The investigating team considers that the provisions of section 10(6) of Act were followed in this investigation and LM Rankine was given every reasonable opportunity to provide information to the Ministry. The investigating team is of the view that the principle applied to anti-dumping investigations is that interested parties should provide the information, and the Ministry assesses and considers the available information in the light of the submissions and other information received from other interested parties. The investigating team believes that natural justice is delivered through these processes without the Ministry being required to assume an additional inquisitorial role.
- 1.6.40 The investigating team therefore considers that the processes under the Act deliver the principles of natural justice referred to in section 27 of the Bill of Rights Act. The ability to ensure the Ministry has the best information available to represent the respective positions of exporters and importers is in their own hands. If they choose not to take advantage of the opportunities they have under the Act to put forward their own cases, then importers cannot rely on alleged breaches of natural justice to invalidate the process followed.
- 1.6.41 The investigating team considers that LM Rankine’s proposals to send officials to Korea, or to obtain independent data through New Zealand Government representation, or to use consultants in Korea to obtain independent data, were not available to it in this case. The process for verifying information is prescribed in Article 6.7 and Annex I of the Agreement. The purpose of a verification visit is to verify information provided or to obtain further details from the exporters. A verification visit requires the co-operation of the exporters. The Agreement provides incentives for exporters to provide information, but if they refuse to co-operate the Ministry cannot make a verification visit. In this case the Korean exporters elected not to provide any information for the Ministry to verify.

- 1.6.42 The investigating team therefore considers that it is not possible under the Agreement to extend the meaning of “available information” in section 6(1) of the Act as submitted by LM Rankine because the submission goes beyond the scope of the verification mechanisms prescribed in the Agreement.

*Confidential Information*

- 1.6.43 In relation to LM Rankine’s submission relating to confidential information, the investigating team notes that the Act contains a scheme for treating certain information as confidential and for the release of non-confidential information to other parties. The investigating team believes that the Ministry has followed the scheme provided for in the Act in a reasonable manner.
- 1.6.44 Related to this subject, the investigating team notes that LM Rankine itself has still not provided a satisfactory non-confidential summary (or reasons why the information is not susceptible to such a summary) for all of the submissions made by it.
- 1.6.45 In response to the ef&c, LM Rankine said it disputes the statement in the paragraph above concerning the provision of non-confidential summaries. LM Rankine said this statement is mistaken in fact and appears to proceed also from a mistaken understanding of the law. LM Rankine said section 10(8) of the Act authorises the Ministry to “request” non-confidential summaries. LM Rankine said in all relevant cases it has responded to the Ministry’s requests for non-confidential summaries. LM Rankine said the Ministry has indicated orally that in respect of a small amount of information, it has a different view of what is confidential. LM Rankine said the Ministry, however, has failed to provide reasons for its view and has not set out its position in writing and it has therefore not had a reasonable opportunity to consider and respond to the Ministry’s position.
- 1.6.46 The investigating team notes that at the time this final report was written, a satisfactory non-confidential summary had still not been supplied for part of LM Rankine’s original questionnaire response. The reason why the Ministry has a different view of what is confidential has been orally explained to LM Rankine on numerous occasions. The investigating team does not believe it has an obligation to explain this in writing and considers that it has acted reasonably in explaining its view verbally. The investigating team does not consider that LM Rankine has shown “good cause” in terms of section 10(7) of the Act why certain information should be treated as confidential. The relevant information provided by LM Rankine has not, however, been disregarded by the investigating team.
- 1.6.47 The investigating team also notes that the Act specifically prohibits the disclosure by the Chief Executive of confidential information without the express permission of any party that would be adversely affected by its release.
- 1.6.48 The investigating team concludes that the use of information provided by the applicant is not unlawful. The investigating team also concludes that it cannot make available to interested parties confidential information used in its reports.



## 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.*

2.1.3 At the time the ef&c was provided to interested parties, the consideration of like goods was the subject of a separate report that was also provided to all interested parties. Submissions in relation to like goods in response to the ef&c have been received from Davenports and LM Rankine. In order to place those submissions in the context of the separate report, that report has now been incorporated in this final report.

2.1.4 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 IWL10 8kg top loader with stainless steel bowl, delay start time and fabric sensing
  - 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.
- 2.1.5 F&P imports its 6.5kg washing machine from its Cleveland plant in Australia where it has been manufactured since February 1999.
- 2.1.6 Over the period of investigation, washing machines of the following sizes falling within the definition of the subject goods have been imported into New Zealand.
- Top Loaders (in kg): 4.5, 5.5, 6.5, 7.0 and 8.5  
Front Loaders: (in kg): 5.0 and 7.0
- 2.1.7 Davenports West Lawyers (Davenports), legal representatives of the Korean suppliers, submitted that it is unreasonable and unjustified to include front loading washing machines as part of the investigation as F&P does not manufacture these in New Zealand. Electrolux Home Products Pty Ltd (Electrolux) also drew attention to the fact that front loading washers are not produced in New Zealand.
- 2.1.8 Radiola Corporation Ltd (Radiola), an importer of washing machines from Korea, has identified one specific model (6.5kg top loading machine) for which it contends there is no New Zealand manufactured equivalent and therefore against which no claim for material injury can be made by F&P.
- 2.1.9 Chen Palmer, legal representatives of LM Rankine have highlighted physical and technological differences that exists between its imported LG washers and those manufactured by F&P. LM Rankine considers that these differences are significant in the marketplace and raises the issue of the appropriate recognition of what are like goods.
- 2.1.10 This part of the report will address whether the 5.5 and 7.5kg top loading washing machines manufactured by F&P are like goods to imported front and top loading washing machines falling within the description of the subject goods.
- 2.1.11 The basis used to consider this issue is set out in a legal opinion by the Ministry’s legal section dated 10 June 1992, which was given during the course of an investigation into Primary Cell Batteries from Korea. After reviewing the multilateral and national approaches to the like goods issue the opinion states at pages 17 and 18:

...I believe that the following list covers relevant matters which may be applicable in given circumstances where the like goods are being considered:

- a) Physical characteristics, which covers appearance, size and dimensions, components, production methods and technology;
- b) Function/usage. This covers consumer perceptions/expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant;
- c) Pricing structures;
- d) Marketing issues such as distribution channels and customers, advertising; and
- e) Other. This can include tariff classification if applicable, and any other matters which would be applicable in the circumstances...

### **Physical Characteristics**

2.1.12 F&P in their application noted that:

- There are some styling differences between the Korean and NZ top loaders but they both present the same basic appearance and are offered in a range of capacities.
- The F&P top loading machines have an obvious difference from the front loading machines with the access to the machine from the top and not the front of the machine.
- There is a slight difference in the external dimensions of the front and top loading machines, however, the production methods for the two types are similar as the machines use similar components (motors, tubs (a drum on its side) and cabinets).
- Most top loading machines contain some type of central agitator or in its absence a pump [or a punch] to force water up from the bottom of the bowl. F&P notes 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 comments 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”.

2.1.13 LM Rankine has differentiated between the “Turbo Drum Wash” technology found in LG top loading machines with agitator technology found in F&P machines, and notes the “fuzzy logic” systems said to have been introduced by LG in 1990 and only now added to the F&P range. LM Rankine, in a subsequent submission, stated that the LG wash drums in its top loading machine rotates during the wash operation but the F&P drums stay fixed. LM Rankine reiterated these submissions in response to the ef&c.

2.1.14 F&P are of the view that all washing machines have a method of producing turbulence, front loaders using fins on the side of the bowl rather than an agitator.

2.1.15 Davenports has stated that the front loaders have the drums sustained in a horizontal position and it rotates very quickly while maintaining that position. According to Davenports, this is a very complex, sophisticated and advanced technology, which is an intrinsic characteristic of front loaders.

2.1.16 F&P do not agree with Davenports view and have made submissions to the contrary. F&P stated that “ The technology in front loading is not “advanced”.

To the best of F&P's knowledge there is only one front loading model manufactured by LG which has a direct drive motor."

- 2.1.17 Davenports has submitted that the front loading machines include heaters for warm washes and do not have to draw water from the home heating system like the top loaders do. Davenports stated that the front loaders also have the ability to measure the exact temperature of the water in the drum using a sensor in order to adjust the water to the most suitable temperature for the clothes. Davenports noted that front loaders also have a sensor that measures the proper and required water level for a particular wash.
- 2.1.18 F&P said in a subsequent submission that "all F&P models can control the temperature of the water in the machine" and "F&P's top loading machines can also measure the amount of water required for a particular wash." The catalogues provided by F&P in its application show that F&P's "Excellence" "Smart Drive" and "Pride" range have the ability to measure water levels and temperature for a particular wash. F&P stated that the top and front loaders have similar technology in balancing the clothes when a machine is in the spinning cycle.
- 2.1.19 F&P, in a subsequent submission, stated that the basic manufacture and function of front load and top load autowashers is very similar. F&P also stated that it could adapt its top loading production process to produce front loading machines due to the similarity in the manufacturing process for the two machines. F&P said that this manufacturing similarity reflects the availability of front and top loading machines from a number of manufacturers and cited Samsung as an example of this.
- 2.1.20 F&P also submitted that the major components in the two machines are basically the same. In F&P's view, the componentry in front and top loading machines are often substitutable. F&P cited the [REDACTED] as an example of this. These [REDACTED] are used by F&P for its top loading machines and are also supplied to front loading manufacturers. F&P did not say what these [REDACTED] are used for in a washing machine. F&P also said that the solenoid valves which controls the water flow are used in both the front and top loading washing machines.
- 2.1.21 F&P said that the difference is in the configuration of the components with the front loading systems operating horizontally and the top load system operating vertically. F&P further explained that the horizontal system uses the action of gravity and a rotating drum to provide the mechanical action whereas the top load systems use an agitator or impeller in conjunction with a drum to create the mechanical action. F&P further noted that the manufacture of the major components require similar tooling and production machinery and the assembly of the components is done in the same way again using the same sort of production and assembly equipment.
- 2.1.22 F&P, in a subsequent submission, stated that even though front and top loading machines are referred to as horizontal axis and vertical axis machines respectively, not all horizontal axis machines are front loading. F&P provided the investigating team with colour photo's of the "Thompson machine", which is a top loading machine with horizontal axis.
- 2.1.23 F&P submitted that the control panels of the top and front loaders are almost exactly the same, using either knobs or buttons to facilitate user input. F&P

said, however, there are differences in the software requirement or mechanical timers to account for the different wash times in a top and front loading machine.

- 2.1.24 During the verification visit F&P stated that there are no real differences (apart from accessibility) between front and top loaders as they both have consoles, steel casing, inner and outer bowl and motors to drive them. LM Rankine, in a subsequent submission, stated that LG uses a motor driven system with a clutch and gear operation in its top loading machines whereas F&P uses a direct drive system. LM Rankine reiterated this submission in its response to the ef&c. F&P have submitted that "A top loading and front loading machine can be driven by exactly the same motor." F&P cited examples of LG and Toshiba manufacturers using the same motor for its top and front loading machines. F&P is of the view that the motors can be mounted in almost the same position to drive both top and front loading machines. F&P provided the investigating team with LG brochures that explains the LG direct drive system, which F&P claim are similar to its direct drive system.
- 2.1.25 F&P stated that the inner bowl of the top and front loaders have been made using materials like stainless steel, plastic and porcelain enamel on steel. F&P also stated that both the washing machines are constructed with an outer bowl, which collects water during a spin cycle. In F&P's opinion, the inner bowl for the front and top loaders can be manufactured in a number of different ways and they both can be suspended and supported by rods and dampers.
- 2.1.26 The catalogues provided by the importers and F&P had information relating to the dimensions of the washing machines. The following table shows the dimensions (height, width and depth) of the Samsung and LG washing machines. The investigating team has no information on dimensions for the Daewoo washing machines.

Table 2.1: Dimensions (Millimeters)

	<b>F&amp;P</b>			<b>Samsung</b>			<b>LG</b>	
<b>Top loaders</b>	5.5kg	7.5kg	8.0kg	5.5kg	6.5kg	4.5kg	6.5kg	8.5kg
Height	1010	1030	1030	1010	1010	850	940	1020
Width	560	650	650	710	710	540	590	625
Depth	560	650	650	700	700	540	620	625
<b>Front loaders</b>						5kg		7kg
Height						844		850
Width						600		600
Depth						550		600

- 2.1.27 The table shows that the height, width and depth of the F&P and imported top loading washing machines are very similar. The back height of the washing machine is used as the investigating team had information on this from F&P, LG and Samsung. There are no significant differences in dimensions between the F&P top loaders and imported front loaders when washers with similar capacities are compared. The Ministry is of the opinion that these differences in dimensions do not affect the basic physical appearance of a washing machine in any significant way.

- 2.1.28 As noted above, the capacity (in kilograms) of washing machines exported to New Zealand from Korea over the period of investigation are:
- Top Loading (in kg) : 4.5, 5.5, 6.5, 7.0 and 8.5  
Front Loading (in kg) : 5.0 and 7.0
- 2.1.29 F&P manufactures 5.5kg, 7.5kg and 8kg washers in New Zealand. The imported 4.5kg and 5.5kg top loading washers are same or similar in size to the F&P manufactured 5.5kg washers. The larger imported washing machines are also the same or similar in size to F&P's 7.5kg and 8kg washing machines. Imported front loading washing machines are similar in size to F&P's 5.5 and 7.5kg top loading washing machines.
- 2.1.30 The Consumer Magazine (August 2000 edition at page 33) reports that their survey shows that most consumers never use their washing machines at full capacity. The report states that the preferred capacity for most consumers is 80 percent as all machines wash really well at that capacity level.
- 2.1.31 The Ministry considers that there are no significant differences in capacities between F&P washing machines and the goods under investigation.
- 2.1.32 LM Rankine has made submissions on differences in features e.g. the LG Turbo Drum Top load washer has controls in the front, plastic dual lid and uses polymer coated light grade steel, whereas the F&P top loader has controls at the back, steel single lid and heavier grade steel. LM Rankine reiterated these submissions in its response to the ef&c. The Ministry does not consider that these differences affect the basic physical characteristics of the F&P and the imported washing machines.
- 2.1.33 In response to the ef&c LM Rankine said that, as it has previously submitted, the following LG machines should be excluded from the investigation:
- WFT 452, 4.5kg top loader. LM Rankine said that F&P does not manufacture a small model.
  - WFT 652, 6.5kg top loader. LM Rankine said that F&P does not manufacture this size in New Zealand.
  - WFT 852, 8.5kg top loader. LM Rankine said this model has a similar retail price to that of the F&P model GW705.
  - WD 1021, 7kg front loader and WD 8050, 7kg front loader. LM Rankine said F&P does not manufacture any thing of this kind.
- 2.1.34 The investigating team notes that the difference in size between some of the imported machines (4.5 and 6.5kg models) and the F&P machines was addressed in the ef&c (now at paragraph 2.1.29 above) and it was considered that the F&P machines were similar in size to the imported machines. The investigating team remains of the view that the difference in the size of the imported and F&P machines is not sufficiently significant as to make them not like goods.
- 2.1.35 The investigating team is unable to discern the relevance of LM Rankine's comment that the LG WFT 852 model has a similar price to the F&P GW705.

The whole question of whether the imported front loaders are a like good to the F&P top loaders is addressed variously throughout this report.

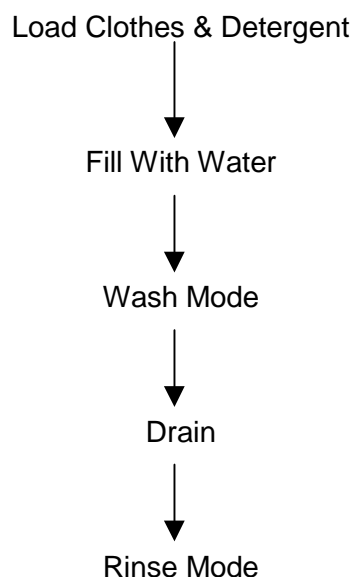
2.1.36 In response to the ef&c LM Rankine also pointed to the number of differences, identified in the conclusion of the report, between top loaders and front loaders. LM Rankine said that most of these differences relate to physical characteristics, which it believes is the most pertinent category for comparing the likeness of these machines. LM Rankine said it is difficult to believe that the Ministry considers that the imported machines and the F&P machines closely resemble each other and yet the Ministry considers they also have so many differences.

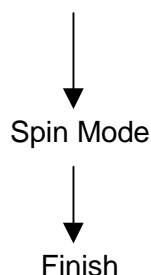
2.1.37 The investigating team notes that in nearly all like goods analyses the goods are not identical and there will therefore be differences which can be identified. In determining whether the goods are “like” it is therefore necessary to weigh up the evidence under all of the relevant headings and make a decision accordingly. The investigating team consequently does not consider that identifying differences means that the goods are not like. It is the weight to be given to those differences versus the weight to be given to the similarities that must be considered.

**Function and Use**

2.1.38 LM Rankine has stated that the LG top loader has a completely different wash method compared to a F&P top loader. LM Rankine reiterated this submission in its response to the ef&c. LM Rankine has also stated that a conventional washing machine uses the friction between the clothes and the agitator to wash which damage clothes, however, the turbo drum uses powerful water whirls created by centrifugal force to enhance the washing performance and reduce damage to clothing.

2.1.39 F&P advised that the two key functions a consumer looks for in a washing machine are the level of gentleness and the ability to remove soil. F&P stated that the function of both types of washing machines is to move clothes around to facilitate the washing process. F&P, in a subsequent submission, stated that the washing process in both machines follow the same sequence and it provided the following flow diagram that depicts the washing process.





- 2.1.40 F&P provided the Ministry with articles from the Consumer Magazine (August 2000 edition at page 32), which shows that the level of gentleness and ability to remove soil are two of the five features that are tested for in rating washing machines. Other features tested are spin efficiency, energy and water consumption.
- 2.1.41 The Consumers Institute has carried out various tests with front and top loading washing machines. In the August 2000 edition of the Consumer magazine (at page 32), the LG front loaders are compared with F&P top loaders. The test suggests that F&P top loaders are slightly better at removing soil than the LG front loaders but the LG front loaders are slightly gentler on the clothes than the F&P top loaders. The time taken by the LG front loaders are between 111 and 116 minutes whereas the F&P top loaders take between 39-46 minutes. The rating for water and energy consumption for a front loader is a lot higher than the F&P top loaders. These tests were based on a normal or regular cycle with warm wash and cold rinses. These tests suggest that a consumer would buy either of the washing machines depending on the level of importance they place on these features and their specific needs.
- 2.1.42 LM Rankine has submitted that a consumer has an advantage of maximising space usage by installing a front loader under a bench and placing a dryer on top of the machine. This cannot be attained with a top loading washing machine due to its access from the top. Some of the added features that LM Rankine claim that their washing machines have over F&P machines are door lock, longer delay start functions and lint filter.
- 2.1.43 At the time of the verification visit, F&P advised the investigating team that it was [REDACTED]. The Provisional Measures report noted that F&P considers [REDACTED] “ [REDACTED] ”.
- 2.1.44 During the verification visit, F&P submitted that if dumping duty was placed on the top loaders, the consumers will easily switch to the front loading washing machines, emphasising the high level of substitutability between the two types of machines.
- 2.1.45 The Initiation Report also recorded F&P’s reference to the growth in imports of front loading washing machines as being indicative of the substitutability of the machines.
- 2.1.46 Davenports have claimed that F&P imports front loaders from Italy to sell to the end users in New Zealand. Davenports said this indicates that if F&P’s claim about substitutability were correct, F&P would not need to import Italian



made front loaders as their top loaders would be an appropriate substitute. LM Rankine has also claimed that F&P has continuously imported other brands of front loaders in the past to supply their EDA members. LM Rankine reiterated this point in its response to the ef&c and said that such imports add further support to the separateness of front and top loading machines. LM Rankine also said that the fact there is a separate demand within the market confirms there is a separate market niche for front loaders. LM Rankine said this is so even if the consumer perceives there are no significant differences between top and front loading machines concerning the level of each machine's gentleness on clothes and the extent of soil removal.

2.1.47 Electrolux has also claimed, in a subsequent submission, that F&P does not produce front load washers in New Zealand or Australia and that all front loaders are imported into New Zealand. F&P has stated that there is a small demand by consumers for front loading machines in preference to top loading machines and that it imported these front-loaders to fulfil those consumer demands.

2.1.48 The investigating team considers that in terms of consumer expectations and perceptions there are no significant differences between top and front loading machines in respect of the key tests of level of gentleness and soil removal. The investigating team does not consider the fact there is a separate demand for front loading machines, indicates of itself that front loaders are not a like good to top loaders.

2.1.49 Both top and front loading machines clearly have the same end use, namely the washing of clothes for households and are obviously substitutable. It is also clear that machines of different sizes perform the same function.

### ***Pricing Structures***

2.1.50 F&P, in its application stated that there is a perception that front loading machines are more expensive than a top loading machine and that this perception may be due to European front loaders being distributed through specialist outlets for many years prior to The Warehouse securing distribution of the AEG brand.

2.1.51 Davenports has submitted that "the technology and design of the machines produced by Samsung and LG are sufficiently different from the technology and design employed by F&P's top-loading models that any price comparison is both artificial and unsound."

2.1.52 The price undercutting analysis in the provisional Measures report shows that there is significant price undercutting by some of the subject goods. The investigating team considers that the difference in prices is not such, however, as to indicate that the washing machines produced by F&P are not like goods.

### ***Marketing Issues***

2.1.53 Electrolux, in a subsequent submission stated that although the front and top loaders produce the same results during the washing process, the motivation for the purchase by a consumer puts the units into two distinct market segments. F&P stated in its application that the top loading and front loading machines are sold through the same outlets and are often placed together on

the retail floor. During the verification visit, F&P showed the verification team catalogues produced by Noel Leeming where the top and front loading machines were promoted side by side. The report from the Consumers Institute tests, submitted by F&P in which both front loading and top loading machines feature reinforces F&P's views that the two are clearly seen as being in the same market.

- 2.1.54 The Initiation and Provisional Measures Report noted F&P's own imports of front loading machines from Italy are distributed through the same exclusive retail outlets as its top loading models. These reports also noted 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". The investigating team sighted an example of these promotional materials during its verification visit to F&P.
- 2.1.55 LM Rankine has provided the investigating team with copies of their retailer's promotional materials. The front loaders and top loaders are featured side by side on the same page. This method of presentation allows for comparison and presents an element of choice to an end-user. This further reinforces the point that the two products are highly substitutable.
- 2.1.56 There is no information from the importers in relation to front loaders that indicates that they are marketed differently to top loaders or flow through different channels of distribution.

### ***Other Relevant Matters***

#### *Standards*

- 2.1.57 The Initiation Report noted F&P's claims regarding 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.
- 2.1.58 All of the importers have advised that the capacity of washing machines they import is measured in accordance with the same Australian and New Zealand Standards, AS/NZ2040.
- 2.1.59 The standard used to measure capacity does not therefore provide any useful guidance in determining like goods issues.

#### *Tariff Classification*

- 2.1.60 Davenports submitted that:
- "In the New Zealand Tariff classification, top-loading and front-loading washing machines are classified into two different tariff headings. (8450.11.01.02H-Top-loading machines, 8450.11.01.05B – front loading machines). . . The common sense of the situation clearly indicates that washing machines should be classified into two different product categories."
- 2.1.61 The "tariff heading" is defined in the New Zealand Customs Service Working Tariff Document as:
- " . . . a heading of the Standard Tariff (printed in bold type) being a heading of the Harmonised System established by the International Convention on the

Harmonised Commodity Description and Coding System signed in Brussels on the 14<sup>th</sup> day of June 1983 and identified by 4 digits; and includes any modification or amendment thereof that may hereafter be made.”

2.1.62 Davenports has erred in stating that the front and top loaders have a different tariff heading. The front and top loading machines appear under the same tariff heading in the New Zealand Customs Service Working Tariff Document. 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.

2.1.63 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.

2.1.64 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 consider that the front loaders are not like goods to top loaders.

### **Conclusion**

2.1.65 The washing machines manufactured by F&P in New Zealand are not identical to the imported Korean washing machines.

2.1.66 The front and top loaders have the following similar characteristics:

- they both have the ability to produce water turbulence
- they have built-in water and temperature control mechanisms
- basic manufacturing methods are similar
- the major components are basically the same ie the consoles, steel casing, inner and outer bowl and motors to drive them
- in some cases, the inner drum of a top loader is sustained horizontally, much the same as front loaders
- the manufacturing processes are very similar
- manufacture of the major components require similar tooling and production machinery
- the assembly of the major components are carried out in the same way, using the same sort of production and assembly equipment
- most of the components are substitutable between the two machines
- the motors to drive them can be the same
- the inner bowls are constructed using the same materials
- they both have outer bowls to collect water during a spin cycle.
- the height, width and depth of the two are similar
- similar technology is used in balancing the clothes during a spin cycle
- the washing process in the two machines follow the same sequence
- the capacities are similar

- in terms of consumer expectation and perception, there are no significant differences between the two in respect of gentleness and ability to remove soil.
- the end use of the two machines are the same i.e. wash clothes for households
- the differences in prices does not indicate that washing machines produced by F&P are not like goods
- they are marketed and distributed in the same way
- the imported front loaders are measured in accordance with the same Australia and New Zealand standards that F&P use
- the two machines appear under the same New Zealand Tariff classifications

2.1.67 The front and top loaders have the following differences in characteristics:

- the method of access i.e. the top loaders are accessed from the top and the front loaders are accessed from the front
- front loaders use fins to produce turbulence. The top loaders use agitators.
- The software requirements are different to account for the different wash times
- the inner drum in a front loader is sustained horizontally, whereas, the top loaders have it placed vertically.
- higher rating for water and energy consumption in front loaders than top loaders.
- a front loader can be installed under a bench
- the top and front loaders have different statistical keys under the New Zealand Tariff classification.

2.1.68 After evaluating the physical characteristics (dimension, method of producing turbulence, capacity, water consumption, temperature control, capacity, componentry requirements and method of manufacture), function and usage (level of gentleness, ability to remove soil, end-use and substitutability), pricing structures and marketing, the investigating team is of the view that the F&P top loaders have characteristics closely resembling the front loading washing machines imported from Korea.

2.1.69 F&P's top loading washing machines, after weighing up similarities and differences in terms of physical characteristics, function and usage, pricing structures, marketing and distribution and tariff classification, have characteristics closely resembling top loading washing machines imported from Korea.

## 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 section 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 also questioned whether or not the washing machines produced by F&P are like goods to those being imported. As noted above under like goods, the investigating team has concluded that F&P produces goods that are like goods to the subject goods.
- 2.2.4 Davenports has noted that in the Initiation Report, the Ministry refers to F&P's importations of washing machines from Australia, Italy, Japan, Korea and the USA, but then excluded such imports from the scope of section 8(2)(f) of the Act on the basis that they are either:
- not subject goods (in the case of Australia and Italy as they did not come from Korea); or
  - not material, as in the case of imported sample models, very few machines were involved.
- 2.2.5 Davenports has submitted that "To adopt such an approach in this context is unfairly discriminatory, and contrary to the tenor and effect of article 4.1 of the WTO Anti-Dumping Agreement". Davenports has further submitted that "The right approach is to exclude from the ambit of the New Zealand industry producers who are also importers, where this is appropriate having regard to the value, quantity and frequency of the producer's importations, no matter from where those importations originate".
- 2.2.6 Davenports has provided figures showing the import volumes of washing machines from Korea, Australia and other countries and has noted that the figures show imports from Australia are greater than those from Korea. Davenports has submitted that the subject goods that F&P imports from Korea, Australia and Italy involve sufficient value, quantity and frequency as to disregard F&P as the industry. Davenports has therefore submitted that the investigation should be terminated pursuant to section 11(1) of the Act.

### Consideration of the Issues by the Ministry

- 2.2.7 Article 4.1 of the Agreement provides in its definition of "domestic industry", that producers who "are themselves importers of the allegedly dumped product" may be excluded from the definition of the domestic industry. Article 4.1 is quite clear in that it specifies that this provision applies only to the importation of the allegedly dumped goods, in this particular case washing machines from Korea. Importation of washing machines from any countries other than Korea does not therefore "trigger" consideration of Article 4.1.
- 2.2.8 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.

- 2.2.9 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.
- 2.2.10 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.
- 2.2.11 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 2.2: Import Volumes of Subject Goods  
(March Years)

	1998	1999	2000	Apr-Dec 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

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 2.3: New Zealand Market  
(March Years)

	1998	1999	2000	Apr-Dec 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 INVESTIGATION

---

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 Korea.

3.1.2 In using this information the Ministry has borne in mind the commercial context in which the information has been provided.

#### 3.2 EXPORT PRICES

3.2.1 Section 4 of the Act provides, *inter alia*, as follows:

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;

#### ***Base Prices***

3.2.2 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.

3.2.3 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 LM Rankine 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 the OANDA currency conversion site on the internet (<http://www.oanda.com/converter/classic>).

### **Adjustments**

#### Ocean Freight

- 3.2.4 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

- 3.2.5 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

- 3.2.6 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**

- 3.2.7 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 Normal values are determined in accordance with section 5 of the Act, which provides, *inter alia*, as follows:

- 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]-

- (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 section 6 of the Act, which provides as follows:

(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 [Chief Executive] 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.

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

#### **Base Prices**

3.3.5 LM Rankine has submitted that in the Provisional Measures Report mistakes were made in the comparison of products imported into New Zealand and products sold in Korea. LM Rankine said that the market in Korea tends towards deluxe models as opposed to the New Zealand market. LM Rankine said that the models sold in the domestic market in Korea are generally those with higher specifications and as a result higher prices, than those sold in New Zealand.

3.3.6 LM Rankine did not provide any further information and the investigating team was therefore unable to make any adjustments for the differences claimed by LM Rankine.

3.3.7 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.

- 3.3.8 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)**

- 3.3.9 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. The investigating team has confirmed through the Korean Ministry of Finance and Economy internet site that a 10 percent VAT applies in Korea and there is no exemption for whiteware. An adjustment was made to deduct the VAT included in the retail price.

#### **Retailer's Margin**

- 3.3.10 In its 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].”

- 3.3.11 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.
- 3.3.12 The investigating team considers that, having regard to all available information, that the retail margin obtained by F&P from its most recent more comprehensive research, is the best information available. An adjustment has been made to deduct a [redacted] percent retailer's margin included in the VAT exclusive selling price.

#### **Wholesaler's Margin**

- 3.3.13 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.

- 3.3.14 The investigating team considers that, having regard to all available information, that the information obtained by F&P on the need for an adjustment for a wholesaler's margin, from its most recent more comprehensive research, is the best information available. An adjustment has been made to deduct a █ percent wholesaler's margin included in the wholesale selling price.

#### Warranty

- 3.3.15 F&P submitted in its application 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.
- 3.3.16 The investigating team considers that, having regard to all available information, that F&P's submission that an adjustment for warranty costs is required, is the best information available. An adjustment of █ percent of the wholesaler's price has been made to take into account the warranty cost.

#### Internal Freight

- 3.3.17 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.
- 3.3.18 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.
- 3.3.19 The investigating team considers, having regard to all available information, that F&P's submission that an adjustment for internal freight costs is required, is the best information available. An adjustment of █ percent on the wholesaler's price has been made to take into account the internal freight costs.

#### ***Normal Value Calculation***

- 3.3.20 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 export prices, as established in section 3.2 of this report, and normal values, as established in section 3.3 has been made. Dumping margins have been calculated on a transaction-to-transaction basis and are expressed as a percentage of 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. 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 [ ] won

*LG Electronics Inc.*

3.4.4 A total of [ ] transactions relating to the subject goods from LG to Electrolux and LM Rankine 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 dumping margins range from 42 to 97 percent.

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

Normal Values [ ] won

Export Prices [ ] won

*Samsung Electronics Co. Ltd*

3.4.6 There were a total of [ ] 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. Dumping 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 [ ] won

Export Prices [ ] 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 concludes that washing machines from Korea are being dumped at weighted average margins ranging from 63 to 80 percent.

## 4. INJURY INVESTIGATION

---

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 MATERIAL INJURY CAUSED BY DUMPING

4.1.1 Section 13 of the Dumping and Countervailing Duties Act 1988 provides:

... the Minister shall make a final determination as to whether or not, in relation to the importation or intended importation of goods into New Zealand,—

- (a) The goods are being dumped or subsidised; 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.

This means that the material injury must be caused by reason of the dumping of goods.

4.1.2 Section 8 of the Dumping and Countervailing Duties Act 1988 sets out the injury factors which must be examined by the Chief Executive. These are:

- the volume of dumped goods;
- the effect of the dumped goods on prices in the New Zealand market for like goods; and
- the consequent impact of the dumped goods on the relevant New Zealand industry.

The Ministry interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. This is consistent with Article 3 of the WTO Anti-Dumping Agreement.

4.1.3 The Act goes on to set out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as



to the matters the Chief Executive may consider. These factors and indices include:

- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
- the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
- the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments;

4.1.4 In addition, the Chief Executive must have regard to factors other than dumping which may be injuring the industry, since in accordance with Article 3 of the WTO Anti-Dumping Agreement, it must be demonstrated that the dumped imports are, through the effects (as set out in paragraphs 4.1.2 and 4.1.3 above) of dumping, causing material injury. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

4.1.5 Section 11(1) of the Act provides for the termination of an investigation where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened by means of the dumping of the goods.

4.1.6 It should be noted that the financial information on which the investigation of injury is based relates only to washing machines produced in New Zealand and sold on the New Zealand market.

### **General Submissions Related to Material Injury**

#### Submission by Davenports West

4.1.7 Davenports made a submission to the Ministry that was received well after the closing date for submissions on the ef&c and consequently could not be

considered in the ef&c. The submission was largely in response to the Provisional Measures Report. Davenports subsequently requested that this submission be treated as a response to the ef&c. The investigating team agreed to treat it as such, as most of the issues raised could equally have been made in response to the ef&c. Davenports subsequently provided a separate submission that largely repeated the earlier submission with some additional material.

- 4.1.8 Because some of these submissions address the investigation of injury in a wide ranging fashion that does not allow it to be easily considered separately under each of the headings used in this report, those parts of the submissions of this nature are considered in this part of the report. Other parts of the submissions that relate more specifically to individual injury factors are considered under the relevant headings below.
- 4.1.9 Davenports quoted Articles 3.2 and 3.4 of the Agreement and has submitted that as provided in these articles and section 8 of the Act, material injury to a domestic industry has to be decided by considering all of these economic factors. Davenports has noted that no one or several of these factors can necessarily give decisive guidance.
- 4.1.10 Davenports said that the Ministry applied section 8 of the Act arbitrarily and concluded [in the Provisional Measures Report] that there was reasonable cause to believe material injury was being caused through only 4 factors.
- 4.1.11 Davenports referred to F&P's 2000 annual report. Davenports has noted that the financial statements publicly available do not distinguish between washing machines and refrigerators and refrigerator-freezers, but said they do identify the revenue contribution from the whiteware business. Davenports said that the annual report shows whiteware revenue was up in the YEM 2000 at \$625,583,000 as compared with \$560,816,000 for the YEM 1999.
- 4.1.12 Davenports also referred to comments by the Chief Executive Officer in the 2000 annual report in which comments are made concerning the increase in whiteware revenue and an improvement in profit margin. Davenports has also pointed to comments by the CEO that whiteware has never been more strongly positioned in terms of product platforms and manufacturing capacity, that profitability improvement had come from efficiency gains and an acknowledgement of the growth in the Australian and New Zealand markets whilst positioning itself for future growth in the USA, UK and Asia.
- 4.1.13 Davenports has submitted that "All of this is quite inconsistent with the tenor of F&P's dumping complaints and the suggestion that it has suffered significant price depression/suppression and reduced profitability as a result". Davenports said that the Ministry's affirmative injury determination, ". . .in the face of no evidence of the most important factors bearing upon material injury, is inexplicable and in clear violation of the WTO Anti-Dumping Agreement and s8 of the Act".
- 4.1.14 Davenports submitted that the Ministry did not, or did not adequately, evaluate all of the economic factors, as required by section 8 of the Act and by the Agreement. Davenports said that the Provisional Measures Report recorded that F&P provided no information on productivity, cash flow, inventory, employment, wages, growth, ability to raise capital and investment.

Davenports said that the Ministry did not give any explanation of its own analysis of these factors [in the Provisional Measures Report].

- 4.1.15 Davenports referred to the WTO panel reports on *European Communities – Anti-dumping Duties on Imports of Cotton –Type Bed Linen from India*, and *Mexico – High Fructose Corn Syrup*. Davenports quoted from parts of the panel report on each case that found that the investigating authorities are required to consider all of the injury factors listed in Article 3.4 of the Agreement.

#### Ministry's Consideration of the Issues

- 4.1.16 The significance that can be attached to any particular injury factor will depend on the circumstances of each case and the responses made by domestic producers to meet competition from dumped imports. In an industry with high fixed costs that is dependent on high throughput, it would not be unusual for such an industry to respond to competition from dumped imports by either not increasing prices or lowering prices and attempting to maintain market share. In those circumstances the investigating team would not expect to see injury manifest itself in loss of sales volume and market share. In some cases there could be an impact on sales revenue, if there has been price depression rather than just price suppression, and some impact on sales volume and market share, depending on the extent to which the industry's strategy has been successful. In the circumstances outlined, the major injurious impact would be expected to be on profits.

- 4.1.17 In any particular case the investigating team therefore does not consider that the absence of evidence of injury relating to sales volume and revenue and market share as being necessary to a finding of material injury. The investigating team notes, however, that in this case, there is evidence of a small decline in sales revenue and evidence of a loss of market share.

- 4.1.18 The financial information used by the investigating team in its analysis of injury relates only to washing machines manufactured by F&P in New Zealand and sold on the New Zealand domestic market. This was verified by the investigating team in the course of its verification visit to F&P. The whiteware operation results referred to by Davenports from F&P's 2000 annual report relates to the whole of F&P's whiteware operation, which includes dishwashers and freezers, its Australian operation and any exports from its New Zealand operation. In addition the injurious impact of the dumped imports found in the ef&c was most significant from April 2000, i.e. after the period covered by the annual report. For the reasons outlined above, the investigating team does not believe that any inference relating to refrigerators sold in the New Zealand market can be drawn from the 2000 annual report.

- 4.1.19 The investigating team agrees that all of the injury factors listed in section 8 must be considered in a final determination and this has been done in this report.

#### 4.2 **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.*

4.2.1 The following table shows the volume of dumped imports into New Zealand and compares them with the New Zealand industry's sales and the total New Zealand market. Imports from Australia are separately identified for reference purposes in later discussion.

4.2.2 Dumping was established for imports of the subject goods from Korea for the year ended 31 October 2000. As recorded in section 3 above, 100 percent of imports from Korea were found to be dumped over this period. For the purposes of the table below, for periods outside of the year ended 31 October 2000, it has been assumed that the same proportion of imports from Korea were dumped.

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				

4.2.3 This analysis shows that imports of the subject goods increased significantly in absolute terms in 2000 and April – December 2000. Imports in April – December 2000 were significantly greater than the volume of imports for all of 2000.

4.2.4 Relative to the New Zealand industry's sales and the total New Zealand market, imports of the subject goods also increased significantly in 2000 and April – December 2000, the subject goods more than doubling their proportion of New Zealand industry sales and the total market from 2000 to April – December 2000.

4.2.5 Since the ef&c was completed, F&P has provided an update of its financial data to 31 March 2001. For the full year ended 31 March 2001, dumped imports totalled 11,574 units and represented █ percent of the New Zealand industry's sales and █ percent of the total New Zealand market.

*Conclusion*

4.2.6 Import volumes of the dumped goods from Korea increased significantly in absolute terms and relative to production and consumption in New Zealand in YEM 2000, April – December 2000 and in the YEM 2001.

4.3 **PRICE EFFECTS**

4.3.1 **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**

4.3.1.1 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.

4.3.1.2 The present investigation is somewhat different from a normal situation in that sales are generally on an ex-warehouse basis. Details of the distribution systems and the basis on which sales are made are described below for F&P and each of the importers. The point at which prices are compared, resulting from the distribution and sales process is also recorded below for each importer.

**Non-Injurious Price**

4.3.1.3 In carrying out a comparison of prices to establish the extent of any price undercutting, it is necessary to establish the unsuppressed price at which the New Zealand industry can sell its product. The unsuppressed selling price refers to the price achievable in the absence of dumped product in the New Zealand market. The New Zealand industry's unsuppressed selling price is normally referred to as its non-injurious price (NIP). Establishing the level of the NIP is significant because any remedy at less than the margin of dumping would be set at a level designed to ensure that the imported product does not undercut the New Zealand industry's NIP.

4.3.1.4 F&P has submitted that its average selling prices over the year ended 31 October 2000 have been suppressed and therefore any price undercutting comparison using these prices will understate the level of price undercutting. F&P has noted that while it increased its prices in October 2000 only a small part of this increase (one month) will be reflected in the average prices for the year ended October 2000. The investigating team agrees there has been price suppression (see below) and therefore considers the calculation of a NIP is appropriate in this case.

4.3.1.5 F&P has provided a submission relating to the calculation of its unsuppressed selling prices and this is summarised below.

4.3.1.6 F&P said that [REDACTED]

\_\_\_\_\_. F&P said that \_\_\_\_\_ of the dumped Korean imports in the year ended 31 March 2000 \_\_\_\_\_.

F&P submitted that in \_\_\_\_\_.

4.3.1.7 F&P said that the \_\_\_\_\_ . F&P noted for example that \_\_\_\_\_ . F&P has provided details of the \_\_\_\_\_ applying to each model for the month of September 2000. F&P said it \_\_\_\_\_ . F&P used the \_\_\_\_\_ for each model to calculate an unsuppressed selling price for that model by applying the percentage to its average selling prices for the year ended 31 October 2000.

4.3.1.8 The percentage price suppression calculated on this basis is as follows:

MW059 5.5kg	_____ percent
GW509 5.5kg smart drive	_____ percent
GW709 7.5kg smart drive	_____ percent
IW509 5.5kg intuitive	_____ percent
IW709 7.5kg intuitive	_____ percent
IWL10 8kg intuitive	_____ percent

4.3.1.9 F&P has provided a calculation that it submits is a check of the reasonableness of using its \_\_\_\_\_ to calculate unsuppressed selling prices. The calculation provided by F&P uses YEM 2000 as a benchmark year "particularly as this year reflects the \_\_\_\_\_". F&P said, however, that in this period the price effects of the dumped imports began to be felt following the Korean models appearing in the New Zealand market in late 1998. F&P said that to adjust for the effect of the dumped goods, it has uplifted its EBIT for YEM 2000 by the \_\_\_\_\_ made for the various models from \_\_\_\_\_. F&P submitted that although the \_\_\_\_\_ began earlier than \_\_\_\_\_, it "believes that it is reasonable to judge that the price effects started to be felt in \_\_\_\_\_ of the financial year commencing 1 April 1999".

4.3.1.10 F&P has calculated its EBIT per unit for YEM 2000 for 5.5kg and 7.5kg machines, the EBIT being uplifted as outlined for \_\_\_\_\_ granted from \_\_\_\_\_. F&P has also provided its EBIT per unit for 5.5kg and 7.5kg machines for YEM 2001. F&P has then calculated, for 5.5kg and 7.5kg machines, the reduction in its EBIT per unit from YEM 2000 to YEM 2001 as a percentage of its average selling prices for YEM 2001. The price suppression calculated by F&P on this basis is \_\_\_\_\_ percent for 5.5kg machines and \_\_\_\_\_ percent for 7.5kg machines.

4.3.1.11 In the ef&c the investigating team proposed measuring price suppression by using an average of the EBIT per unit achieved over the YEM 1998, 1999 and 2000 compared to the EBIT per unit achieved in YEM 2001.

4.3.1.12 In response to the ef&c, F&P has submitted that the Ministry was in error by calculating an average EBIT per unit from YEM 1998 to 2000. F&P said that the \_\_\_\_\_ referred to above were made \_\_\_\_\_ 1999. F&P said it is arguable that the Ministry

should adjust the EBIT from YEM 1998 to account for subsequent cost savings so that a more representative EBIT is obtained. F&P said it chose YEM 2000 as the benchmark year as [REDACTED]. F&P said [REDACTED] despite the increased volumes of dumped washing machines which did have some impact on its business.

- 4.3.1.13 F&P said that by taking an average EBIT the Ministry is wrongly assuming that the business is unable to repeat the YEM 2000 result, which F&P claims was understated following the substantial increase in imports that year. F&P said that this is not to say that the Ministry should ignore YEM 2000 as a benchmark because of the effects of dumping. F&P said it had referred to the growth in imports to identify the constraints on its EBIT in YEM 2000 so that the YEM 2000 result is not seen as an [REDACTED] result that needs to be [REDACTED] by averaging. F&P said that by ignoring YEM 2000 as the benchmark year [in the ef&c] the Ministry has failed to answer the obvious question: "What reasons, apart from the dumping, would prevent F&P from continuing with the YEM 2000 EBIT ratios?".

#### Ministry's Consideration of the Issues

- 4.3.1.14 Establishing a non-injurious price to measure the extent of price undercutting is not controversial in international or New Zealand trade remedy practice. The concept of a NIP is widely accepted and has been used extensively by those countries with a "lesser duty" rule in their domestic trade remedy legislation, most notably by Australia and the European Union.
- 4.3.1.15 In establishing an unsuppressed selling price the investigating team is of the view that market prices in a period not affected by dumping are the best indicator of likely unsuppressed selling prices, provided that those market prices are from a period reasonably close to the period for which unsuppressed selling prices are being established. In this case the most recent periods not affected by dumping are the YEM 1998, 1999 and 2000 which the investigating team considers are sufficiently close to the year ended October 2000 to provide a benchmark for use in establishing unsuppressed selling prices. That is, there is unlikely to have been such significant changes in the market or the economy in general since those periods as to make them unreliable for benchmarking purposes.
- 4.3.1.16 F&P does not have available its average selling prices on a model by model basis for the YEM 1998, 1999 and 2000 (although this information is available on size of machine basis). The investigating team therefore considers it reasonable to use movements in the EBIT per unit in the manner used by F&P above to measure the extent to which prices have been suppressed. The investigating team notes that F&P's profits have fluctuated over YEM 1998, 1999 and 2000 (as have its average selling prices).
- 4.3.1.17 F&P has claimed that YEM 2000 should serve as a benchmark year particularly because that year reflects [REDACTED]. In response to the ef&c F&P has pointed out that the [REDACTED] 1999 although the [REDACTED] YEM 2000. F&P has also argued that by taking an average across 3 years, the investigating team is wrongly assuming that its business is unable to repeat the YEM 2000 result and has asked what

reasons apart from dumping would prevent it from doing so. F&P has also submitted that its profits for YEM 2000 should be adjusted to take account of some [REDACTED] given in that year. Given the fluctuating nature of its profits over YEM 1998, 1999 and 2000, it is clear that profits have been affected by factors other than the [REDACTED] to by F&P. The investigating team therefore considers that it is not reasonable for F&P to suggest that in the absence of dumping, F&P would be able to duplicate its results year on year. The investigating team also notes that if it was to adjust F&P's EBIT upwards in YEM 1998 and 1999 to account for the [REDACTED] [REDACTED] 1999, it could equally be argued that adjustments should be made for other factors which may have adversely affected the EBIT. The investigating team also notes that F&P has not previously claimed that it has been affected by dumping in YEM 2000, although in its response to the ef&c, F&P has now stated there was an injurious impact in that year as noted above.

- 4.3.1.18 For the reasons outlined above, the investigating team still considers that an average of the EBIT per unit of the 5.5kg and 7.5kg machines (excluding Quantum machines) over YEM 1998, 1999 and 2000 compared to that for YEM 2001, is the most reasonable approach. The average EBIT for 5.5kg machines for YEM 1998, 1999 and 2000 is \$[REDACTED]. The difference between this EBIT per unit and that for 5.5kg machines for the YEM 2001 is \$[REDACTED] which is [REDACTED] percent of the average 5.5kg selling price for YEM 2001. The average EBIT per unit for 7.5kg machines for YEM 1998, 1999 and 2000 is \$[REDACTED]. The difference between this EBIT per unit and that for 7.5kg machines for the YEM 2001 is \$[REDACTED] which is [REDACTED] percent of the average 7.5kg selling price for YEM 2001. The price suppression percentages calculated on this basis by F&P using YEM 2000 as the benchmark year were [REDACTED] and [REDACTED] percent for 5.5kg and 7.5kg machines respectively. The investigating team has calculated percentages that are significantly lower than those calculated by F&P.
- 4.3.1.19 The investigating team considers that the [REDACTED] provide a reasonable basis on which to calculate the proportionate increase in prices model by model in order to calculate unsuppressed selling prices. On the basis of the analysis above, however, the investigating team considers that the increase in prices for 5.5kg and 7.5/8kg machines should be close to [REDACTED] and [REDACTED] percent respectively. (The percentage movement relating to the 7.5kg machines was also applied to the 8kg machines because 8kg machines were not produced prior to YEM 2001). The investigating team has therefore made an adjustment to the [REDACTED] based on the difference between the price suppression percentages calculated by F&P ([REDACTED] and [REDACTED] percent) and the price suppression percentages calculated by the investigating team ([REDACTED] and [REDACTED] percent).
- 4.3.1.20 In response to the ef&c F&P has pointed out an apparent error in the investigating team's calculation of the NIPs. As a result, the investigating team has checked its calculations and agrees that there was an error in its calculations and has re-calculated the NIPs accordingly. The revised calculations have resulted in an increase in the NIPs. Details of the NIPs are shown in the tables below under each importer.



**Differences in Size and Features**

- 4.3.1.21 Radiola has submitted that differences in features between F&P washing machines and the Samsung machines it imports means the cost of manufacture differs and this cost difference should be taken into account when carrying out a price comparison for price undercutting purposes.
- 4.3.1.22 Radiola has provided a comparison of the features found in all F&P models and those found in 2 Samsung models (the SW55AP and the SW65ASP). The comparison provided by Radiola showed differences such as a polypropylene bowl in the Samsung 5.5kg model and a stainless steel bowl in all F&P models; a direct drive electronic motor in the F&P machines but a belt drive only in the Samsung machines; variable spin speed in the F&P machines but a single spin speed in the Samsung machines; and automatic lint removal system in the F&P machines but lint bags only in the Samsung machines.
- 4.3.1.23 Radiola has submitted that those features exclusive to F&P models add to the manufacturing cost. Radiola said it was “not possible for it to quantify the cost imposition for these feature differences but they will in total be substantial. (We believe that Samsung effected an FOB cost reduction of [REDACTED] at least by fitting a polypropylene bowl to its 5.5kg model. This would translate into a New Zealand retail price saving of at least \$[REDACTED])”.
- 4.3.1.24 In view of the submissions made by Radiola, the investigating team asked F&P to look at the models that had been compared for price undercutting in the provisional measures report and to comment on the extent to which there were any differences in size and features of the models compared. The investigating team then asked F&P if there were such differences to comment on whether they affect the selling price at the level of trade at which the models were compared. The investigating team further asked F&P that if it considered any differences in size and features affected the selling price, to quantify the impact on the selling price.
- 4.3.1.25 In response to the above request F&P provided a comparison of the features found in its models and the comparable Samsung and LG models. F&P said “while there are different features in various models of washing machine sold in the New Zealand market, these features do not support any meaningful adjustment to either the domestically produced or imported models”. F&P said, for example, all of the Korean washing machines are electronic and there are substantially more electronic features in a washing machine than a refrigerator.
- 4.3.1.26 F&P said that although the Korean machines have a conventional motor drive system, in its view this drive system is comparable in cost to the direct drive system used in F&P models. F&P noted that while comment has been made about the Samsung polypropylene bowl, any perceived advantage/disadvantage of this feature is offset by [REDACTED]. F&P said that the stainless steel bowl in its machines is formed [REDACTED]. F&P said it is only the [REDACTED], the outer bowl is polypropylene. F&P submitted that if it made a washing machine with the same features as the Samsung models, then the [REDACTED]. F&P submitted that

“In general, differences in features do not affect the ex-warehouse price but can provide a selling point of difference, which may or may not influence the consumer’s purchase of a particular brand”.

- 4.3.1.27 In concluding its response, F&P submitted that the differences in features between the various models do not warrant an adjustment to the ex-wholesale selling prices for the purposes of establishing price undercutting. F&P said “To assess the validity of any such adjustments would require a substantial exercise in ascribing a value (which may not be quantified in dollar terms) to features that are present in some models and not others. Such research may require panels of consumers to comment on these features and it is doubtful that a reliable outcome would be achieved”.
- 4.3.1.28 At a very late stage in the completion of the ef&c report F&P advised it considers it reasonable to make an adjustment to prices to account for differences in the capacities of machines compared for price undercutting purposes. F&P initially proposed that the prices of its 5.5kg and 7.5kg machines be adjusted when comparing its prices with those of imported 4.5kg and 6.5kg machines. F&P calculated an adjusted price for comparison with imported 4.5kg machines by dividing the price of its 5.5kg machines by 5.5 and multiplying by 4.5. Similarly, F&P calculated an adjusted price for comparison with imported 6.5kg machines by dividing the price of its 5.5kg and 7.5kg machines by 5.5 and 7.5 respectively and multiplying by 6.5. There is some difference in the price of a 6.5kg machine calculated on this basis.
- 4.3.1.29 Following its initial late submission, F&P submitted that there is not a [REDACTED] of its machines. F&P submitted, on the basis of estimated ex-warehouse prices of Korean machines, that LG and Samsung machines of different capacities have a [REDACTED]. F&P said that if the price of a 6.5kg machine was to be estimated from its 5.5kg and 7.5kg machine prices, it should be the average of the prices calculated from these 2 sizes of machine. F&P said that the average unsuppressed price calculated on this basis is close to its [REDACTED]. F&P submitted, however, that because of the similar price per kilogram of the Samsung and LG machines, that the prices of those machines should be adjusted, rather than adjusting the price of the F&P machines.
- 4.3.1.30 In the ef&c the investigating team calculated an adjustment for differences in capacity based on the method initially proposed by F&P. The ef&c noted that there had not been sufficient time to take into account the later submission by F&P concerning an adjustment for differences in sizes.
- 4.3.1.31 In response to the ef&c F&P has made a further submission on adjusting for differences in size. F&P said that Ministry’s calculation of a NIP for a 6.5kg machine of \$[REDACTED] is well below the [REDACTED] ex-warehouse price of its GW609 machine (which is manufactured in Australia) of \$[REDACTED]. F&P said that, coincidentally the \$[REDACTED] price is the same as the average unsuppressed price of its [REDACTED]. F&P submitted that this is convincing evidence that calculating a price for the GW609 from the GW709 [as was done in the ef&c] delivers a result that is clearly wrong. F&P said that to obtain a price for the GW609 machine, the Ministry should average the appropriate prices for the [REDACTED]. F&P said that by seeking to find the lowest possible equivalent 6.5kg price the Ministry was ignoring the

known 6.5kg selling prices and would establish the basis for a remedy which will unfairly impact on F&P's local manufacture.

4.3.1.32 In response to the ef&c F&P also said it disagrees with the Ministry's comparison of its MW059 with the Samsung SW55APP. F&P said its 5.5kg machines are manufactured to meet a market requirement for size. F&P said that if the market had not been impacted by dumping, F&P would have sold [REDACTED] rather than the [REDACTED]. F&P said that the [REDACTED], i.e., it elected to maintain revenue through volume sales by [REDACTED]. F&P submitted that it is consequently more accurate to use a [REDACTED]. F&P said that if the Ministry does use this [REDACTED], it is penalising F&P for using a [REDACTED] in terms of establishing a remedy against the equivalent Samsung product.

4.3.1.33 In response to the ef&c, LM Rankine said that the Ministry had rejected the use of the F&P 6.5kg machine for use in its price undercutting comparisons on the basis that it is manufactured in Australia. LM Rankine said this ignores the fact that the product is produced with New Zealand technology, New Zealand investment and New Zealand intellectual property by a New Zealand company for its home market. LM Rankine said that it is unreasonable and unfair to reject this comparator for the purposes of assessing price undercutting in respect of F&P's domestic operation. LM Rankine said it is all the more unreasonable and unfair to then choose a notional F&P model arbitrarily derived at F&P's behest.

4.3.1.34 LM Rankine submitted, in response to the ef&c, that in the case of modern whiteware, technology is a critical factor that must be taken into account. LM Rankine said if cost and price comparisons are to be taken into account, as they must be, then it is essential to recognise that a product with higher levels of technology, even if it is exactly the same size, inevitably includes in its price higher R&D costs and often also involves much higher cost componentry. LM Rankine said this point is not satisfactorily addressed in the ef&c. LM Rankine said it is unsatisfactory and contrary to natural justice, for the Ministry to argue [in the ef&c] that it is not practically possible to quantify the extent to which a multitude of variations and differences in features can be quantified in terms of the differences in the cost of production. LM Rankine stated that "Independent sources of the facts of the Ministry's investigation could have permitted a clearer picture of the impact of technological variations in terms of the differences in the cost of production".

4.3.1.35 In its late submission referred to above, LM Rankine compared the features of the LG model WFT-452 and the F&P models MW059 and GW509, stating that the comparison showed key differences between the machines. The differences relate to capacity (4.5kg for the LG model and 5.5kg for the F&P models), control, wash method, motor, programs, spin speed and lid. LM Rankine also said that the F&P 6.5kg machine should have been used as a comparison against the LG WFT652, and not the dearer F&P GW709 7.5kg machine.

4.3.1.36 In response to the ef&c, Eurolife said that special technology developed by Daewoo had enabled it to discard the old central agitator, which allowed the

outside dimensions of the machine to remain the same size and the volume of washing to be increased by 2kg due to the absence of the agitator. Eurolife said this allowed a normal 5kg model to become a 7kg machine without any change in external size. Eurolife said that this immediately gave it an advantage in the market place as at the same price it takes to produce a 5kg machine it now has a 7kg machine. Eurolife said through technology it has a price advantage over an outdated machine. Eurolife submitted that the Ministry could not therefore compare a 7kg F&P machine with a 7kg Daewoo machine, as through its older technology the F&P machine needs to be bigger in outside dimensions to achieve a 7kg capacity and is more expensive to manufacture. Eurolife said that its Advanced 7kg machine is the same externally as a F&P 5kg machine and should be compared as such.

- 4.3.1.37 F&P has provided a submission in response to the Eurolife submission outlined above. F&P has submitted that Eurolife's argument is not valid. F&P has provided a comparison of the external dimensions of the Advance 7kg machine with those of F&P's 5.5, 6.5, 7.5 and 8kg machines. This comparison shows that the Advance 7kg machine is larger than the F&P 5.5kg machine and is between the F&P 6.5kg and 7.5kg machines in size. F&P provided excerpts from the instruction manual of the Advanced washer which show the dimensions of the Advanced washer used in the comparison.
- 4.3.1.38 F&P said that factors other than size (e.g. soil removal) determine the rated capacity of washers in New Zealand. F&P also said it strongly refutes Eurolife's claim that its washers use old technology and said its washers were state-of-the-art. F&P said that impellers are not a recent development and noted that they were used in Hoover twin tub machines, which were on the New Zealand market over 25 years ago.

#### Ministry's Consideration of the Issues

- 4.3.1.39 The comparison of features between the F&P and imported washing machines provided by F&P shows there are a wide variety of features found in the F&P and imported models, examples of which are referred to in this section of the report and some in the like goods section of the report. The investigating team notes that with a consumer product of this nature such a wide range of features, which are constantly changing as technology develops, is inevitable. Given this, it is likely there will always be differences in the range of features available between the F&P models and the imported models.
- 4.3.1.40 The investigating team notes that the lack of co-operation from the Korean producers means that it is not practically possible to quantify the extent to which a multitude of variations and differences in features can be quantified in terms of the differences in the cost of production. Even if the Korean producers had co-operated, the investigating team is uncertain if quantifying differences in production costs would have been a practical proposition. LM Rankine, in response to the ef&c said that it is unsatisfactory and contrary to natural justice for the Ministry to argue that this is the case. LM Rankine referred to "independent sources" that the Ministry could have used to obtain a clearer picture of the impact of technological variation. The investigating team notes that LM Rankine did not specify what those independent sources were or suggest how, in a practical way differences in costs could be calculated or suggest how differences in costs might translate into differences in prices.

- 4.3.1.41 The investigating team considers that it is likely there are some differences in the cost of production arising from the difference in features and in capacity. It is, however, difficult to establish to what extent (if at all) differences in production costs affect selling prices.
- 4.3.1.42 While there are differences in the detail of the features available, the investigating team considers that the comparisons provided by F&P show that the models are broadly similar and are therefore generally comparable. Given the broadly similar nature of the features of the models being compared, and F&P's contention that variations in features do not affect selling prices (although they may affect consumer decisions to purchase) the investigating team considers it reasonable to compare models where there are variations in features between the models being compared.
- 4.3.1.43 In relation to accounting for differences in the sizes of machines being compared, the investigating team considers that it is reasonable to make an adjustment to prices, given the distinct difference in prices of machines of different capacities. The investigating team has considered the further submission made by F&P on the calculation of an adjustment for differences in size. The investigating team agrees that the actual price of the Australian produced 6.5kg machine provides a reasonable guide to the general level of the likely 6.5kg equivalent price of a New Zealand produced machine. Where an imported machine of 6.5kg capacity is compared to a F&P model, the price of the F&P model has been adjusted to a 6.5kg equivalent by taking the average of the relevant prices of the [REDACTED]. The investigating team considers that this approach also addresses the concerns in the submission made by LM Rankine, who argued that the price of the F&P 6.5kg machine should be used in the price comparison, as the price calculated is close to the 6.5kg price.
- 4.3.1.44 Where an imported machine of 4.5kg capacity is compared to a F&P model, the price of the F&P model has been adjusted by dividing the price of the equivalent F&P 5.5kg model by 5.5 and multiplying it by 4.5 [this is the same adjustment used in the ef&c].
- 4.3.1.45 The investigating team notes that in the case of other price comparisons, the machines being compared are either identical in capacity or vary by only half a kilogram.
- 4.3.1.46 The investigating team does not agree with F&P's submission that it should use a [REDACTED] of the F&P [REDACTED] machines when comparing prices with the Samsung SW55APP machine. F&P has claimed that it would be disadvantaged through the use of its [REDACTED] model because that model has had [REDACTED] with the dumped imports. The effect of price suppression has been recognised through the calculation of NIPs and any remedy will be based on those NIPs if a lesser duty is appropriate. The remedies proposed in this report (see section 6 below) are based on the weighted average NIPs for 5 categories and [REDACTED].
- 4.3.1.47 In relation to LM Rankine's claim that the F&P 6.5kg machine should have been used as a comparison against the LG WFT652, the investigating team notes that the F&P 6.5kg machine is manufactured in Australia, and therefore cannot be used to assess price undercutting in relation to F&P's domestic New Zealand operation.

- 4.3.1.48 The investigating team has also considered the submission by Eurolife and the response from F&P, concerning the comparison of the Advanced 7kg washer with an equivalent F&P model. The evidence available indicates that the Advanced 7kg washer is not of similar external dimensions to the F&P 5.5kg washer. In addition, as pointed out by F&P, factors other than size determine the rated capacity in New Zealand. The investigating team therefore considers that the comparison should remain as made in the ef&c, i.e., the Advanced 7kg machine should be compared to the F&P 7.5kg machine.

#### ***Differences in Credit Terms***

- 4.3.1.49 There are differences between the length of credit extended to customers by F&P and the importers. None of the importers has advised if their credit terms affect their selling prices, except that LM Rankine has stated that if its [REDACTED]. F&P has submitted that if its average length of credit increased from its current [REDACTED] days then its costs would increase. F&P said that its current credit costs are reflected in a lower ex-warehouse selling price which would increase if its credit terms were extended from the current terms.

- 4.3.1.50 On the basis of the submission made by F&P, LM Rankine's advice that [REDACTED], and the common commercial practice of giving discounts for cash or early payment, the investigating team considers it reasonable to assume that credit terms do affect the price. Adjustments have therefore been made to selling prices to take account of differences in length of credit. Details of credit terms and the basis on which adjustments have been made, are shown below under each company.

#### ***Other Matters***

- 4.3.1.51 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). 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 (i.e. the Daewoo models and OEM models produced by Samsung and LG for other producers), the investigating team has selected the most comparable washing machine based on capacity and features.
- 4.3.1.52 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**

- 4.3.1.53 F&P transfers finished goods from its factory at [REDACTED]. F&P operates 3 warehouses from which it supplies its customers in all parts of New Zealand.
- 4.3.1.54 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.

4.3.1.55 In response to the ef&c F&P pointed out an apparent error made by the investigating team in the calculation of its average ex-warehouse selling prices for the year ended 31 October 2000 for some of its models relating to the calculation of ex-warehouse prices from FIS prices. The investigating team checked its calculations and agrees that there was an error and has amended some of the prices accordingly. The revised calculations have resulted in an increase in some of the F&P ex-warehouse prices.

4.3.1.56 F&P has provided information showing that the average length of credit extended to its customers is [redacted] days and its cost of credit is [redacted] percent.

### **Samsung Electronics Ltd**

#### *Radiola Corporation Ltd*

4.3.1.57 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 [redacted].

4.3.1.58 F&P has submitted that the relevant price comparison is between Radiola's into PRG warehouse price and F&P's into warehouse price. [redacted]. 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.

4.3.1.59 Radiola advised that it is invoiced by Samsung on a FOB basis in [redacted]. 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."

4.3.1.60 The appropriate level of trade for Radiola is its ex-warehouse selling price (rather than its purchase prices). The investigating team asked Radiola if the selling prices it provided effectively reflected the benefits of any favourable forward exchange rates. At a very late stage in the preparation of the ef&c report, Radiola provided information on its forward exchange contracts.

- 4.3.1.61 The investigating team is of the view that Radiola's actual selling prices (which presumably reflect the benefit of forward exchange contracts) should be used in its price undercutting comparison. The question of whether favourable forward exchange contracts that have enabled importers to hold prices have been a cause of injury to F&P not related to dumping, is considered under "Other Causes of Injury" below.
- 4.3.1.62 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.
- 4.3.1.63 Radiola advised that its credit terms are [REDACTED]. It is unclear if invoices are issued throughout the month or on one date each month. It has been assumed that invoices are issued at the beginning of the month and therefore the length of credit has been taken as [REDACTED]. Radiola advised that its average cost of capital for the year ended 31 October 2000 was [REDACTED] percent.
- 4.3.1.64 The difference in the number of days credit extended by F&P and Radiola is [REDACTED] days. At [REDACTED] percent this is equivalent to an annual rate of [REDACTED] percent. Because Radiola has extended the [REDACTED], an adjustment has therefore been made to [REDACTED] Radiola's prices by [REDACTED] percent.
- 4.3.1.65 On the basis set out above, the following table shows a comparison of F&P prices with those of Radiola.

Table 4.2: Price Undercutting: Samsung Imports by Radiola

<i>Samsung Model</i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
SW55APP 5.5kg Top loader	[REDACTED]	MW059 5.5kg Top loader	[REDACTED]	[REDACTED]	[REDACTED]
SW65ASP 6.5kg Top loader	[REDACTED]	GW509 <sup>1</sup> 5.5kg Top loader	[REDACTED]	[REDACTED]	[REDACTED]
SWFP10 5kg Front loader	[REDACTED]	GW509 5.5kg Top loader	[REDACTED]	[REDACTED]	[REDACTED]

<sup>1</sup> Adjusted to equivalent 6.5kg price

- 4.3.1.66 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 [REDACTED] percent of Radiola's imports.
- 4.3.1.67 The following table shows the extent of price undercutting in relation to the F&P NIPs calculated on the basis set out above.



Table 4.3: Price Undercutting: Samsung Imports by Radiola

<i>Samsung Model</i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
SW55APP 5.5kg Top loader	█	MW059 5.5kg Top loader	█	█	█
SW65ASP 6.5kg Top loader	█	GW509 <sup>1</sup> 5.5kg Top loader	█	█	█
SWFP10 5kg Front loader	█	GW509 5.5kg Top loader	█	█	█

<sup>1</sup> Adjusted to equivalent 6.5kg price

- 4.3.1.68 The table shows the same pattern of undercutting as that found using F&P's actual average prices, i.e., the Samsung models are undercutting the equivalent F&P model in 2 out of 3 cases.

#### **LG Electronics Ltd**

##### *LM Rankine Trading Co Ltd*

- 4.3.1.69 LM Rankine advised that it markets direct to retailers and that distribution is carried out by █. The investigating team considers the point of comparison is between F&P ex-warehouse and LM Rankine ex-warehouse prices.
- 4.3.1.70 LM Rankine has provided cost build up to selling price information at November 1999, April 2000 and October 2000. LM Rankine 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. LM Rankine considered that if it had attempted to reconstruct a single build-up for the entire period of investigation, the figures would be distorted. LM Rankine 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.
- 4.3.1.71 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.
- 4.3.1.72 LM Rankine has advised that its credit terms are █. On the basis that sales are spread evenly through the month, the investigating team has calculated the average length of credit at █ days. LM Rankine advised that its average cost of working capital is █ percent.

- 4.3.1.73 The difference in the number of days credit extended by F&P and LM Rankine is █ days. At █ percent this is equivalent to an annual rate of █ percent. Because LM Rankine has █, an adjustment has therefore been made to █ LM Rankine's prices by █ percent.
- 4.3.1.74 LM Rankine advised that it █ forward exchange contracts for specific orders for any product, █. LM Rankine noted that its selling prices are █. The investigating team considers, therefore that forward exchange contracts are █ for price undercutting purposes in relation to LM Rankine.
- 4.3.1.75 On the basis set out above, the following table shows a comparison of F&P prices with those of LM Rankine.

Table 4.4: Price Undercutting: LG Imports by LM Rankine

<i>LG Model</i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse Price</i>	<i>Undercutting</i>	<i>% F&amp;P Price</i>
WF-T 452 4.5kg Top loader	█	MW059 <sup>1</sup> 5.5kg Top loader	█	█	█
WF-T 652 6.5kg Top loader	█	GW509 <sup>2</sup> 5.5kg Top loader	█	█	█
WF-T 852 8.5kg Top loader	█	IWL10 8kg Top loader	█	█	█
WD 1021W 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█
WD 8050FH 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█

<sup>1</sup>Adjusted to equivalent 4.5kg price

<sup>2</sup>Adjusted to equivalent 6.5kg price

- 4.3.1.76 The table shows that the LG models are undercutting the equivalent F&P model in 3 out of 5 cases. The 2 LG models that do not undercut the equivalent F&P model account for █ percent of LM Rankine's imports. In one case where there is no undercutting the equivalent F&P model (█) is undercut by one other LG model imported by LM Rankine.
- 4.3.1.77 The following table shows the extent of price undercutting in relation to the F&P NIPs calculated on the basis set out above.

Table 4.5: Price Undercutting: LG Imports by LM Rankine

LG Model	Ex-Warehouse Price	F&P Model	Ex-Warehouse NIP	Undercutting	% F&P Price
WF-T 452 4.5kg Top loader	█	MW059 <sup>1</sup> 5.5kg Top loader	█	█	█
WF-T 652 6.5kg Top loader	█	GW509 <sup>2</sup> 5.5kg Top loader	█	█	█
WF-T 852 8.5kg Top loader	█	IWL10 8kg Top loader	█	█	█
WD 1021W 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█
WD 8050FH 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█

<sup>1</sup>Adjusted to equivalent 4.5kg price

<sup>2</sup>Adjusted to equivalent 6.5kg price

4.3.1.78 The table shows there is price undercutting in all cases.

*Electrolux Home Products (NZ) Limited*

4.3.1.79 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.

4.3.1.80 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 were █ over November 1999 – September 2000 and █ in 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.

4.3.1.81 Electrolux has advised that its credit terms are █, i.e. payment █. The investigating team has taken the average length of credit to be █ days. Electrolux did not provide its cost of credit, so the investigating team has taken the cost of credit as the average of those importers that did provide this information, i.e. █ percent.

4.3.1.82 The difference in the number of days credit extended by F&P and Electrolux is █ days. At █ percent this is equivalent to an annual rate of █ percent. Because Electrolux has █, an adjustment has therefore been made to █ Electrolux's prices by █ percent.

4.3.1.83 Electrolux advised that it does not hold forward exchange contracts in relation to imports of washing machines.

4.3.1.84 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

<i>LG Model<sup>1</sup></i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
LF700B 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█
LF708B 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█

<sup>1</sup> Sold under Westinghouse brand

4.3.1.85 The table shows that one of the 2 LG models is 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 █ percent of Electrolux's imports. In the case of the model where there is no undercutting, the equivalent F&P model (█) is undercut by the other LG model imported by Electrolux.

4.3.1.86 The following table shows the extent of price undercutting in relation to the F&P NIPs calculated on the basis set out above.

Table 4.7: Price Undercutting: LG Imports by Electrolux

<i>LG Model</i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
LF700B 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█
LF708B 7kg Front loader	█	GW709 7.5kg Top loader	█	█	█

4.3.1.87 The table shows the same pattern of price undercutting as that using F&P's actual average prices, i.e., there is price undercutting in one out of the 2 cases.

### **Daewoo Electronics Co Ltd**

#### *Eurolife NZ Ltd*

4.3.1.88 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.

4.3.1.89 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.

4.3.1.90 Eurolife has advised that its credit terms are [redacted] days and the average cost of its working capital over the year ended 31 October 2000 was [redacted] percent. The difference in the number of days credit extended by F&P and Eurolife is [redacted] days. At [redacted] percent this is equivalent to an annual rate of [redacted] percent. The difference in the cost of credit is negligible so no adjustment has been made.

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

Table 4.8: Price Undercutting: Eurolife Imports from Daewoo

<i>Daewoo Model<sup>1</sup></i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
Rapid 7 7kg Top loader	[redacted]	GW709 7.5kg Top loader	[redacted]	[redacted]	[redacted]

<sup>1</sup> Sold under Advanced Appliances brand

4.3.1.92 The table shows that the Daewoo model is undercutting the equivalent F&P model, although as noted above the Rapid 7 has been [redacted].

4.3.1.93 The following table shows the extent of price undercutting in relation to the F&P NIPs calculated on the basis set out above.

Table 4.9: Price Undercutting: Eurolife Imports from Daewoo

<i>Daewoo Model</i>	<i>Ex-Warehouse Price</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
Rapid 7 7kg Top loader	[redacted]	GW709 7.5kg Top loader	[redacted]	[redacted]	[redacted]

4.3.1.94 This table also shows price undercutting.

**Price Undercutting and the Margin of Dumping**

4.3.1.95 The margin of price undercutting must be related to the margin of dumping in order to establish the extent to which price undercutting can be attributed to dumping. The investigating team has calculated the weighted average margin

of dumping for each model exported by Samsung, LG and Daewoo. The investigating team has added the margin of dumping to the importer's ex-warehouse prices shown in the tables above and compared the result to F&P's ex-warehouse NIP. The figures are shown in the tables below.

### Samsung Electronics Ltd

*Radiola Corporation Ltd*

Table 4.10: Price Undercutting: Samsung Imports by Radiola

<i>Samsung Model</i>	<i>Ex-Warehouse Price + D/M</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
SW55APP 5.5kg Top loader		MW059 5.5kg Top loader			
SW65ASP 6.5kg Top loader		GW509 <sup>1</sup> 5.5kg Top loader			
SWFP10 5kg Front loader		GW509 5.5kg Top loader			

<sup>1</sup> Adjusted to equivalent 6.5kg price

4.3.1.96 The table shows there is no price undercutting for any of the models compared. Where there is no price undercutting after adding back the margin of dumping is an indication that anti-dumping duty at less than the margin of dumping (a "lesser duty") should apply.

### LG Electronics Ltd

*LM Rankine Trading Co Ltd*

Table 4.11: Price Undercutting: LG Imports by LM Rankine

<i>LG Model</i>	<i>Ex-Warehouse Price + D/M</i>	<i>F&amp;P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&amp;P Price</i>
WF-T 452 4.5kg Top loader		MW059 <sup>1</sup> 5.5kg Top loader			
WF-T 652 6.5kg Top loader		GW509 <sup>2</sup> 5.5kg Top loader			
WF-T 852 8.5kg Top loader		IWL10 8kg Top loader			
WD 1021W 7kg Front loader		GW709 7.5kg Top loader			

WD 8050FH 7kg Front loader	GW709 7.5kg Top loader
----------------------------------	------------------------------

<sup>1</sup>Adjusted to equivalent 4.5kg price

<sup>2</sup>Adjusted to equivalent 6.5kg price

4.3.1.97 The table shows there is no price undercutting for any of the models compared.

*Electrolux Home Products (NZ) Ltd*

Table 4.12: Price Undercutting: LG Imports by Electrolux

LG Model	Ex-Warehouse Price + D/M	F&P Model	Ex-Warehouse NIP	Undercutting	% F&P Price
LF700B 7kg Front loader		GW709 7.5kg Top loader			
LF708B 7kg Front loader		GW709 7.5kg Top loader			

4.3.1.98 The table shows there is no price undercutting for any of the models compared.

**Daewoo Electronics Co Ltd**

*Eurolife NZ Ltd*

Table 4.13: Price Undercutting: Eurolife Imports from Daewoo

Daewoo Model	Ex-Warehouse Price + D/M	F&P Model	Ex-Warehouse NIP	Undercutting	% F&P Price
Rapid 7 7kg Top loader		GW709 7.5kg Top loader			

4.3.1.99 The table shows there is no price undercutting.

*Conclusion*

4.3.1.100 When F&P's actual average prices are compared to the prices of the imported goods 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 82 percent of all imports of the subject goods.

4.3.1.101 When F&P's non-injurious prices are compared to the prices of the subject goods, there is an increase in the number of models undercutting the equivalent F&P model, and the margins are larger. The volume of imported

goods found to be undercutting on this basis represents 88 percent of all imports of the subject goods.

4.3.1.102 When F&P’s actual or non-injurious prices are compared with the prices of the imported goods plus the margin of dumping, there is no price undercutting by any of the imported goods, indicating that a duty at less than the margin of dumping should be imposed.

4.3.2 **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.*

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

4.3.2.2 The following table shows average per unit selling prices for F&P washing machines separately for 5.5kg, 7.5kg and 7.5kg Quantum machines (the Quantum machines were first introduced in YEM 2000). F&P transferred its production of 6.5kg machines to Australia in February 1999. In order to provide a more meaningful comparison, the table below is exclusive of the reported data in respect of F&P’s 6.5kg washing machines.

Table 4.14: Price Depression  
(March Years, NZ\$/Unit)

	1998	1999	2000	Apr-Dec 2000
5.5kg	████████	████████	████████	████████
7.5kg	████████	████████	████████	████████
7.5kg Quantum			████████	████████
O/All Average	████████	████████	████████	████████

4.3.2.3 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 5.5kg machines and 7.5kg machines (inclusive of the Quantum series since its introduction):

	5.5kg	7.5kg
1998	████████	████████
1999	████████	████████
2000	████████	████████
2001	████████	████████

4.3.2.4 The increase in the proportion of sales represented by ██████ machines will, even in the absence of any price changes, ██████ the overall average price per unit because of the ██████ per unit value of these machines. Changes in the average selling prices of each size of machine (5.5kg, 7.5kg and 7.5kg Quantum) are therefore more likely to be indicative of any price depression than overall average selling prices.



- 4.3.2.5 The price of 5.5kg 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.
- 4.3.2.6 The price of 7.5kg machines fell in April – December 2000 to a level below that achieved in 1998 and 2000, but still above the price achieved in 1999.
- 4.3.2.7 The price of 7.5kg Quantum machines also fell in April – December 2000 below the price achieved in 2000.
- 4.3.2.8 Since the ef&c was completed, F&P has provided an update of its financial data to 31 March 2001. For the YEM 2001, average selling prices were as follows:

5.5kg	\$ [redacted]
7.5kg	\$ [redacted]
7.5kg Quantum	\$ [redacted]
Overall average	\$ [redacted]

- 4.3.2.9 The average prices of each machine listed above for the YEM 2001 are lower than those recorded in each of the 3 previous years (for 5.5 and 7.5kg machines) and the previous year (for 7.5kg Quantum machines), although average prices are slightly higher than those achieved in April – December 2000.

*Conclusion*

- 4.3.2.10 Prices have been depressed in April – December 2000 and in the YEM 2001.

**4.3.3 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.*

- 4.3.3.1 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.

- 4.3.3.2 The following table shows F&P’s cost of production, selling and administration expenses and total costs relative to sales. Data relating to 6.5kg machines has been excluded to allow a valid comparison between years).

Table 4.15: Price Suppression  
(March Years, NZ\$/Unit)

	1998	1999	2000	Apr-Dec 2000
Ave Selling Price	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Production	[redacted]	[redacted]	[redacted]	[redacted]

S&A Expenses	■	■	■	■
Total Costs	■	■	■	■
As % of Sales				
-Cost of Production	■	■	■	■
-S&A Expenses	■	■	■	■
-Total Costs	■	■	■	■

- 4.3.3.3 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 April – December 2000 to a level slightly higher than that in 1998 and 1999.
- 4.3.3.4 Since the ef&c was completed, F&P has provided an update of its financial data to 31 March 2001. For YEM 2001 total costs were ■ percent of sales.
- 4.3.3.5 In response to the ef&c, Davenports said that the significant cost savings made in YEM 2000 (see details under “Profits” below) means there was no pressure to increase prices. Davenports referred to the Ministry’s introduction to price suppression where it is stated that “where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression”. Davenports said that the Ministry therefore seems to have determined that prices were suppressed only in April – December 2000 which means there is no clear evidence of price suppression during the whole injury investigation period.
- 4.3.3.6 Davenports said that the price of a product is affected by hundreds of variables. Davenports submitted that “accordingly, F&P’s argument that it could not incorporate cost increases into the prices of washing machines, because of dumped imports, does not make sense”. Davenports also noted that the price of electronic products tends to drop as time goes by. Davenports said this is relevant to causation. Davenports also said that F&P has no reasonable expectation that it can increase prices immediately when costs increase.
- 4.3.3.7 The investigating team notes that the cost savings made in YEM 2000 would still be in place in April – December 2000 and the YEM 2001. The costs relative to sales established in the YEM 2000 would therefore set a benchmark resulting from those cost savings against which any future price suppression could be measured. Measured against the benchmark for the YEM 2000, it is clear that costs have increased significantly in April – December 2000 and the YEM 2001.
- 4.3.3.8 The investigating team is of the view that the attribution of price suppression to dumped imports needs to be considered in the light of other evidence. Therefore, while factors other than dumped imports may have affected prices, the significant increase in the import volumes of the dumped goods coinciding with the price suppression and the level of price undercutting by the dumped goods over the period of investigation, indicate that the price suppression found is likely to be linked to the dumped imports.

#### *Conclusion*

- 4.3.3.9 Prices were suppressed in April – December 2000 and in the YEM 2001.

**Conclusion on Price Effects**

4.3.3.10 There is significant price undercutting by a large majority of imported washing machines. Prices have been depressed and suppressed in April – December 2000 and in the YEM 2001.

4.4 **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**

4.4.1 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.

4.4.2 As F&P has advised that production closely follows sales, a separate analysis of output has not been carried out.

4.4.3 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.

4.4.4 The following table shows sales volume and revenue, excluding sales of New Zealand-produced 6.5kg machines.

Table 4.16: Sales of Washing Machines  
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000
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	█	█	█	█

### Sales Volume

- 4.4.5 The table shows that sales volumes increased significantly in 1999 and returned almost to the 1998 level in 2000. The average sales per month in the April to December 2000 period are below those achieved between YEM 1998 and 2000.
- 4.4.6 F&P stated that “the volume impact of the dumping is on the █ in particular are forcing prices in the market to where F&P’s forecast sales revenue is no longer sufficient to generate an acceptable EBIT”. F&P provided sales volume figures for each washing machine capacity. These show that sales of █ machines have declined significantly since 1998.
- 4.4.7 Since the ef&c was completed, F&P has provided an update of its financial data to 31 March 2001. The sales volume for YEM 2001 was █ units, which is close to the sales recorded in 1998 and 2000 but below the sales achieved in 1999.
- 4.4.8 While sales volumes have declined in 2000 and 2001 relative to 1999, it is unclear to what extent 1999 can be used as a base line as sales in 2000 and 2001 are close to those recorded in 1998.
- 4.4.9 Davenports has referred to a comment in the Provisional Measures Report that information in the application was not considered sufficient to demonstrate a decline in industry sales either in terms of volume or revenue. Davenports said that the Ministry changed its mind after it received F&P’s additional submissions. Davenports said that the mere revision or addition of such simple figures as sales data cannot sensibly produce such a decisive change to the Ministry’s first determination. Davenports said that if the original sales data submitted by F&P was so drastically inaccurate, then the overall credibility of F&P sales data is suspect.
- 4.4.10 The investigating team points out that there has been no change in the sales figures originally submitted by F&P. The sales figures were, however, updated since the application was lodged and further updated since the Provisional Measures Report was prepared. The updated figures were considered in the Provisional Measures Report, the ef&c report and in this report.

### Sales Revenue

- 4.4.11 The table shows that sales revenue has been close to the same level each year from 1998 to 2000. The average sales revenue per month for the period from April to December was █ percent down on that achieved in the previous 3 years. F&P has stated that “█”

4.4.12 F&P's sales revenue for the YEM 2001 was [redacted] which is a little below the revenue achieved in each of the 3 previous years.

*Conclusion*

4.4.13 It is unclear if there has been a sustained decline in sales volume. There was a small decline in sales revenue in YEM 2001.

**Market Share**

4.4.14 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.

4.4.15 The table below shows market share and changes in market share. F&P's sales of 6.5kg machines and F&P's imports from Australia, have been excluded so that the transfer of F&P's production of 6.5kg machines in 1999 does not confuse the impact of the dumped imports. F&P's imports from countries other than Australia are negligible and have been included in the "Other Imports" figure. Imports from Australia have once again been isolated for reference purposes in later discussion.

Table 4.17: Market Share  
(March Years)

	1998	1999	2000	Apr-Dec 2000
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
NZ Industry Sales	[redacted]	[redacted]	[redacted]	[redacted]
Dumped Imports	9	698	5,731	9,625
Imports from Australia	[redacted]	[redacted]	[redacted]	[redacted]
Other Imports	13,063	6,862	9,198	4,925
Change in Volume:				
- NZ Market		[redacted]	[redacted]	
- NZ Industry Sales		[redacted]	[redacted]	
- Dumped Imports		689	5,033	
- Imports from Australia		[redacted]	[redacted]	
- Other Imports		-6,201	2,336	
% Share Held By:				
- NZ Industry Sales	[redacted]	[redacted]	[redacted]	[redacted]
- Dumped Imports	[redacted]	[redacted]	[redacted]	[redacted]
- Imports from Australia	[redacted]	[redacted]	[redacted]	[redacted]
- Other Imports	[redacted]	[redacted]	[redacted]	[redacted]

4.4.16 The figures in the table show that market share held by the New Zealand industry increased significantly in 1999, fell significantly in 2000 to a level slightly higher than the share held in 1998, and continued to decline in April – December 2000 to a level below that in all 3 previous years.

4.4.17 The decline in the New Zealand industry's market share in 2000 coincided with a large increase in the market share held by the dumped imports. However, in 2000 other imports also increased their market share while

imports from Australia lost significant market share. In April – December 2000 there was a further large increase in the market share held by dumped imports that coincided with a significant decline in the share held by the New Zealand industry and other imports, while imports from Australia held their share at about the same level.

4.4.18 The decline in the market share held by the New Zealand industry in 2000 may have been attributable in part to the increase in the share held by other imports, but it is likely to also be attributable in part to the dumped imports. The decline in the New Zealand industry's market share in April – December 2000 is clearly attributable to the dumped imports.

4.4.19 As noted previously, since the ef&c was completed, F&P financial data to 31 March 2001 has been provided. For the YEM 2001 the total New Zealand market was [REDACTED] units and the percentage market shares were as follows:

NZ Industry Sales	[REDACTED]
Dumped Imports	[REDACTED]
Imports from Australia	[REDACTED]
Other Imports	[REDACTED]

4.4.20 The data for YEM 2001 shows there was no material change in the market shares held and the analysis above in relation to April – December 2000 remains valid in relation to YEM 2001.

#### *Conclusion*

4.4.21 There has been a significant loss of the market share held by the New Zealand industry in April – December 2000 and in the YEM 2001, which has coincided with a significant increase in the market share held by the dumped imports in the same period.

#### **Profits**

4.4.22 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.

4.4.23 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.

4.4.24 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. 18: Earnings Before Interest & Tax  
(March Years)

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

4.4.25 The table shows that total EBIT reduced between YEM 1998 and 1999 and increased sharply in 2000. On a per unit basis the same pattern is evident from 1998 to 2000, and per unit EBIT in April – December 2000 is well below that in all 3 previous years.

4.4.26 As noted above, since the ef&c was completed, F&P has provided financial data to 31 March 2001. The EBIT for the YEM 2001 was \$\_\_\_\_\_, \$\_\_\_\_\_ per unit and represented \_\_\_\_\_ percent of sales. The total EBIT, per unit EBIT and EBIT relative to sales in YEM 2001 was significantly below that achieved in each of the 3 previous years.

4.4.27 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 stated 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 \$\_\_\_\_\_, although these were partly offset by increased overheads. F&P stated:

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.

4.4.28 In the YEM 2001 F&P has shown a \_\_\_\_\_ to that which was originally projected in its application which has had the effect of increasing the EBIT. F&P stated that this alteration has come about due to its decision to \_\_\_\_\_. F&P has stated that this decision was made as a direct result of the presence in the New Zealand market of dumped goods.

4.4.29 In response to the ef&c, Davenports said that the Provisional Measures Report recorded a significant improvement in profit in the YEM 2000. Davenports submitted that “This fact proves that there was not a significant decline in profit during the material for injury examination”. [The investigating team assumes this means Davenports is submitting that there is no evidence of a decline in profit over the period examined for evidence of injury].

- 4.4.30 Davenports, in response to the ef&c, said that the Ministry did not sufficiently examine the impact on F&P's profit for April – December 2000 caused by the depreciation of the NZ dollar against the US dollar. Davenports said that the NZ dollar depreciated almost 20 percent against the US dollar from 1 April to 31 December 2000. Davenports submitted that the Ministry approached this depreciation only in terms of F&P's exporting business and no consideration was given to the relationship between the depreciation of the NZ dollar and F&P's profits.
- 4.4.31 Davenports said that F&P imports a significant number of parts from other countries for the purpose of assembling its finished products. Davenports said that F&P's business is therefore very vulnerable to exchange rate fluctuations. Davenports said that as the NZ dollar depreciates its costs increase and consequently its profits decline. Davenports said that F&P's comments on its results for the 6 months ended September 2000 recognised that the erosion of earnings was attributable to a continued fall in the value of both the NZ and Australian dollars that increased the cost of overseas sourced materials. Davenports said that F&P reported that its EBIT margin for the whiteware segment reduced from 5.3 to 3 percent. Davenports submitted that considering the cost increase of overseas sourced materials owing to a 20 percent NZ dollar depreciation against the US dollar, this accounts for the 2.2 percent reduction in EBIT margin, without attributing it to other sources.
- 4.4.32 It is unclear to the investigating team why an improvement in EBIT in the YEM 2000 should mean that there was no decline in EBIT over the period under review. As noted above, the improvement in EBIT in the YEM 2000 can be attributed to efficiency gains and could serve as a new benchmark profit rate against which subsequent performance could be measured. When the EBIT for April – December 2000 and the YEM 2001 is measured against the result achieved in the YEM 2000 the decline in EBIT is particularly marked. Even if the EBIT recorded in all 3 previous years is used as a benchmark, the EBIT for the YEM 2001, in total, per unit and relative to sales, is significantly below that achieved in the 3 previous years.
- 4.4.33 The investigating team has examined movements in the NZ dollar to US dollar exchange rate. The following is the NZ to US dollar inter-bank exchange rate taken from the OANDA internet currency converter ([www.oanda.com/converter/classic](http://www.oanda.com/converter/classic)) at 3 monthly intervals over the period under review:
- |                |        |
|----------------|--------|
| 1 April 1997   | 0.6970 |
| 1 July 1997    | 0.6797 |
| 1 October 1997 | 0.6424 |
| 1 January 1998 | 0.5810 |
| 1 April 1998   | 0.5499 |
| 1 July 1998    | 0.5212 |
| 1 October 1998 | 0.5034 |
| 1 January 1999 | 0.5265 |
| 1 April 1999   | 0.5356 |
| 1 July 1999    | 0.5356 |
| 1 October 1999 | 0.5174 |
| 1 January 2000 | 0.5242 |
| 1 April 2000   | 0.4970 |
| 1 July 2000    | 0.4696 |
| 1 October 2000 | 0.4133 |



---

1 January 2001	0.4430
1 April 2001	0.4025

- 4.4.34 The investigating team notes that there is no clear relationship between the depreciation of the NZ dollar and F&P's profit. Since 1 April 1997 the largest annual depreciation (21 percent) of the NZ dollar against the US dollar took place in YEM 1998. The EBIT achieved in the YEM 1998 was higher than that achieved in the YEM 1999, when the NZ dollar depreciated by only 3 percent. As noted above, EBIT increased significantly in the YEM 2000, but over the same period the NZ dollar depreciated by 7 percent against the US dollar.
- 4.4.35 The investigating team also notes that most of the washing machines imported from Korea are invoiced in US dollars. Importers will also be affected by the depreciation of the NZ dollar against the US dollar. The imported component in the ex-warehouse selling price in New Zealand of a Korean washing machine will be greater than the imported component in the ex-warehouse selling price of a F&P washing machine which has a significant value added to the washing machine in New Zealand. The impact of a depreciating New Zealand currency on ex-warehouse selling prices is therefore likely to be greater on Korean washing machines. The investigating team also notes that the impact on EBIT will be significant when the effects of currency depreciation cannot be recovered in prices or by improvements in efficiency, or both. Consequently, while a depreciating NZ dollar will have undoubtedly increased the cost of imported materials, that will not automatically result in a decline in profit.
- 4.4.36 The investigating team is of the view that the attribution of a decline in profits to dumped imports needs to be considered in the light of all of the evidence. While factors other than dumped imports may have affected profits, the significant increase in the import volumes of the dumped goods since April 2000, the level of price undercutting by the dumped goods over the period of investigation, and the price suppression since April 2000, indicate that the decline in profits since April 2000 is likely to be linked to the dumped imports. The investigating team also notes that other causes of injury have also been examined in detail (see below) and have been found not to have contributed in any material way to the injury evident since April 2000.

#### *Conclusion*

- 4.4.37 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 in the YEM 2001 in comparison to all 3 previous years, and the investigating team concludes that a significant part of this decline is due to dumping.

#### **Productivity**

- 4.4.38 F&P considers that, because it is [REDACTED], [REDACTED].
- 4.4.39 At a very late stage in the completion of the ef&c report, F&P stated that its plant is automated to a high degree and this means that labour is more of a fixed component rather than a variable component. F&P said that numbers tend to remain relatively stable given the processes used in its factory. F&P
-

said that while it has to date [REDACTED], should there be a reduction in volumes then productivity would be adversely affected.

- 4.4.40 The investigating team concludes there is no evidence of an adverse impact on productivity.

#### **Return on Investments**

- 4.4.41 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.

- 4.4.42 At a very late stage in the preparation of the ef&c report, F&P provided information relating to its return on assets. The information provided shows EBIT for YEM 2000 and forecast EBIT for YEM 2001, as a percentage of total assets used in its New Zealand laundry operation at March 2000 and March 2001 respectively. The percentage return on assets calculated on this basis for YEM 2000 and 2001 is [REDACTED] and [REDACTED] percent respectively. No information was provided for YEM 1998 and 1999.

- 4.4.43 The investigating team concludes there is evidence of a decline in the return on assets from YEM 2000 to YEM 2001.

#### **Utilisation of Production Capacity**

- 4.4.44 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.

- 4.4.45 F&P states that utilisation of production capacity "[REDACTED]".

- 4.4.46 Data provided by F&P shows that factory utilisation was fairly static over the 1998, 1999 and 2000 financial years at [REDACTED]% to [REDACTED]%, but declined to [REDACTED]% in the 4 months to July 2000.

- 4.4.47 At a very late stage in the completion of the ef&c report, F&P said "Since the impact of the imports there have been times when F&P's utilisation of its [REDACTED] capacity for both of its plants has not been met. Because F&P [REDACTED] [REDACTED]."

- 4.4.48 The information initially provided by F&P showing a decline in capacity utilisation in the 4 months to July 2000 is somewhat contradicted by its late submission referred to above. The 4 months to July 2000 is a short period only and the investigating team concludes that when considered in relation to F&P's later submission, does not provide convincing evidence of a significant decline in capacity utilisation.

**Factors Affecting Domestic Prices**

4.4.49 The investigating team is not aware of an adverse economic impact by the subject goods relating to factors affecting domestic prices.

**Magnitude of the Margin of Dumping**

4.4.50 The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

4.4.51 The analysis of price undercutting above has related the margin of dumping to the margin of price undercutting and has concluded that anti-dumping duty should be imposed at less than the full margin of dumping.

**Other Adverse Effects**

4.4.52 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. At a very late stage in the completion of the ef&c report F&P provided a submission in relation to these factors and this is summarised below.

*Cash Flow*

4.4.53 F&P submitted that prior to the effects of dumping, in YEM 2000 the business cash flow as measured by EBIT plus depreciation was \$ [redacted] million. F&P said that this figure is forecast to reduce to \$ [redacted] million in YEM 2001.

4.4.54 The investigating team has confirmed that these figures agree with verified information provided by F&P for YEM 1998 and agrees with the forecast for YEM 2001. Calculating cash flow on the same basis, the figures for all of the injury period are as follows (excluding 6.5kg machines):

1998	\$ [redacted] million
1999	\$ [redacted] million
2000	\$ [redacted] million
Apr – Dec 2000	\$ [redacted] million
2001 forecast	\$ [redacted] million

4.4.55 The investigating team concludes that the figures available show a reduction in cash flow from April 2000.

*Inventories*

4.4.56 F&P has stated that “Inventories will be substantially [redacted]”.

4.4.57 The investigating team concludes there is no evidence of an adverse impact on inventories.

*Employment*

4.4.58 F&P said that in [redacted]. F&P said that prior to [redacted].

the effects of the dumped imports it had successfully managed its business with the concentration on product focus. F&P said that this meant that the washing machine factory had its own dedicated team of engineering, design and marketing expertise as did the refrigeration plant. F&P submitted that because of an urgent need to reduce costs, brought about by the effects of dumping, a centralised sharing of resources was introduced. [REDACTED]

- 4.4.59 F&P provided a copy of an internal report at the end of September 2000 and February 2001. The reports show that permanent indirect laundry division staff in September 2000 numbered [REDACTED] compared with [REDACTED] in February 2001. F&P said there were also job losses in its electronics division which supplies products to the washing machine and refrigeration plants. F&P said that in September 2000 there [REDACTED] full time indirect positions which were reduced to [REDACTED] positions in February 2001. F&P also supplied an internal memorandum to staff that sets out the reasons for the reorganisation in November 2000.
- 4.4.60 The investigating team agrees there is evidence of a significant reduction in employment. It is unclear, however, to what extent such a reduction in staff can be attributed to the effects of dumped imports. The logic of the cost savings of the centralisation referred to by F&P would presumably have meant this move would have occurred in any event. The investigating team notes that there is evidence that sales volumes will have reduced in YEM 2001, so a loss of throughput in the factory may have been a factor in the staff reductions, although it is difficult for the investigating team to judge if the reduction in sales volume forecast for YEM 2001 is significant enough on its own to cause a reduction in staff numbers.
- 4.4.61 The investigating team concludes that it is unlikely that the reduction in staff numbers can be materially attributed to the effects of dumping.

#### *Wages*

- 4.4.62 F&P said that it has [REDACTED]. F&P said that [REDACTED] and provided an extract from a company report showing that this bonus reduced from 30 hours per person in September 1999 to 21 hours per person in September 2000. F&P said that while this bonus is based on all of the divisions the extract from the company report shows the whiteware group has been subsidised by the healthcare group and it is reasonable to conclude that the drop in the bonus is attributable to the whiteware division.
- 4.4.63 The investigating team concludes there is evidence of a small impact on wages through a reduction in the bonus.

#### *Growth*

- 4.4.64 F&P said that without strong profits the ability to grow the business will be constrained. F&P said that expenditure to grow the business will be governed by the expected return from the expenditure. F&P submitted that if the expected return is not there then the reasons for developing the business become less certain. F&P said it funds expansion through cash flow generated through earnings and maintains a conservatively geared balance sheet.

4.4.65 The investigating team agrees with the general principles outlined above by F&P, but concludes there is no evidence of F&P's growth having been adversely affected.

*Ability to Raise Capital*

4.4.66 F&P said that it has already demonstrated the impact on cash flow and submitted that without cash flow and profitability then access to more capital is constrained. F&P said that although it has a strong asset base, lenders look at the ability of borrowers to meet interest payments and the fall in cash flow therefore impacts on its ability to raise capital.

4.4.67 The investigating team agrees with the general principles outlined above by F&P, but concludes there is no evidence of an actual instance where F&P's ability to raise capital has been adversely affected.

*Investments*

4.4.68 F&P said, "[REDACTED]". The investigating team assumes this is a reference to the delay in the [REDACTED]. F&P advised during the verification visit that this [REDACTED]. F&P advised during the verification visit that further investment in the [REDACTED].

4.4.69 The investigating team concludes there is evidence of an adverse impact on investment.

4.5 **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**

4.5.1 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.

- 4.5.2 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**

- 4.5.3 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. 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 reduction in 2000.
- 4.5.4 F&P has submitted that prior to the dumping of Korean product in New Zealand the Electrolux brands "were not contributing to the effects of unfair trade". F&P has submitted that this is demonstrated by the large volumes of imports from Australia occurring in a period when F&P was not claiming to have suffered material injury. F&P has noted that there has always been a history of imports from Australia in periods when it was recording profits. F&P said that since January 2000 import volumes of washing machines from Korea have impacted on its ability to recover costs, and to [REDACTED].
- 4.5.5 F&P has pointed to Radiola's questionnaire response where Radiola stated in part it ". . . had to set retail prices lower than it wanted in order to win floor space off Email in Pacific Retail Group shops". F&P has also pointed to another part of the same questionnaire response where Radiola stated in part that "To get Samsung products accepted by Pacific Retail Group and its retail customers Samsung pricing has had to be lower than or close to Email. With improving brand awareness and proven product quality we are now able to price Samsung products much closer and on occasion above the Email brands".
- 4.5.6 Imports from sources other than Korea and Australia have declined overall since YEM 1998 although an apparent recovery is evident in the year ended March 2000. This recovery does not appear likely to be sustained in YEM 2001.

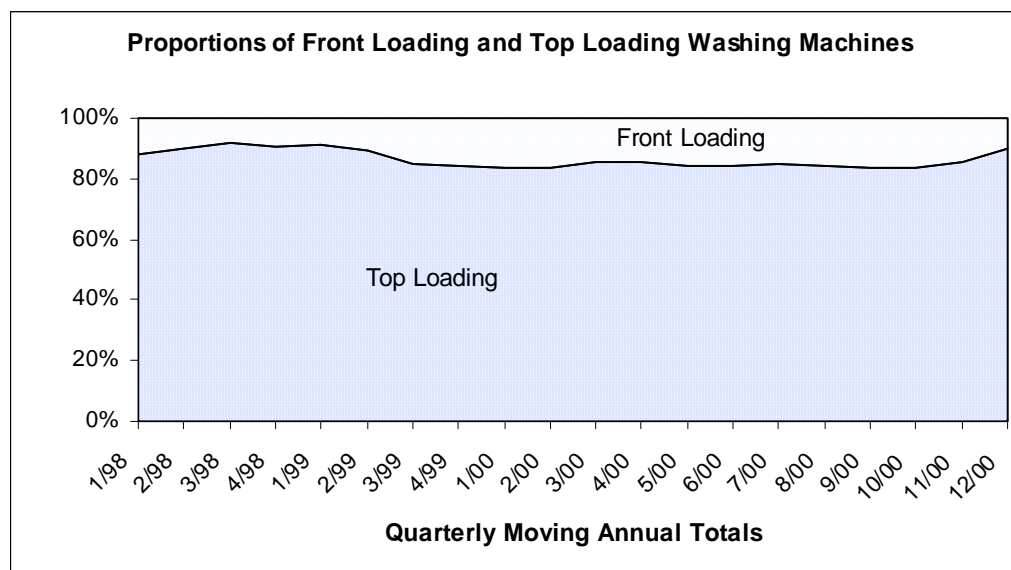
- 4.5.7 LM Rankine has submitted that price pressure from Australian competitors is the major factor impacting on whiteware pricing in New Zealand. In support of this, LM Rankine has cited examples of washing machines from Australia being priced at the retail level below the prices of the equivalent LG models imported by LM Rankine and below the prices of the equivalent F&P models. LM Rankine reiterated this submission in its response to the ef&c.
- 4.5.8 Radiola has also submitted that “the most consistent and significant price competition for the F&P New Zealand manufactured washing machines has been and still is the Email brands, Hoover and Simpson manufactured in Australia”. Radiola has provided a comparison of prices at the retail level of some F&P, Simpson, Hoover and Samsung washing machines, showing 4 sets of prices from early 2000 to January 2001, although in some cases prices were not available for each size of machine. Comparative prices for F&P, the Australian brands and Samsung were only shown for 5.5kg machines and these prices show the Simpson and Hoover brands were generally lower or about the same as the Samsung prices.
- 4.5.9 In view of the submissions made by LM Rankine and Radiola, 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. A partial response to this questionnaire was received but did not provide information in a form that could usefully be used in this report.
- 4.5.10 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.
- 4.5.11 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*

- 4.5.12 F&P noted in its application that demand for front loading machines appeared to be increasing. F&P pointed 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.

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



#### *Market Sophistication: Diversity and Innovation*

- 4.5.14 LM Rankine has submitted the New Zealand market is undergoing significant change. It states that younger consumers are less impressed by old brand loyalties and are instead motivated by technological options and diversity. LM Rankine 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. LM Rankine submits that consumers are therefore increasingly interested in products such as those imported by LM Rankine from LG and which they submit have their own unique niche in the market. LM Rankine 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. LM Rankine believes 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.

- 4.5.15 Without commenting on the validity of the submissions the investigating team considers that any changes of the kind described by LM Rankine 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**

- 4.5.16 F&P considers there is no evidence that restrictive trade practices of, and competition between, overseas and New Zealand producers are causing injury.
- 4.5.17 Submissions by each of the importers and on behalf of 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.

- 4.5.18 The investigating team has no evidence that restrictive trade practices are having an adverse impact on F&P.

#### **Developments in Technology**

- 4.5.19 F&P stated in its application that it considered there to be no evidence of technology developments relevant to the consideration of injury.

- 4.5.20 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**

- 4.5.21 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.

- 4.5.22 The investigating team is satisfied that the financial data on which its assessment of injury is based reflects only F&P's operation on the domestic market, i.e. production of washing machines in New Zealand and their subsequent sale into the New Zealand market.

- 4.5.23 Radiola has submitted that by comparison with all of 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.

- 4.5.24 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.

- 4.5.25 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.

- 4.5.26 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**

- 4.5.27 F&P imports automatic washing machines from its own factory in Australia. F&P has also imported front loading washing machines from [REDACTED] and [REDACTED] and has imported sample top loading models from [REDACTED], [REDACTED],

\_\_\_\_\_ and \_\_\_\_\_. The Ministry notes that the washing machines F&P imports from countries other than Korea are not subject goods (not being from Korea) and consequently do not fall within the scope of section 8(2)(f) of the Act.

- 4.5.28 The volume of washing machines imported as samples from Korea are negligible (■ machines were imported by F&P from Korea over the period 1 April 1997 to 31 December 2000) and therefore have no significance on the analysis of the injurious impact of dumped imports from Korea.

### **Other Factors**

#### *Forward Exchange Contracts*

- 4.5.29 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.
- 4.5.30 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.
- 4.5.31 At a very late stage in the preparation of the ef&c report, Radiola provided information on its forward exchange contracts and stated that it "shows that favourable forward exchange contracts assisted Radiola to hold prices in the period from June 2000 to the end of 2000". The information provided in cost schedules for each model imported shows the difference in the FOB costs using the exchange rate at the date of import and Radiola's forward exchange rate.
- 4.5.32 In the limited time available, the investigating team has selected 2 models, the SW55APP and the SW65ASP and examined the impact on the per unit cost of the forward exchange contracts. The information provided by Radiola shows that forward exchange contracts have enabled Radiola to decrease its FOB cost by \$\_\_\_\_\_ and \$\_\_\_\_\_ per unit for the SW55APP and SW65ASP respectively. This cost saving has been related to the level of price undercutting (assuming the cost difference would translate directly into the ex-warehouse selling price). At the forward exchange rate the price undercutting of the NIP of the equivalent F&P model by the SW55APP would increase from \_\_\_\_\_ to \_\_\_\_\_ percent and the SW65ASP from \_\_\_\_\_ to \_\_\_\_\_ percent.

- 4.5.33 Forward exchange contracts purchased by Radiola have therefore contributed slightly to the injury suffered by F&P, but the injurious effects of the dumping have been far greater.

*Importers Marketing Strategy*

- 4.5.34 In the same late submission referred to above under forward exchange contracts, Radiola submitted that the detailed cost and pricing information supplied as part of its questionnaire response clearly showed that Radiola [REDACTED]. Radiola submitted that the Ministry [in the provisional measures report] made no allowance for it [REDACTED] as a factor other than dumping causing material injury to F&P. Radiola submitted that irrespective of the level of dumping, it is the end selling price in the market that does or does not affect the ability of the local industry to raise or hold its prices. Radiola said that “[REDACTED] whether or not those products are “dumped goods””.

- 4.5.35 Radiola has submitted that to fairly reflect the effect of it [REDACTED] such that an EBIT per unit of [REDACTED] percent is realised. Radiola said that the 2 provisional measures reports show that F&P has made positive EBITs on all product sold in the dumping period. Radiola said it has selected [REDACTED] percent as this is the return on whiteware reported by F&P for the 6 months ended 30 September 2000. Radiola submitted that [REDACTED], “[REDACTED] and the material damage arising from Radiola’s [REDACTED] fairly measured”. Radiola attached to its submission revised cost schedules that Radiola stated show what Samsung trade and retail prices would have been without the benefit of its forward exchange contracts and to achieve an EBIT of [REDACTED] percent.

Ministry’s Consideration of the Issues

- 4.5.36 The investigating team observes firstly that the submission by Radiola was received very close to the time this report was completed and the time available has not allowed its submission to be considered fully in this report.
- 4.5.37 The investigating team has examined 2 of the cost schedules and selling prices calculated by Radiola on the basis outlined above (the SW55APP and SW65ASP). The investigating team notes that the profit margins on which the [REDACTED] are based show profit margins in relation to sales higher than the [REDACTED] percent stated by Radiola to be the basis on which the prices were calculated. On the basis of the information provided by Radiola, the model SW55APP shows profit margins in relation to sales of [REDACTED], [REDACTED] and [REDACTED] percent (being the 3 quarters for which information was provided). The model SW65ASP shows profit margins of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] percent (being the 4 quarters for which information was provided).
- 4.5.38 The investigating team also notes that the costs used in these schedules are the same as those provided by Radiola in its original questionnaire response and are therefore based on the exchange rate at the date of entry rather than at the forward exchange rate under contracts taken out by Radiola.

4.5.39 The investigating team has [REDACTED] based on a profit of [REDACTED] percent, on the basis of the cost data provided by Radiola for each of the 3 quarters for which information was provided, for the 2 models examined. The [REDACTED] [REDACTED]". On this basis the [REDACTED] [REDACTED]. Both of these [REDACTED] [REDACTED]. On this basis it is still possible to attribute injury through the dumping of the goods.

4.5.40 Even if the [REDACTED] of the equivalent F&P models, the investigating team doubts if this would form a basis on which to attribute injury to factors other than dumping. The price at which Radiola purchased the goods was a dumped price (the dumping margins being significant) and would have contributed to the decision to purchase those goods, even if those goods were then to be [REDACTED] [REDACTED]. It is also difficult to draw any firm conclusions on the basis of [REDACTED]. To allow evidence on this basis would be an invitation to parties to endlessly postulate what [REDACTED] [REDACTED] would have been had circumstances been different.

4.5.41 The investigating team notes that there is no evidence to suggest that Radiola [REDACTED] [REDACTED]. The investigating team does not therefore consider that the purchase of the goods by Radiola should be [REDACTED] [REDACTED].

*Exclusive Dealer Arrangements*

Submissions by F&P

4.5.42 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.

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

- 4.5.44 During the verification visit to F&P the investigating team discussed the operation of the EDA with F&P. That discussion is summarised below.
- 4.5.45 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].
- 4.5.46 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].
- 4.5.47 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]  
[REDACTED]  
[REDACTED].
- 4.5.48 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.
- 4.5.49 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]  
[REDACTED]  
[REDACTED]."
- F&P also provided CM research market share data for the period July 1996 to November 2000 to demonstrate the [REDACTED]  
[REDACTED].
- 4.5.50 F&P has provided further submissions in response to submissions made by other interested parties (as shown below) on the EDA and these are summarised below.

- 4.5.51 F&P has noted that “Prior to the effects of the dumped imports, F&P was not losing volume sales to imports from Korea and other countries”. F&P has submitted that there are many instances with other products where this type of distribution has been and continues to be successful. F&P has noted that there are no indications that Radiola will be distributing Samsung whiteware other than through the Pacific Retail Group. F&P has stated that “There are probably good reasons for this approach as there are good reasons for F&P’s method of distribution”.
- 4.5.52 F&P has submitted that the EDA does not impose costs on it. F&P has observed that it is a voluntary agreement between an independent retailer and F&P and has submitted that distribution costs are not higher because of the EDA and more likely to be lower.
- 4.5.53 F&P said that Radiola’s comments that prices are competitive between F&P retailers “indicates that the EDA is far from non-competitive and the retailer is able to offer the consumer a choice in both price and service”. F&P has submitted that it is not the EDA or the competition between F&P retailers that is driving down prices, it is the price of dumped imports.
- 4.5.54 In response to Radiola’s claim that F&P’s involvement with its retailers has adversely affected its whiteware operation, F&P has noted that its manufacturing accounts [REDACTED]. [The investigating team is satisfied that this is the case].
- 4.5.55 F&P has pointed to Radiola’s statement that it had to set retail prices lower than it wanted in order to win floor space off Email in PRG shops, as confirming that material injury was caused by dumping and “clearly shows that Australian product has not been the cause of material injury to F&P”.

#### Submissions by Other Parties

- 4.5.56 A number of interested parties have made submissions on the impact on F&P of its EDA. Those submissions are summarised below.
- 4.5.57 A joint submission was made by Davenports 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 of 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.
- 4.5.58 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.

- 4.5.59 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.
- 4.5.60 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.
- 4.5.61 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.
- 4.5.62 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.
- 4.5.63 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.
- 4.5.64 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.

4.5.65 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."

4.5.66 LM Rankine 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. LM Rankine 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. LM Rankine 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. LM Rankine 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."

4.5.67 LM Rankine said that only a small number of multi-branded stores are able to offer a wide range of washing machines. LM Rankine 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 [redacted] outlets for F&P washing machines and [redacted] for brands imported from Korea. LM Rankine considers that this estimate more fairly reflects the comparative number of outlets than the numbers provided by F&P.

4.5.68 LM Rankine 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. LM Rankine



said that F&P use the EDA to control their dealer network by only letting a set number of outlets in each region.

- 4.5.69 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, Retravisio and Betta Electrical for non-F&P brands.

Ministry's Consideration of the Issues

- 4.5.70 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.
- 4.5.71 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.
- 4.5.72 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's ability to improve its margins. Radiola has not identified exactly when it considers the EDA began to work against F&P.
- 4.5.73 The submission by LM Rankine 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 LM Rankine 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.
- 4.5.74 The investigating team accepts that the type of change that Radiola and LM Rankine consider have taken place is not by nature something that can be precisely placed in time and is likely to be incremental.
- 4.5.75 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**

- 4.5.76 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.
- 4.5.77 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.
- 4.5.78 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 Matters*

- 4.5.79 In its late submission, LM Rankine referred to the findings on other causes of injury in the Provisional Measures Report. LM Rankine said that the Provisional Measures Report implies that the explanations provided by importers lack credibility because the impacts are unlikely to have occurred in the timeframes related to the onset of injury. LM Rankine consider that, while none of the factors raised by them in earlier submissions on their own can be correlated directly to 1999/00, seen together there is a clear convergence of factors which created a critical mass of market factors which have negatively influenced F&P products.
- 4.5.80 LM Rankine said if there was any one single factor which brought all of these factors together at one time it was the emergence as a powerful force of multi-brand stores in New Zealand consisting of Bond & Bond and Noel Leeming to form the Pacific Retail Group, and the Appliance Network Group Trading as Betta Electrical. LM Rankine said these are 2 very high profile retail groups with strong public awareness through their heavy active marketing. LM Rankine believe this had a "catalytic effect" on the market and precipitated a significant trend against F&P. LM Rankine has submitted "It would be a mistake and essentially protectionist approach to infer – as the Provisional Measures Reports do – that pricing factors from Korean imports have caused this situation". LM Rankine reiterated this submission in its response to the ef&c.
- 4.5.81 In response to the LM Rankine submission outlined above, F&P has submitted that there is no evidence to support LM Rankine's claims. F&P said that if LM Rankine has evidence to support this view, then this should be presented to the Ministry to allow both the Ministry and F&P to meaningfully respond.
- 4.5.82 The late submission by LM Rankine was couched in very general terms and the investigating team does not find it convincing. The investigating team also notes that the Pacific Retail Group was in existence for several years before

the onset of injury, and is therefore unlikely to have been a major contributing factor to the injury evident from April 2000.

**Conclusion on Other Causes of Injury**

4.5.83 On the basis of the information available and analysis carried out it is concluded that factors other than dumping have not materially contributed to the decline in F&P's performance in April – December 2000.

4.6 **CONCLUSIONS RELATING TO INJURY**

4.6.1 The following is a summary of the conclusions reached on injury:

- (a) Imports of dumped washing machines from Korea have increased significantly both absolutely and relative to production and consumption in New Zealand.
- (b) When F&P's actual average prices are considered, a large majority of the dumped imports are undercutting the prices of equivalent models produced in New Zealand by F&P.
- (c) When F&P's non-injurious prices are considered, a large majority of the dumped imports are undercutting the equivalent models produced by the New Zealand industry.
- (d) When F&P's actual or non-injurious prices are compared to the prices of the dumped imports plus the margin of dumping, there is no price undercutting, indicating that anti-dumping duty should be imposed at less than the full margin of dumping.
- (e) The New Zealand industry's prices have been depressed and suppressed in April - December 2000 and the YEM 2001.
- (f) Consequent upon the volume and price effects found there is evidence of adverse economic effects in the form of:
  - Reduced sales revenue in the YEM 2001.
  - A significant decline in market share in April – December 2000 and in the YEM 2001.
  - A significant decline in profits in April – December 2000 and in the YEM 2001.
  - A decline in return on investments.
  - A decline in cash flow.
  - An adverse impact on wages.
  - An adverse impact on investment.
- (g) There is no evidence of an adverse economic impact on productivity, or utilisation of production capacity. It is unclear if there has been a decline in sales volume.
- (h) There is no evidence of an adverse economic impact relating to factors affecting domestic prices. The magnitude of the margin of dumping when related to price undercutting indicates that anti-dumping duty should be imposed at less than the margin of dumping.

- (i) There is no evidence of an adverse impact attributable to dumping on inventories, employment, growth, and ability to raise capital.
- (j) Factors other than the dumped imports have not materially contributed to either the adverse effects identified in April – December 2000 or the probable adverse effects identified in YEM 2001.

## **5. CONCLUSIONS**

---

5.1 On the basis of the information available, it is 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 caused.



## **6. ANTI-DUMPING DUTIES**

---

The provision of the Act relating to the imposition of anti-dumping duties is section 14, the relevant parts of which are set out below.

### **14. ANTI-DUMPING AND COUNTERVAILING DUTIES**

(1) At any time after the Minister makes a final determination under section 13 (1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this section (which notice may be given simultaneously with, or at any time after, the notice given under section 13 (2) of this Act) and there shall, with effect on and from the applicable date referred to in section 17 of this Act, be imposed,–

(a) In respect of those goods that are dumped, a duty to be known as anti-dumping duty:

(b) In respect of those goods that are subsidised, a duty to be known as countervailing duty.

(2) Anti-dumping duty or countervailing duty, as the case may be, imposed under subsection (1) of this section, shall be collected and paid on the demand of the Customs on and from the day after the date on which the notice under subsection (1) of this section is published in the Gazette.

(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister,–

(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

(b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

### **6.1 LEVEL OF DUTY**

6.1.1 In accordance with section 14(4)(a) of the Act, the rate or amount of anti-dumping duty which may be applied cannot exceed the margin of dumping that has been found, while under section 14(5) the Minister is required to consider the level of duty necessary to prevent material injury.

6.1.2 The price undercutting analysis in section 4.3.1 above has found that when F&P's actual or non-injurious prices are compared with the margin of dumping added to the prices of the imported goods, there is no price undercutting by any of the subject goods, indicating that anti-dumping duty at less than the margin of dumping should be imposed. The method by which this should be done and the amount of anti-dumping duty, is discussed below.

### **6.2 METHOD OF IMPOSING DUTY**

6.2.1 Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula.

The basic approaches are: a specific amount per unit of product; an *ad valorem* rate; and a reference price approach under which the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value or the non-injurious price.

- 6.2.2 The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account. The objective of the anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping.
- 6.2.3 Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export price and normal value established in the investigation or to the values at the time the goods subjected to the duty are imported. Given this, the Ministry's approach is to adopt a form of duty that minimizes the possibility of exceeding the margin of dumping on shipments subsequent to the imposition of the duty by the Minister.
- 6.2.4 A specific duty, based on the monetary value of a margin of dumping, has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty. A specific rate clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established. A specific duty expressed as a monetary amount can really operate only when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, such an approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values.
- 6.2.5 An *ad valorem* duty, based on the dumping margin expressed as a percentage of the export price, and itself expressed as a percentage of the dutiable value is convenient to apply and is not so affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. *Ad valorem* rates are often appropriate where there is a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.



- 6.2.6 A reference price duty is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the value for duty of the goods. Nevertheless, a reference price does have the advantage that it clearly signals to the exporter and importer what level of price is undumped or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with.
- 6.2.7 Because there are a range of different sizes and a variety of different models of washing machine that are imported into New Zealand, the washing machines have been divided into 5 different categories depending on their capacity. The categories are as follows:

Table 6.1: Washing Machine Categories

Category	Capacity (kg)
1	Less than 4.5
2	4.6 - 5.5
3	5.6 - 6.5
4	6.6 - 7.5
5	7.6 - 10

- 6.2.8 There are a range of washing machines imported (from 4.5 – 8.5kg) and their dumping margins vary from 42 to 105 percent. Due to the range of dumping margins and sizes, a reference price method is therefore considered to be the best method for assessing and collecting anti-dumping duties in the circumstances presented in this case.

### 6.3 AMOUNT OF ANTI-DUMPING DUTY

#### *Introduction*

- 6.3.1 It was concluded above that injury to the New Zealand industry attributable to dumping could be removed by imposing a lesser duty. The investigating team considers that under a reference price approach, imposing an anti-dumping duty at a level below the full margin of dumping can best be achieved through a non-injurious free-on-board (NIFOB) method.

- 6.3.2 In order to assess the extent of any price undercutting, prices of the imported and domestically produced washing machines must be compared at the same level of trade. It is essential that prices be compared at the same level of trade to ensure that the existence of any price undercutting, and its extent, is correctly assessed and that any remedy applied at less than the margin of dumping is calculated in such a way as to ensure that the prices of the dumped goods when imported do not undercut the F&P non-injurious prices.

#### *Calculation of F&P Ex-warehouse NIP*

- 6.3.3 Following the release of the ef&c, F&P provided information on its sales volumes of washing machines in New Zealand on a model by model basis. The investigating team grouped these models in the 5 categories depending on their capacity and calculated a weighted average F&P NIP for the 5

categories. The total quantity of washing machines falling within the definition of the subject goods sold by F&P during the period of investigation was [REDACTED]. The F&P NIP for each model were used to calculate the weighted average NIP on a category by category basis. F&P does not manufacture a washer in category 1 or category 3. The NIP for these categories was calculated on the same basis as the equivalent NIPs used in the model by model price undercutting comparison. The NIP for category 1 was calculated by dividing the category 2 NIP by 5.5 and multiplying it by 4.5. The category 3 NIP was established by taking the average of the NIPs for the F&P [REDACTED] models. The following table shows the weighted average ex-warehouse F&P NIP on a category by category basis.

Table 6.2: F&amp;P NIP

Category	F&P NIP \$NZ
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]

#### *Calculation of NIFOBs*

- 6.3.4 A NIFOB is calculated by establishing a NIP and deducting from the NIP those costs and profit margins that the importer's incur or are properly entitled to an allowance for, after FOB to the point in the market at which the imported goods compete with the F&P NIP. The purpose of a NIFOB is to ensure that the price of imported product, when considered at the FOB level, is such that when the washing machines are sold at the ex-warehouse level, their sale prices equate to the NIP.
- 6.3.5 If a NIFOB was to be established in Korean Won, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to Korean Won exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-warehouse price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the Korean Won, then the NIFOB in NZ dollars would increase and result in a ex-warehouse price higher than the NIP, and the dumping margin could also be exceeded. The reverse would result if the NZ dollar appreciated against the Korean Won.
- 6.3.6 If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duty collected will be such that the ex-warehouse price (assuming the allowable profit margin is taken) will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-warehouse from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-warehouse are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs and the cost of sea freight do change significantly, this can be addressed by way of reassessment. A NIFOB fixed in NZ dollars will ensure that the duty collected does not exceed the margin of dumping and is administratively simple to operate.

- 6.3.7 All importers provided information on cost build up to selling price of washing machines imported from Korea for the year ended 31 October 2000. The importers also provided details of their selling and administration expenses for the year ended 31 October 2000. [REDACTED] all of its sales of the subject goods over the period of investigation.
- 6.3.8 The Ministry is of the view that where a Korean producer did not export washing machines in a particular category, that a cost be used for that producer based on the weighted average costs of the other producers who did export in that category. There were no exports from LG in category 2, Samsung in category 1, 4 and 5 and Daewoo in category 1, 2, 3 and 5.
- 6.3.9 The Ministry is also of the view that where an importer sold on the New Zealand market at a loss, that a weighted average reasonable profit margin be calculated across the 5 categories based on the weighted average profit margins of those importers that sold washing machines at a profit. All the importers provided information on profit margins before the imposition of provisional measures.
- 6.3.10 A reasonable weighted average profit margin was calculated as a percentage of the weighted average annual cost. [REDACTED], their profit margins were used to calculate a reasonable weighted average profit margin across the 5 categories, which was [REDACTED] percent [REDACTED]. [REDACTED] profit margin information was combined with "other operating expenses" information, which presented the investigating team with a difficulty in establishing a clear profit margin for [REDACTED], therefore, [REDACTED] profit margin could not be included for the purposes of calculating the weighted average reasonable profit margin for the 5 categories.
- 6.3.11 On the basis outlined above, NIFOBs have been calculated for each exporter for each of the 5 categories of machine. Details are shown below.

**LG Electronics**

- 6.3.12 The following table shows the NIFOB calculation for LG category 1 exports of washing machines.

Table 6.3: NIFOB for LG-Category 1  
(Less than 4.5kg)

	NZ\$/Unit
F&P ex-factory NIP	[REDACTED]
Less Costs and Margin after FOB to Ex-Warehouse	[REDACTED]
- Overseas Freight	[REDACTED]
- Port Services Charge & Wharfage	[REDACTED]
- Overseas Insurance	[REDACTED]
- Customs Duty	[REDACTED]
- Customs Clearance fees	[REDACTED]
- Cartage to Store	[REDACTED]
- Devanning Fees	[REDACTED]
- Other Import Costs	[REDACTED]

- Documentation Fee	█	
- Storage and Handling Costs	█	
- Selling and Admin Costs	█	
- Reasonable Profit Margin	█	
Category 1 NIFOB		398.66

6.3.13 Only LM Rankine’s annual cost was used to calculate category 1 NIFOB’s as it was the only importer of washing machines from LG in that category over the period of investigation.

6.3.14 There were no category 2 exports of washing machines by LG. As Samsung was the only other exporter of category 2 washers, Samsung’s annual cost information was used to calculate LG category 2 NIFOB. A reasonable weighted average profit margin of █ percent was added to the annual cost total in order to calculate the LG category 2 NIFOB. The following table shows the calculation of LG category 2 NIFOB.

Table 6.4 NIFOB for LG - Category 2  
(4.6 - 5.5kg)

	NZ\$/Unit
F&P ex-factory NIP	█
Less Costs and Margin after FOB to Ex-Warehouse	█
- Overseas Freight	█
- Port Services Charge & Wharfage	█
- Overseas Insurance	█
- Customs Duty	█
- Customs Clearance fees	█
- Cartage to Store	█
- Devanning Fees	█
- Other Import Costs	█
- Documentation Fee	█
- Storage and Handling Costs	█
- Selling and Admin Costs	█
- Reasonable Profit Margin	█
Category 2 NIFOB	503.36

6.3.15 The table below shows the LG category 3 NIFOB calculations. As LM Rankine was the only importer in this category from LG, its annual costs and profit margin information were used to calculate the LG Category 3 NIFOB.

Table 6.5: NIFOB for LG - Category 3  
(5.6 - 6.5kg)

	NZ\$/Unit
F&P ex-factory NIP	
Less Costs and Margin after FOB to Ex-Warehouse	
- Overseas Freight	
- Port Services Charge & Wharfage	
- Overseas Insurance	
- Customs Duty	
- Customs Clearance fees	
- Cartage to Store	
- Devanning Fees	
- Other Import Costs	
- Documentation Fee	
- Storage and Handling Costs	
- Selling and Admin Costs	
- Reasonable Profit Margin	
<b>Category 3 NIFOB</b>	<b>505.54</b>

6.3.16 The LG category 3 NIFOB is based on annual cost and profit margin information from LM Rankine as it was the only importer of washing machines in that category.

6.3.17 The LG category 4 NIFOB is based on information provided by LM Rankine and Electrolux. Individual NIFOBs were calculated for LM Rankine and Electrolux, which were then weighted between the two on the basis of their total volume of imports in category 4 to calculate a LG category 4 NIFOB. The table below shows this calculation.

Table 6.6: NIFOB for LG - Category 4  
(6.6 - 7.5kg)

	NZ\$/Unit
F&P Ex-factory NIP	
<i>LM Rankine</i>	
Less Costs and Margin after FOB to Ex-Warehouse	
- Overseas Freight	
- Port Services Charge & Wharfage	
- Overseas Insurance	
- Customs Duty	
- Customs Clearance fees	
- Cartage to Store	
- Devanning Fees	
- Other Import Costs	
- Documentation Fee	
- Storage and Handling Costs	
- Selling and Admin Costs	
- Reasonable Profit Margin	
<b>LM Rankine NIFOB</b>	

*Electrolux*

Less Costs and Margin after FOB to Ex-Warehouse		
- Overseas Freight & Ins.		
- Customs Duty		
- Port Clearance Fees		
- Cartage to Store		
- Other Import Costs(Bank)		
- Budgeted Operational Costs		
- Reasonable Profit Margin		
Electrolux NIFOB		
LG Category 4 NIFOB		623.86

6.3.18 The LG category 5 NIFOB is based on annual cost and profit margin information from LM Rankine as it was the only importer of washing machines in that category. The following table shows annual cost and profit margin for LM Rankine’s category 5 imports and LG category 5 NIFOB calculation.

Table 6.7: NIFOB for LG - Category 5  
(7.6 – 10kg)

		NZ\$/Unit
F&P Ex-Factory NIP		
Less Costs and Margin after FOB to Ex-Warehouse		
- Overseas Freight		
- Port Services Charge & Wharfage		
- Overseas Insurance		
- Customs Duty		
- Customs Clearance fees		
- Cartage to Store		
- Devanning Fees		
- Other Import Costs		
- Documentation Fee		
- Storage and Handling Costs		
- Selling and Admin Costs		
- Reasonable Profit Margin		
Category 5 NIFOB		762.01

**Samsung Electronics**

6.3.19 Samsung category 1 NIFOB calculation in the following table was based on the cost information used for LG for the same category as there were no exports by Samsung in this category. A reasonable weighted average profit margin of █ percent is applied against this annual cost information.

Table 6.8: NIFOB for Samsung - Category 1  
(Less than 4.5kg)

		NZ\$/Unit
F&P ex-factory NIP		

Less costs and Margin after FOB to Ex-Warehouse		
- Overseas Freight		
- Overseas Insurance		
- Customs Duty		
- Port Clearance Fees		
- Cartage to Store		
- Devanning Fees		
- Other Import Costs (Bank Fees)		
- Selling and Admin Costs		
- Store Costs		
- Customs Clearance Fees		
- Documentation Fee		
- Reasonable Profit Margin		
Category 1 NIFOB		373.64

6.3.20 The Samsung category 2 and 3 NIFOB was based on annual cost information provided by [REDACTED].

Table 6.9: NIFOB for Samsung - Category 2  
(4.6 - 5.5kg)

		NZ\$/Unit
F&P ex-factory NIP		
Less costs and Margin after FOB to Ex-Warehouse		
- Overseas Freight		
- Overseas Insurance		
- Customs Duty		
- Port Clearance Fees		
- Cartage to Store		
- Devanning Fees		
- Other Import Costs (Bank Fees)		
- Selling and Admin Costs		
- Store Costs		
- Reasonable Profit Margin		
Category 2 NIFOB		503.36

Table 6.10: NIFOB for Samsung - Category 3  
(5.6 - 6.5kg)

		NZ\$/Unit
F&P ex-factory NIP		
Less costs and Margin after FOB to Ex-Warehouse		
- Overseas Freight		
- Overseas Insurance		
- Customs Duty		
- Port Clearance Fees		
- Cartage to Store		
- Devanning Fees		
- Other Import Costs (Bank Fees)		

- Selling and Admin Costs	█
- Store Costs	█
- Reasonable Profit Margin	█
Category 3 NIFOB	616.98

6.3.21 Samsung did not export washing machines in category 4 over the period of investigation. The Samsung category 4 NIFOB was based on the weighted average category 4 NIFOBs for LG and Daewoo, weighted on the volume of exports by the two companies in category 4. The following table shows the Samsung category 4 NIFOB calculation.

Table 6.11: NIFOB for Samsung - Category 4  
(6.6 - 7.5kg)

	\$NZ
LG Category 4 NIFOB	█
Daewoo Category 4 NIFOB	█
Samsung Category 4 NIFOB	604.62

6.3.22 As Samsung does not export washing machines to New Zealand in category 5, the annual cost information used to calculate the LG category 5 NIFOB was used to calculate the Samsung category 5 NIFOB. The reasonable weighted average profit margin of █ percent was added to the annual cost figure. The following table shows the calculation of Samsung category 5 NIFOB.

Table 6.12: NIFOB for Samsung - Category 5  
(7.6 - 10kg)

	NZ\$/Unit
F&P ex-factory NIP	█
Less costs and Margin after FOB to Ex-Warehouse	█
- Overseas Freight	█
- Overseas Insurance	█
- Customs Duty	█
- Port Clearance Fees	█
- Cartage to Store	█
- Devanning Fees	█
- Other Import Costs (Bank Fees)	█
- Selling and Admin Costs	█
- Store Costs	█
- Customs Clearance Fees	█
- Documentation Fee	█
- Reasonable Profit Margin	█
Category 5 NIFOB	764.19

**Daewoo Electronics**

6.3.23 Eurolife only imported washing machines in category 4 from Daewoo, therefore, the Daewoo category 4 NIFOB is based on Eurolife annual cost and profit information. For categories 1, 2, 3 and 5, LG and Samsung information was used wherever applicable to calculate NIFOBs for these categories.



6.3.24 The following table shows the calculation for Daewoo category 1 NIFOB. This NIFOB is based on the annual cost information used to calculate the LG category 1 NIFOB, as Daewoo did not supply washing machines to NZ during the period of investigation in this category. A reasonable weighted average profit margin of █ percent was used.

Table 6.13: NIFOB for Daewoo - Category 1  
(Less than 4.5kg)

	NZ\$/Unit
F&P ex-factory NIP	█
Less Costs and Margin after FOB to Ex-Warehouse	█
- Overseas Freight	█
- Port Services Charge & Wharfage	█
- Overseas Insurance	█
- Customs Duty	█
- Customs Clearance fees	█
- Cartage to Store	█
- Devanning Fees	█
- Other Import Costs	█
- Documentation Fee	█
- Storage and Handling Costs	█
- Selling and Admin Costs	█
- Reasonable Profit Margin	█
<b>Category 1 NIFOB</b>	<b>373.64</b>

6.3.25 The following table shows the calculation for Daewoo category 2 NIFOB. This NIFOB is based on the Samsung annual cost information used to calculate the Samsung category 2 NIFOB, as Daewoo did not supply washing machines to NZ during the period of investigation in this category. A reasonable weighted average profit margin of █ percent was used.

Table 6.14: NIFOB for Daewoo - Category 2  
(4.6 - 5.5kg)

	NZ\$/Unit
F&P ex-factory NIP	█
Less Costs and Margin after FOB to Ex-Warehouse	█
- Overseas Freight	█
- Port Services Charge & Wharfage	█
- Overseas Insurance	█
- Customs Duty	█
- Customs Clearance fees	█
- Cartage to Store	█
- Devanning Fees	█
- Other Import Costs	█
- Documentation Fee	█
- Storage and Handling Costs	█
- Selling and Admin Costs	█
- Reasonable Profit Margin	█
<b>Category 2 NIFOB</b>	<b>503.36</b>

- 6.3.26 Daewoo did not supply washing machines to New Zealand under category 3 during the period of investigation. Since LG and Samsung both exported washing machines in this category, their total weighted average annual cost information for category 3 was used. A reasonable weighted average profit margin of █ percent was applied to the total weighted average annual cost to calculate Daewoo category 3 NIFOB as shown in the following table.

Table 6.15: NIFOB for Daewoo - Category 3  
(5.6 - 6.5kg)

	NZ\$/Unit
F&P Ex-factory NIP	█
Less Costs and Margin after FOB to Ex-Warehouse	█
Total Weighted Average Annual Costs	█
Reasonable Profit Margin	█
Category 3 NIFOB	603.03

- 6.3.27 Eurolife only imported washing machines from Daewoo under category 4 over the period of investigation. Eurolife annual cost information was used to calculate the Daewoo category 4 NIFOB. █  
█  
█". The following table shows the Daewoo category 4 NIFOB calculation.

Table 6.16: NIFOB for Daewoo - Category 4  
(6.6 - 7.5kg)

	NZ\$/Unit
F&P Ex-factory NIP	█
Less costs and Margin after FOB to Ex-Warehouse	█
- Duty	█
- Overseas Freight	█
- Cartage(Wharf-Store)	█
- Customs Clearance	█
- Port Services Charge	█
- Insurance	█
- Freight to the Consumer	█
- Warranty	█
- Other Operating Expenses & profits	█
Eurolife Category 4 NIFOB	560.59

- 6.3.28 The Daewoo category 5 NIFOB was based on LG category 5 annual costs as it was the only producer that supplied washing machines to New Zealand in that category over the period of investigation. A reasonable weighted average profit margin of █ percent was used to calculate the Daewoo category 5 NIFOB as follows:

Table 6.17: NIFOB for Daewoo - Category 5  
(7.6 - 10kg)

	NZ\$/Unit
F&P Ex-Factory NIP	█
Less Costs and Margin after FOB to Ex-Warehouse	█
- Overseas Freight	█

- Port Services Charge & Wharfage	
- Overseas Insurance	
- Customs Duty	
- Customs Clearance fees	
- Cartage to Store	
- Devanning Fees	
- Other Import Costs	
- Documentation Fee	
- Storage and Handling Costs	
- Selling and Admin Costs	
- Reasonable Profit Margin	

Category 5 NIFOB

764.19

**Other Exporters**

6.3.29 In deciding what duties should be imposed on “other” exporters of washing machines from Korea, the investigating team followed Article 9.4 of the WTO Agreement, which states that:

9.4 When the authorities have limited the examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination should not exceed:

- (i) the weighted average margin of dumping established with respect to the selected exporters or producers or,
- (ii) where the liability of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,....”

6.3.30 The investigating team limited its examination to those exporters of washing machines from Korea which represented 99 percent of exports (by volume) of the subject goods over the year ended October 2000.

6.3.31 The investigating team is of the view that a weighted average margin of dumping expressed as a percentage of the export price should be calculated for the 5 categories for “other” exporters of washing machines from Korea as this approach is reasonable and consistent with Article 9.4 of the WTO Agreement.

6.3.32 The proposed anti-dumping duty, to be applied as a reference price for all categories of exports from LG, Samsung and Daewoo, and as a percentage weighted average dumping margin for “other” exporters are shown in the table below. The reference prices are expressed in \$NZ.

Table 6.18: Proposed Reference Price Levels for Specified Suppliers and Percentage Rates of Duty for Other Suppliers

	Category				
	1 < 4.5kg	2 4.6-5.5kg	3 5.6-6.5kg	4 6.6-7.5kg	5 7.6-10.0kg
LG	398.66	503.36	505.54	623.86	762.01
Samsung	373.64	503.36	616.98	604.62	764.19
Daewoo	373.64	503.36	603.03	560.59	764.19
Other Suppliers	52%	93%	68%	75%	70%

### Retrospective Application of Final Duties

- 6.3.33 The Act provides in section 17(2) for the retrospective application of final anti-dumping duties for the period for which provisional measures have been applied.
- 6.3.34 The reference prices proposed as final duties are different from the provisional measures imposed as *ad valorem* percentage of the value of duty. Section 16(5) of the Act requires that, where the amount of anti-dumping duty provisionally imposed exceeds the amount of duty finally determined, “the amount of the excess shall be remitted by the Collector if so required by the Minister”. Section 16(6) requires that, where the amount of anti-dumping duty provisionally imposed is less than the amount of duty finally determined, “the amount of the difference shall not be collected on those importations subject to the provisional direction.”

### Impact of Anti-dumping Duties

- 6.3.35 Any anti-dumping duties imposed will impact only on the washing machines originating from Korea that are being dumped. Anti-dumping duties are set at a level that is no greater than is necessary to remedy the injury suffered by the New Zealand industry.
- 6.3.36 Most importers have advised that they have ceased importing the subject goods from Korea as a result of the imposition of provisional anti-dumping duties. The imposition of the final anti-dumping duties recommended in this report may mean that importers will not resume importing.
- 6.3.37 The imposition of final duties may therefore result in consumers not having the same access to Korean washing machines. If imports from Korea resume it is likely that consumers will face a significant increase in prices. Washing machines imported from other countries will not be affected by the duties and consumers will therefore continue to have the same access to washing machines from other countries. Other countries that are significant suppliers of washing machines to the New Zealand market include Australia, the United States, Germany, Italy and Japan.

## 7. RECOMMENDATIONS

---

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

1. That the Minister determine pursuant to s.13 of the Dumping and Countervailing Duties Act 1988 that in relation to the importation or intended importation of washing machines from Korea into New Zealand:
  - (a) the goods are being dumped; and
  - (b) by reason thereof material injury to an industry has been caused.
2. That the Minister, having made a determination under s.13 of the Act, give notice pursuant to s.14 (1) of the rate or amount of duty determined under s.14 (4) of the Act to be imposed in respect of those washing machines from Korea that are dumped. It should also be noted that in accordance with s.14 (1) and s.17 of the Act, such duty shall be payable from the day after the date of the Minister's decision to give notice of the provisional direction.
3. That the Minister require that, where the amount of anti-dumping duty provisionally imposed exceeds the amount of duty finally determined, the amount of the excess be remitted by the Collector of Customs.
4. That the Minister sign the attached *Gazette* Notice, and give notice of the final determination and imposition of duties to interested parties in accordance with sections 9, 13 and 14 of the Act.

.....

.....

Investigating Team  
Trade Remedies Group