

DUMPING AND COUNTERVAILING DUTIES ACT 1988

DUMPING APPLICATION

NON-CONFIDENTIAL FINAL REPORT

REFRIGERATOR-FREEZERS AND REFRIGERATORS FROM KOREA

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ABBREVIATIONS

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Amendment Act (the)	Dumping and Countervailing Duties Amendment Act 1994
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
AUD	Australian Dollars
Casmor	Casmor International Ltd
Chen Palmer	Chen Palmer and Partners
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
Daewoo	Daewoo Electronics Co. Ltd
Davenports	Davenports West
EBIT	Earnings Before Interest and Tax
ef&c	Essential Facts and Conclusions
EIAK	Electronic Industries Association of Korea
Electrolux	Electrolux Home Products (NZ) Ltd
Email	Email Appliances (NZ) Ltd
F&P	Fisher & Paykel Ltd
FIS	Free Into Store
FOB	Free on Board
LDC	Less Developed Countries
LG	LG Electronics Inc.
LLDC	Least Developed Countries
LM Rankine	LM Rankine Trading Co Ltd
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
R&D	Research and Development
Radiola	Radiola Corporation Ltd
Samsung	Samsung Electronics Co. Ltd
VFD	Value for Duty
Whirlpool	Whirlpool (Australia) Pty Ltd
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 (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 refrigerator-freezers and refrigerators*, on being satisfied that sufficient evidence had been provided that:

- (a) The goods imported or intended to be imported into New Zealand are 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 15 March 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, Fisher & Paykel Ltd (F&P) claimed that as a result of the alleged dumping, material injury is resulting from:

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

resulting in:

- decline in sales;
- decline in market share;
- decline in profits;
- decline in return on investments.

1.1.5 F&P has stated in its application that the material injury resulting from the importation of the allegedly dumped refrigerators commenced in the year ended March 2000.

- 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 submitted by F&P, the sole New Zealand producer of household refrigerators and refrigerator-freezers. 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) data as exporting the subject goods over the period of investigation (the year ending 31 October 2000), the investigation has been limited, in accordance with Article 6.10 of the Anti-Dumping Agreement, to those exporters representing the top 98 percent of imports by volume over the period of investigation. These exporters are:

Samsung Electronics Co. Ltd
LG Electronics Inc.
Daewoo Electronics Co. Ltd

All other exporters and importers have the opportunity to provide submissions but these have not been directly solicited.

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

Importers

- 1.2.6 The companies identified from 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)
Whirlpool (Australia) Pty Ltd (Whirlpool)
Fisher & Paykel Ltd (F&P)
Casmor International Ltd (Casmor)

LM Rankine Trading Co Ltd

- 1.2.7 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 refrigerators from LG.
- 1.2.8 LM Rankine's major customer is [REDACTED] and it also supplies [REDACTED] and [REDACTED]. [REDACTED] in the New Zealand market.
- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 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 Ltd

- 1.2.12 Email is a subsidiary of Email Limited (Major Appliances) of New South Wales Australia. At an early stage of the investigation the parent company Email Limited (Major Appliances) was purchased by Electrolux Home Products Pty Limited and Email is now known as Electrolux Home Products (NZ) Limited (Electrolux).
- 1.2.13 Electrolux is a manufacturer and distributor of major household appliances in New Zealand. The company is headquartered in Auckland and its production facility is located in Christchurch. Electrolux does not produce refrigerators in New Zealand.
- 1.2.14 Whiteware is [REDACTED] and is sold through retail electrical appliance stores and outlets nation-wide. The company's Korean sourced refrigerators are purchased from LG and are sold under the Westinghouse and Simpson brands.
- 1.2.15 Outlets available to [REDACTED] are the same as those serviced by [REDACTED].
- 1.2.16 Electrolux provided a full submission in response to the importers questionnaire and has provided additional information and clarification as required.

Radiola Corporation Ltd

- 1.2.17 Radiola is headquartered in Porirua where its Consumer Appliances division acts as an importer and wholesale distributor of Samsung branded whiteware. Its customers are retail chains and independent retailers throughout New Zealand. Imports by Radiola [REDACTED] during the period under investigation. Radiola's major customer for whiteware is the Pacific Retail Group.
- 1.2.18 Radiola provided a full submission in response to the importers questionnaire and has provided additional information and clarification to the investigating team as required.
- 1.2.19 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 it is pertinent the points raised by Chapman Tripp are addressed in this report.

Whirlpool (Australia) Pty Ltd

- 1.2.20 Whirlpool trades in New Zealand as Whirlpool New Zealand. Whirlpool's parent company is Whirlpool Corporation which is listed on the New York stock exchange. Whirlpool only provided an address in Australia.
- 1.2.21 Whirlpool imports products into New Zealand from its own facilities and supplements such imports with product sourced from other manufacturers. Whirlpool's imports from Korea are sold under the Whirlpool brand. Whirlpool sells direct to retailers throughout New Zealand. Whirlpool supplied a list of its major customers and advised that as a result of discounting "within the confined market of non EDA stores" it has ceased to be a supplier to the PRG and more recently to the Betta Stores Group.
- 1.2.22 Whirlpool provided a full response to the importers questionnaire.

Fisher & Paykel Ltd

- 1.2.23 F&P imports small bar type refrigerators from Daewoo in Korea. F&P has advised that it primarily imports these refrigerators to supply [REDACTED], in order to offer a whole package of whiteware (washing machines, dryers, dishwashers, stoves and refrigerators), but also sells to retailers. F&P said that the smallest refrigerator it makes does not fit under a bench, [REDACTED], and the volumes do not make it worthwhile to tool up and produce these refrigerators in New Zealand.
- 1.2.24 F&P provided a full response to the importers questionnaire.
- 1.2.25 As a result of a change in the definition of the goods under investigation (see below in section 2.1 under "Like Goods"), F&P is no longer considered to be an importer.

Casmor International Ltd

- 1.2.26 Casmor made [REDACTED] of refrigerators over the period of investigation, from Daewoo, that it sold direct to a retailer. The company is located in Auckland.
- 1.2.27 Casmor provided a response to the importers questionnaire.

Korean Government

- 1.2.28 The Korean Government made a submission in relation to the Provisional Measures Report which is considered in this report. The Korean Government also 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 the subject of the application, hereinafter referred to as refrigerators or "subject goods", are:

Household type combined refrigerator-freezers fitted with separate top and bottom external doors or drawers up to and including a total gross volume of 500 litres and single door refrigerators with a total gross volume of not less than 60 litres, the capacities determined by standard AS/NZS4474.1997

- 1.3.2 As a result of like goods considerations (see section 2.1 below), the description of the subject goods has been narrowed and now is as follows:

Household type combined refrigerator-freezers fitted with separate top and bottom external doors or drawers up to and including a total gross volume of 500 litres and single door refrigerators with a total gross volume of not less than 80 litres, the capacities determined by standard AS/NZS4474.1997

- 1.3.3 All of the importers except Casmor advised that the capacity of refrigerators they import is measured according to the standard AS/NZS 4474. Casmor did not answer the question concerning the standard used to measure capacity.

- 1.3.4 NZCS has stated that the subject goods enter under the following tariff classifications:

- 8418 Refrigerators, freezers and other refrigerating or freezing equipment, electric or other: heat pumps other than air conditioning machines of heading No. 84.15
- 8418.10.00 - Combined refrigerator-freezers, fitted with separate external doors
- 02C . . Compression type:
. . . Less than 200 litres gross internal capacity

05H	...	200 litres and over but less than 300 litres gross internal capacity
07D	...	300 litres and over but less than 400 litres gross internal capacity
11B	...	400 litres and over but less than 500 litres gross internal capacity
14G	...	500 litres and over gross internal capacity
8418.21.00	-	Refrigerators, household type:
		.. Compression type:
01C	...	Less than 200 litres gross internal capacity
03K	...	200 litres and over but less than 300 litres gross internal capacity
05F	...	300 litres and over but less than 400 litres gross internal capacity
07B	...	400 litres and over but less than 500 litres gross internal capacity
12J	...	500 litres and over gross internal capacity

1.3.5 Applicable duty rates are:

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

1.4 INVESTIGATION DETAILS

1.4.1 In this report, unless otherwise stated, years are March years and dollar values are NZ\$. In tables, column totals may differ from individual figures because of rounding.

1.4.2 The period for considering claims of dumping is 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.

1.4.3 The applicant claims that material injury commenced in the year ended March 2000 and that ongoing injury is likely. The investigation of injury involves the evaluation of data from 1 April 1997 to 31 December 2000.

1.5 EXCHANGE RATES

1.5.1 Article 2.4.1 of the WTO Agreement provides as follows:

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

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

1.5.2 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 has used the invoice date to establish the date of sale and export transactions have been converted into Korean Won 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>).

1.6 DISCLOSURE OF INFORMATION

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

1.6.2 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.

1.6.3 As noted 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 available information, 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 the report.

1.6.4 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.

1.6.5 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.

1.7 INVESTIGATION PROCESSES

Submission by LM Rankine Ltd

Introduction

1.7.1 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 1.2.11 above. The submission was received by the Ministry on 1 May.

- 1.7.2 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 therefore had very little time to respond to the issues raised by LM Rankine in this submission.
- 1.7.3 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

- 1.7.4 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”.
- 1.7.5 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.
- 1.7.6 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-à-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-à-vis* New Zealand companies whose vital interests are at stake, not to rely on information provided by a party with a vested interest.
- 1.7.7 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.
- 1.7.8 LM Rankine said that under section 6 of the Act the Secretary 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 Secretary. LM Rankine has submitted that section 6 most certainly does not empower the Secretary 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

- 1.7.9 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.
- 1.7.10 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 Secretary must determine whether “good cause” has been shown for such confidentiality.
- 1.7.11 LM Rankine considers that, in reaching a decision as to whether good cause has been shown, the Secretary 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 Secretary 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.
- 1.7.12 LM Rankine has submitted that the Secretary 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 Secretary 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

- 1.7.13 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.
- 1.7.14 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.

- 1.7.15 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.
- 1.7.16 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.
- 1.7.17 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”.
- 1.7.18 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.
- 1.7.19 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.
- 1.7.20 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

- 1.7.21 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 ef&c 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.
- 1.7.22 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.
- 1.7.23 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.
- 1.7.24 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.
- 1.7.25 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 Secretary. Blackburn Croft has submitted that to expect the Secretary 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".
- 1.7.26 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.

- 1.7.27 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.
- 1.7.28 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

- 1.7.29 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.

- 1.7.30 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.

- 1.7.31 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.

- 1.7.32 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”.

- 1.7.33 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 each intervening adjustment). 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.
- 1.7.34 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.
- 1.7.35 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 an 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*¹ 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 . . .”
- 1.7.36 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.
- 1.7.37 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.
- 1.7.38 The investigating team also notes that natural justice concerns are dealt with under section 10(6) of the Act, which states as follows:

¹ Vermulst, Edwin and Waer, Paul (1996) *E.C. Anti-Dumping Law and Practice*, Sweet & Maxwell Ltd, London, UK, p.40 – 41.

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.

- 1.7.39 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.
- 1.7.40 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.
- 1.7.41 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.
- 1.7.42 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

- 1.7.43 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.

- 1.7.44 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.
- 1.7.45 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.
- 1.7.46 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.
- 1.7.47 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.
- 1.7.48 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 type combined refrigerator-freezers fitted with separate top and bottom external doors or drawers up to and including a total gross volume of 500 litres and single door refrigerators with a total gross volume of not less than 60 litres, the capacities determined by standard AS/NZS4474.1997

New Zealand Production

2.1.3 F&P advises it produces refrigerator-freezers and refrigerators in a range of sizes commencing with the single door P120 model with a capacity of 115 litres up to the E411T and E415H models that have a capacity of 411 litres. The range includes top and bottom mounted freezers, and features such as frost free, intelligent electronics, butter conditioner, and humidity controlled fruit and vegetable bin.

Imported Goods

- 2.1.4 The importers have provided details of all of the models of refrigerator they import falling within the description of the subject goods. An outline of the range of models imported from each Korean supplier and a summary of any submissions concerning like goods, are shown below.

Radiola Corporation Ltd

- 2.1.5 Radiola has imported 9 different models of refrigerator (falling within the definition of the subject goods) from Samsung over the period of investigation. All of the refrigerators imported by Radiola are refrigerator-freezers with a top mounted freezer and range in size from 260 litres to 495 litres. The range imported includes features such as frost free, chiller compartment, crisper humidity control and intelligent electronics.

- 2.1.6 Radiola has noted that there are differences in the features between the Samsung models it imports and F&P models, which need to be taken into account when comparing prices for price undercutting purposes (see introduction to the section on price undercutting below). Radiola has not, however, submitted that the refrigerators produced by F&P are not like goods to the subject goods.

Whirlpool Australia Pty Ltd

- 2.1.7 Whirlpool has imported 6 different models of refrigerator (falling within the definition of the subject goods) from Samsung over the period of investigation. All of the refrigerators imported by Whirlpool are refrigerator-freezers with a top mounted freezer and range in size from 256 litres to 486 litres. The range imported includes features such as frost free, and crisper bin (but not humidity controlled).

- 2.1.8 No submissions were made by Whirlpool on the issue of like goods.

LM Rankine Trading Co Ltd

- 2.1.9 LM Rankine has imported 8 different models of refrigerator (falling within the definition of the subject goods) from LG over the period of investigation consisting of one model of bar refrigerator, 5 models of refrigerator-freezers with a top mounted freezer, and 2 models of refrigerator-freezer with a bottom mounted freezer. The sizes imported range from 94 litres to 400 litres. The range imported includes such features as frost free, dual temperature, fresh meat compartment, and a lamp that prolongs the shelf life of protein (a "FIR" lamp).

- 2.1.10 LM Rankine has submitted that there are substantial differences between a number of its products and those produced by F&P relating to capacity and technological innovation. In particular LM Rankine has pointed to the following differences:

- F&P does not make a small bar refrigerator similar to the 94 litre model it imports, the smallest refrigerator produced by F&P being 120 litres [F&P's information records this refrigerator as 115 litres].

- F&P does not produce a frost free refrigerator of a similar size to the LG model GR242 of 215 litres which is frost free.
- Two of the LG models (GR372 and GR432) are technologically unique through having a “FIR” lamp to prolong the shelf life of protein. LM Rankine said that there is no feature equivalent to this in F&P refrigerators.
- The LG model GR403SF has no equivalent produced by F&P. LM Rankine said that “This model has three compartments and, is the only model of this kind in NZ, having a unique middle three in one compartment which can be utilised as a fridge, freezer or chiller.”
- The LG models GR349 and GR389 are also technologically unique and no equivalent is produced by F&P. LM Rankine said both of these models incorporate the “neuro fuzzy control system” that uses sensors and a microcomputer to automatically adjust the temperature.
- The LG GR389 model has a separate meat compartment. Although not expressly stated by LM Rankine, it is assumed that LM Rankine is asserting no such feature is found in F&P’s refrigerators.
- The LG models GR349 and GR389 are technologically unique in having a quick freeze function in the top drawer of the freezer.
- In general the dimensions and capacities of LG models differ from F&P models and none of the LG models have a butter conditioner.

2.1.11 LM Rankine has submitted that these differences are significant, certainly in the marketplace and “raise the question as to whether there is in fact an appropriate recognition in this investigation of what are “like goods””.

2.1.12 At a very late stage in the preparation of the ef&c report, LM Rankine made a further submission. Those parts of the submission relevant to like goods are summarised below.

2.1.13 LM Rankine said that size is a factor in determining appropriate distinctions between products and therefore needs to be considered. LM Rankine argue that a small refrigerator designed for an under bench situation is a different product from a larger refrigerator not designed for that purpose.

2.1.14 LM Rankine provided a comparison of 2 LG models (the GR131 of 94 litres and the GR151 of 129 litres) with the F&P model P120 of 120 litres [F&P record this as 115 litres]. LM Rankine has submitted that the Ministry should be comparing the GR151 with the P120, not the GR131 (this is also referred to under “Price Undercutting” below). LM Rankine said that F&P do not manufacture any form of refrigeration under 120 litres and have always imported smaller sizes. LM Rankine has submitted therefore that anything under 100 litres should be excluded from the investigation.

2.1.15 LM Rankine has referred to the LG models GR349 (of 305 litres) and GR389 (of 346 litres). LM Rankine said that these 2 models have electronic temperature control and are slim in design. LM Rankine said there is one equivalent F&P model which is much smaller in capacity and has a cheaper

retail price [the F&P model is not identified by LM Rankine]. LM Rankine stated that “these two products have been penalised because of their size and F&P do not manufacture any thing like it”.

- 2.1.16 LM Rankine referred to LG’s door cooling range of models. LM Rankine said that the door cooling models, which have a patent pending worldwide, involve new technology and are more expensive and operate differently to F&P products. LM Rankine said the new technology doubles cooling speed and gives an even temperature and keeps food fresher and longer. LM Rankine said the door cooling models arrived in New Zealand in December 2000 and were not part of the Ministry’s investigation. LM Rankine said it would be unfair and unlawful if this unique range with this feature is included in any final decision.
- 2.1.17 LM Rankine made a further submission relating to like goods in response to the ef&c. The submission is intertwined with comments relating to the comparison of models for price undercutting purposes. Because the submissions relating to like goods and price undercutting cannot be easily separated, it is summarised below inclusive of those parts relating to price undercutting. The price undercutting section of the report refers back to this part of the report where necessary.
- 2.1.18 LM Rankine has submitted that some of the LG refrigerators should be excluded from the investigation. LM Rankine has presented the refrigerators it considers should be excluded in the form of the following table:
- | <u>Model</u> | <u>F&P’s Position</u> |
|------------------------|--|
| GR131 | Do not manufacture anything under 100 litres |
| GR242 | No model in this area |
| GR349, GR389 | No slim line models in size and features |
| GRT382, GRT452, GRT582 | Do not manufacture anything of this kind |
- 2.1.19 LM Rankine claims that the Ministry has made no serious effort to consider its previous submissions and in other cases has only partially responded to the points made and ignored the fundamental issue in dispute.
- 2.1.20 LM Rankine has argued that a small refrigerator designed for an under bench situation is a different product from a larger refrigerator that is not designed with this purpose in mind. To illustrate this point, LM Rankine provided details of the capacity, dimensions and features of 3 models: the LG GR131 (94 litres), the LG GR151 (129 litres) and the F&P P120 (120 litres). LM Rankine submitted that the Ministry should be comparing the LG GR151 with the F&P P120, rather than comparing LG GR131 with the F&P P120. LM Rankine said that the Ministry has compared the GR131 with the P120 even though F&P admits that its P120 is clearly not intended to be used as an under bench model, and that it imports an under bench model from Korea. LM Rankine said that in terms of size, capacity and function the LG GR151 is the closest in size to the F&P P120 and it would be irrational and unreasonable for the Ministry to persist with an arbitrary comparison between the GR131 and P120.
- 2.1.21 LM Rankine said that the Ministry [in the ef&c] considered that LM Rankine had failed to provide a reason why the cut off point should be at 100 litres [this was in connection with establishing the point at which small refrigerators

were no longer considered to be like goods to the smallest refrigerator produced by F&P]. LM Rankine said there is no issue of cut off, the issue is what is the reasonable and rational comparator. LM Rankine said for the purposes of the like goods analysis, on all the indicators available, the P120 and GR151 are the closest models.

- 2.1.22 LM Rankine said the Ministry only partially responded to its submissions concerning technology differences between F&P's whiteware and LG's whiteware. LM Rankine said the Ministry failed to take into account that, in the case of modern whiteware, technology is a critical factor and differences in technology between refrigerators of similar size are crucial and impact upon consumer purchasing behaviour. LM Rankine said that as discussed in previous submissions, the LG models GR372 and GR432 have manual controls whereas the nearest size F&P models do not.
- 2.1.23 LM Rankine said the Ministry had also failed to consider issues which were properly raised, particularly in the case of the door cooling models (GRT382, GRT452 and GRT582) which are caught by the generic nature of the provisional duties but which were never properly subject to the investigation. LM Rankine reiterated its submission recorded above concerning the features of the door cooling models.
- 2.1.24 LM Rankine said it is false to proceed on the basis of an argument that a "refrigerator is a refrigerator" and ignore the practical and commercial reality that, within a category of goods, such as cars or computers or refrigerators or washing machines, there are significant differences which must be recognised if a fair and lawful application of the Act is to take place. LM Rankine said there is an inconsistency between the Ministry's conclusions and the facts outlined in its reports when the Ministry states [in the ef&c] that there is a "wide variety of features" found in F&P whiteware and imported whiteware.
- 2.1.25 LM Rankine submitted 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".
- 2.1.26 LM Rankine provided a comparison of the LG GR242 (215 litres) and LG GR282 (245 litres) with the F&P N249 (248 litres). LM Rankine submitted that the GR282 should be compared with the N249. LM Rankine stated "The only reference to this example in the Essential Facts and Conclusion Report (at paragraph 4.3.1.35) is in regard to pricing comparisons. The Ministry have not compared the actual likeness (if any) of these freezers".

- 2.1.27 LM Rankine provided a comparison of the LG GR372 (339 litres) with the F&P E331 (329 litres), and a comparison of the LG GR432 (392 litres) with the F&P E381 (380 litres). LM Rankine said that the LG models have manual temperature control whereas the F&P models have a much more costly electronic temperature control function. LM Rankine stated "Again the Ministry have not compared the actual likeness (if any) of these products".
- 2.1.28 LM Rankine referred to the LG models GR349 (305 litres) and GR389 (346 litres). LM Rankine said these 2 models have electronic temperature control and are slim in design. LM Rankine said there is one equivalent F&P model which is much smaller in capacity and has a cheaper retail price [the F&P model was not identified by LM Rankine]. LM Rankine said these 2 models have been penalised because of their size and stated that F&P does not manufacture anything like it. LM Rankine referred to the ef&c where the Ministry stated that F&P does manufacture refrigerators with electronic temperature controls in sizes similar to the GR349 and GR389, being the F&P models E331 (329 litres) and the E372B (373 litres). LM Rankine stated that "These examples are totally different in size to GR349 (305 litres) and GR389 (346 litres) and, therefore, cannot be meaningfully compared".

Electrolux Home Products (NZ) Ltd

- 2.1.29 Electrolux has imported 4 different models of refrigerator (falling within the definition of the subject goods) from LG over the period of investigation. All of the refrigerators imported by Electrolux are refrigerator-freezers with a top mounted freezer and range in size from 245 litres to 392 litres. Details of other features in these refrigerators have not been provided.
- 2.1.30 In response to a question in the importer's questionnaire asking for an explanation of any differences between the refrigerators imported by Electrolux and those produced in New Zealand, Electrolux has stated that it considers the F&P refrigerators are like goods.

Fisher & Paykel Ltd

- 2.1.31 F&P has imported only one model of refrigerator (falling within the definition of the subject goods) from Daewoo over the period of investigation. The model imported is a single door bar refrigerator of 74 litres.
- 2.1.32 F&P has stated that the model it imports is similar to its P120 model which is a single door refrigerator of 115 litres. F&P said that the differences between these 2 models are largely confined to the physical dimensions. F&P has noted that the method of manufacture, function and use and marketing and distribution are the same when the 2 models are compared.
- 2.1.33 As a result of the submission made by LM Rankine that F&P does not produce a small bar refrigerator similar to the 94 litre model imported by LM Rankine from LG, the investigating team sought further comment on this issue from F&P. The investigating team referred F&P to the verification report that contains a table setting out the range of size variations within which F&P considers refrigerators are still comparable. The investigating team noted that F&P's P120 model of 115 litres falls within the 100 to 200 litre group for which the range of size variations is plus or minus 45 litres. The investigating team noted that in terms of F&P's own table this would make the smallest

refrigerator comparable to F&P's P120 model a refrigerator of 70 litres, which is 10 litres more than the lower limit of the goods description.

- 2.1.34 The investigating team also referred to comments in the verification report by F&P that the smallest refrigerator it manufactures does not fit under a bench, as is often required for flats and apartments. The investigating team also referred to comments by F&P that it imports 2 types of bar refrigerator from Korea (of 47 litres and 74 litres capacity) primarily to supply [REDACTED], in order to offer a whole package of whiteware. The investigating team pointed out to F&P that this raised the question of whether F&P produces a like good to single door refrigerators that are capable of fitting under a normal height bench.
- 2.1.35 In response F&P advised that "Further analysis has shown that the P120 does fit under a bench". F&P said that it had previously assumed that the P120 did not fit under a bench because of the height of the plinth. F&P said, however, that the P120 does not need a plinth and stands on the floor. F&P said that the under bench height is approximately 870mm and the P120 comfortably fits under a bench as its height is 819mm.
- 2.1.36 F&P said that taking into account the range of size variations referred to by the investigating team "it would seem appropriate that the 60 litre lower limit should be increased to 70 litres". F&P said it believes that the physical characteristics of under bench refrigerators are very similar apart from the dimensions, i.e., some under bench refrigerators are smaller and some are larger but they all have similar physical characteristics. F&P provided extracts from various brochures showing a range of small refrigerators. F&P said purchasers wanting a larger under bench refrigerator are likely to purchase models 70 litres or greater which F&P believes compete with its P120 model.
- 2.1.37 F&P said that although it has imported a 74 litre under bench unit, this is not seen as contradicting its previous argument. F&P said that the reason for it selling a 74 litre unit is to meet the demands of purchasers wanting a "package" of appliances. F&P said that whatever the size of an under bench refrigerator, its function and usage is essentially the same. F&P noted that the pricing of under bench refrigerators is dependant on the size of the unit as is common with combined refrigerator-freezers. F&P said that under bench refrigerators are distributed through the same outlets as other refrigerators and refrigerator-freezers and does see this as impacting on like goods.

Casmor International Ltd

- 2.1.38 Casmor has imported 2 models of refrigerator (falling within the definition of the subject goods) from Daewoo over the period of investigation. The 2 models imported by Casmor are both 386 litres, frost free, refrigerator-freezers, one of which has a door with a stainless steel look. No other details of features in these refrigerators have been provided.
- 2.1.39 No submissions have been made on the issue of like goods.

Korean Producers

- 2.1.40 No submissions were made on the issue of like goods.

Like Goods Considerations

- 2.1.41 In deciding like goods issues the Ministry takes into account the following considerations:
- 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.
 - e. Other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.
- 2.1.42 This framework is used to consider what goods produced in New Zealand are like goods to the allegedly dumped imports.

Physical Characteristics

- 2.1.43 Catalogues provided by F&P and importers show the imported refrigerators have the same general appearance as those produced by F&P. The capacity of the imported models range from 74 to 486 litres. The capacity of the F&P models range from 115 to 411 litres. Both the imported and F&P models include single door refrigerators and refrigerator-freezers with top and bottom mounted freezers.
- 2.1.44 LM Rankine has submitted that in general the dimensions and capacities of LG models differ from F&P models. The investigating team notes that while the sizes of the LG models imported by LM Rankine are not exactly the same as the models produced by F&P, the sizes are generally similar. LM Rankine has also submitted that size is a factor in determining distinctions between products, that F&P does not manufacture any form of refrigerator under 120 litres [115 litres according to F&P], and have always imported smaller sizes.
- 2.1.45 As outlined above, LM Rankine has submitted that 2 of its larger models, the GR349 (305 litres) and the GR389 (346 litres) have no F&P equivalent of similar size. The information available to the investigating team shows that F&P does manufacture “active smart” refrigerators which have electronic temperature control, in sizes similar to the 2 models cited by LM Rankine. For example F&P manufacture the active smart models E331 of 329 litres and the E372B of 373 litres. L M Rankine has claimed that the E331 and E372B are totally different in size to the GR349 and GR389. The investigating team notes that all 4 refrigerators fall within the size band of 300 – 400 litres and vary in size by far less than the 75 litre variation identified by F&P as sufficient to make the refrigerators not comparable (see below under “Price Undercutting”). The investigating team does not consider there is a significant difference in the physical characteristics of these models.

- 2.1.46 LM Rankine has also specifically claimed that F&P does not produce any model in the same area as the LG GR242. The information available from F&P on the GR242 shows that it is 215 litres in capacity, frost free with a top mounted freezer. This model is similar to the F&P N249T which is 248 litres in capacity, frost free with a bottom mounted freezer. Both models fall within the 200 – 300 litre range size band and vary in size by less than the 50 litre variation identified by F&P as sufficient to make the refrigerators not comparable (see below under “Price Undercutting”). The investigating team does not consider there is a significant difference in the physical characteristics of these 2 models.
- 2.1.47 As outlined above, F&P has argued that the smallest model it produces can in fact fit under a bench and is a like good to the imported under bench models, although F&P now considers that the smallest imported model that is a like good to its smallest model is one of 70 litres. On the basis of the information available, the investigating team considers that in terms of dimensions, under bench refrigerators are distinct from larger refrigerators. The information provided by F&P is that the dimensions of its smallest refrigerator are such that it can fit under a bench, so it cannot be distinguished from imported under bench refrigerators on that basis.
- 2.1.48 The Korean producers did not provide any information on production methods. F&P has provided detailed information on its production methods. The investigating team has no information indicating there is any significant difference between the production methods used by F&P and the Korean producers.
- 2.1.49 Technology features such as frost free, automatic defrost, humidity controlled fruit and vegetable bins and computer climate control are present in both the subject goods and the F&P models. LM Rankine has submitted that the FIR lamp, 3 compartments, a neuro fuzzy control system, a separate meat compartment and a quick freeze function are not available in F&P models. LM Rankine has also submitted that the LG door cooling range involves new technology features such that door cooling refrigerators should not be included in any final decision. The information available to the investigating team indicates that F&P models do have an intelligent electronic temperature control system, but do not have the other features referred to by LM Rankine.
- 2.1.50 LM Rankine has emphasised the difference between the LG door cooling range and the models produced by F&P. The information available from LM Rankine does not specifically describe how the door cooling range differs physically from F&P models. The investigating team assumes from the information provided that there are separate cooling vents located in the doors of these models. There is no information available relating to the production methods used to manufacture the door cooling range.

Function and Usage

- 2.1.51 The information available indicates that the imported refrigerators and the refrigerators produced by F&P have the same function and usage, i.e. to store food and drink in a cool or frozen condition in order to extend its useful life. The subject goods are therefore generally substitutable for F&P models.

- 2.1.52 No information has been provided on consumer perceptions or expectations, although LM Rankine says that technical differences are significant in the market place, but no evidence has been provided to substantiate this.
- 2.1.53 LM Rankine has submitted that F&P does not make a small bar refrigerator. LM Rankine has also submitted that a small refrigerator designed for an under bench situation is a different product from a larger refrigerator not designed for that purpose. As noted above, the dimensions of the smallest F&P refrigerator (the P120) would allow it to fit under a bench. It would appear, however, that as F&P has only just discovered that its P120 model will in fact fit under a bench without a plinth, that it did not market the P120 as an under bench model and therefore did not see its end use as an under bench model. As F&P imports a smaller model (of 74 litres) from Daewoo largely for sale to [REDACTED], F&P clearly sees that such smaller models have a different end use to its own P120.

Pricing Structures

- 2.1.54 The price undercutting analysis shows there is significant price undercutting by the subject goods. The investigating team considers that the difference in prices is not such, however, as to indicate that the refrigerators produced by F&P are not like goods to the subject goods.
- 2.1.55 The door cooling models were not imported over the period of investigation and were therefore not included in the price undercutting comparison. LM Rankine did not provide information relating to the price of the door cooling range.

Marketing Issues

- 2.1.56 Both the subject goods and the F&P models are distributed through dealers that sell directly to consumers. F&P advises that it has three warehouses from which it supplies its dealers. The importers also generally distribute through warehouses to retailers.

Other Relevant Matters

- 2.1.57 It is likely that the refrigerator-freezers and refrigerators produced by F&P would be classified under the same tariff item as the subject goods.

Conclusions Relating to Like Goods

- 2.1.58 The information available indicates that there are some physical differences in terms of the technology differences between the imported models and the models produced by F&P, as noted above. The information available also indicates that F&P does produce a refrigerator that can be substituted for imported bar refrigerators in situations where the refrigerator is required to fit under a bench. The function and usage of the imported and F&P refrigerators is generally the same, except that the smallest model produced by F&P is clearly not intended to be used as an under bench model. This is reinforced by F&P importing an under bench model from Korea. Pricing and marketing issues do not provide any information suggesting that the F&P models are not like goods to the imported models.

- 2.1.59 On the basis of the information available the investigating team does not consider the differences referred to above are sufficient to outweigh the evidence indicating that F&P refrigerators are like goods to the subject goods except in relation to smaller under bench models.
- 2.1.60 In relation to the door cooling range, there is no information available that indicates these refrigerators differ in general appearance from F&P models, although there are presumably differences in the internal “plumbing” that allows cool air to be vented through the doors. There is no information available that suggests that the door cooling refrigerators have a different function or use, that they have different pricing structures or are marketed differently. While the door cooling refrigerators clearly have some differences in physical characteristics, the investigating team does not consider this outweighs the evidence indicating that such refrigerators are like goods to the F&P models.
- 2.1.61 On the basis of information provided by F&P, the investigating team considers that the smaller bar type refrigerators produced specifically for fitting under benches in accommodation where space is limited can be distinguished from larger refrigerators not intended for this purpose. The difficulty is in drawing a line between under bench bar type refrigerators and larger models not intended for this purpose. LM Rankine has submitted that refrigerators less than 100 litres should be excluded, but has given no clear explanation as to why the cut off point should be at 100 litres. In response to the ef&c, LM Rankine said there is no issue of cut off, just what is a reasonable and rational comparator. The LM Rankine submission appears to be aimed at establishing a suitable model to model comparison for price undercutting purposes, rather than relating to establishing a suitable size limit for under bench refrigerators. The investigating team considers that the size of refrigerator imported by F&P provides some guidance in drawing this line. The refrigerator imported by F&P has a capacity of 74 litres. The investigating team therefore considers it reasonable that refrigerators of less than 80 litres are not like goods to the smallest refrigerator produced by F&P.
- 2.1.62 The investigating team therefore concludes that the description of the goods under investigation should be narrowed to exclude refrigerators of not less than 80 litres. The description of the subject goods would therefore be as follows:
- Household type combined refrigerator-freezers fitted with separate top and bottom external doors or drawers up to and including a total gross volume of 500 litres and single door refrigerators with a total gross volume of not less than 80 litres, the capacities determined by standard AS/NZS4474.1997*
- 2.1.63 The investigating team concludes that the refrigerators produced by F&P, while not identical to the subject goods (as amended above), have characteristics closely resembling the subject goods and are therefore like goods to the subject goods.

2.2 NEW ZEALAND INDUSTRY

- 2.2.1 The New Zealand producer of like goods by or on whose behalf the application was made is Fisher and Paykel Ltd. F&P is the sole New Zealand producer of household refrigerators and refrigerator-freezers. The

investigation was initiated on the basis that the application met the requirements of section 10(3) of the Act.

- 2.2.2 In its submission on behalf of the Korean exporters, Davenports has questioned whether in fact F&P can be considered to be a New Zealand industry. It should be noted that Davenport's submission relies in part on F&P being an importer of the subject goods. In commenting on the Provisional Measures Report, the Korean Government stated its view that an industry that imports the subject goods cannot be considered a domestic industry. The conclusion above under like goods that the description of the subject goods be narrowed means that F&P is no longer an importer of the subject goods. The points raised by Davenports are discussed below.
- 2.2.3 Davenports has noted that F&P has itself imported refrigerators from Australia and Korea. Davenports has estimated that F&P's imports of refrigerators in 1999 and 2000 from Korea amount to 10 percent of all refrigerators imported from Korea which it submits is "not a negligible amount". Davenports has noted that in the Initiation Report, in considering importations of dumped goods by the New Zealand industry in terms of section 8(2)(f) of the Act, the Ministry excluded F&P's imports from Australia on the basis they are not subject goods (not being from Korea). Davenports has opined that "To adopt such an approach in this context is unfairly discriminatory, and contrary to the tenor and effect of article 4.1 of WTO Anti-Dumping Agreement".
- 2.2.4 Davenports has further noted that the Initiation Report records that F&P imports refrigerators from Australia and has provided import volume figures showing that imports of refrigerators from Australia are greater than those from Korea. Davenports has submitted that "It is not enough to approach the standing issue on the basis of excluding only F&P's refrigerator imports from Korea". Davenports has further submitted that "The subject goods that F&P imports . . . from Korea and Australia . . . 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.

Ministry's Consideration of the Issue

- 2.2.5 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 refrigerators from Korea. Importation of refrigerators from any countries other than Korea does not therefore "trigger" consideration of Article 4.1.
- 2.2.6 Section 8(2)(e) of the Act, however, requires the Ministry to have regard to the effects of non-dumped imports when considering injury. By definition, imports by any party (including F&P) from any source other than Korea would fall within the ambit of this requirement and are considered later in this report.
- 2.2.7 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 3.4.11 and 3.4.12 below).

2.3 IMPORTS OF REFRIGERATORS

2.3.1 The following table shows import volumes of the subject goods. The import figures have been taken from NZCS data covering goods imported into New Zealand under the tariff item and statistical keys shown at paragraph 1.3.4 above. The NZ Customs data covers a wider range of goods than those subject to investigation. To estimate the volume of imports of the subject goods, the proportion of subject goods to non-subject goods for each of the 3 Korean producers investigated was calculated for the year ended 31 October 2000 (but excluding F&P's imports from Korea), using information provided by importers on the size and type of refrigerators imported in each shipment over this period. This calculation showed that 94 percent of imports were refrigerators of the type under investigation. This percentage has been applied to NZCS data to calculate the volume of imports of the subject goods from Korea for each period from 1998 (except for F&P's imports from Korea). The same percentage (94 percent) has also been applied to NZCS data to calculate the volume of imports of goods falling within the description of the subject from countries other than Korea, for each period since 1998. F&P's imports from Korea have been excluded as they are not subject goods.

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

	1998	1999	2000	Apr-Dec 2000
Imports from Korea*	10,997	10,451	14,371	13,179
Other Imports	29,145	34,061	35,232	22,086
Total Imports	40,142	44,512	49,603	35,265

* For the purposes of the non-confidential report these figures include F&P's imports. F&P's imports have been included in order to protect the confidentiality of F&P's import volume figures which were included in the same table in the Provisional Measures Report. The inclusion of F&P's imports does not materially alter the table.

2.4 NEW ZEALAND MARKET

2.4.1 The following table shows the New Zealand market for refrigerators. Import volume figures in the table below were compiled on the same basis as those in Table 2.1 above. New Zealand industry sales information was provided by F&P.

Table 2.2: New Zealand Market
(March Years)

	1998	1999	2000	Apr-Dec 2000
Imports from Korea*	10,997	10,451	14,371	13,179
Other Imports	29,145	34,061	35,232	22,086
Total Imports	40,142	44,512	49,603	35,265
NZ Industry Sales				
NZ Market				

*Includes F&P's imports. See note under table 2.1

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 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. Samsung's sales to its importers Radiola and Whirlpool were invoiced in [REDACTED] on a FOB basis. [REDACTED], Daewoo invoiced its sales to F&P and Casmor in US dollars on a FOB basis. LG's sales to L M Rankine and Electrolux were invoiced in US dollars ([REDACTED]) and in AUD ([REDACTED]) 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

- 3.2.3 LG's sales to Electrolux were in [REDACTED] basis. 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 insurance was deducted from the combined [REDACTED] cost, based on information provided by F&P.

Inland Freight

- 3.2.4 An adjustment of [REDACTED] percent was made to the base price for cost of freight from factory to wharf based on information provided by F&P in its application.

Port Services Charge

- 3.2.5 F&P did not provide any information relating to port services charge in Korea. An adjustment for port services charges was therefore based on verified information obtained from Korean suppliers in the Lead Acid Batteries case conducted in 1999/00. The port services charge includes wharfage, brokerage, fumigation and terminal handling charges. An adjustment of [REDACTED] percent of the FOB price was made on this basis.

Total Adjustments

- 3.2.6 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 adjustments 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

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

(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] 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] may direct that the normal value of the goods shall be so ascertained.

3.3.2 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.

3.3.3 In the absence of a response 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

3.3.4 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.

3.3.5 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.

3.3.6 F&P in its application and a subsequent submission, provided the Ministry with retail prices for a sample of refrigerator-freezers and refrigerators sold in the Korean domestic market that 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 base 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.

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

Adjustments

Value Added Tax (VAT)

- 3.3.8 F&P in its application advised that Korea currently has a 10 percent tax 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

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

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

- 3.3.10 F&P has stated that its estimate of the retailer's margin of [redacted] percent in its application was excessive. F&P have submitted that an adjustment for a retail margin of [redacted] percent, which is based on the most recent information, be used.
- 3.3.11 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

- 3.3.12 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 sell to retailers is at the equivalent level of trade to the Korean manufacturer's sales to NZ importers who onsell to retailers.
- 3.3.13 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 [redacted] percent wholesaler's margin included in the wholesale selling price.

Warranty

- 3.3.14 F&P submitted in its submission that there is likely to be a warranty cost in the domestic price which is not included in the export price. F&P has further stated that the accepted figure for warranty in the whiteware business is █ percent.
- 3.3.15 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

- 3.3.16 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 refrigerators are delivered to the end consumer either direct from the manufacturing site or through regional warehouses that belong to the manufacturer. F&P has estimated the freight cost on the basis of the known cost to it in Australia of █ percent plus a █ percent loading to cover delivery into the home and installation. F&P notes that the █ percent cost it incurs in Australia is for delivery from warehouse to the retailer.
- 3.3.17 The investigating team considers that, 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

- 3.3.18 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.

Daewoo Electronics Co. Ltd

- 3.4.2 There were a total of █ transactions relating to the subject goods from Daewoo to Casmor in the period 1 November 1999 to 31 October 2000. Of these transactions 100 percent were dumped with a weighted average dumping margin of 47 percent. Both dumping margins were 47 percent expressed as a percentage of the export price.

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

Normal Values █ won

Export Prices [REDACTED] won

LG Electronics Inc.

3.4.4 There were a total of [REDACTED] transactions relating to the subject goods from LG to Electrolux and LM Rankine in the period 1 November 1999 to 31 October 2000. Of these transactions 100 percent were dumped with a weighted average dumping margin of 47 percent, with a range of margins from 2 percent to 85 percent, expressed as a percentage of the export price.

3.4.5 LM Rankine said that the Provisional Measures Report included products with a dumping margin of 2 percent. LM Rankine said that in its view products at that level of margin should come under the *de minimis* rule of Article 5.8 of the Agreement.

3.4.6 The Ministry is of the view that, in transaction to transaction analysis, in calculating the volume of dumped imports, it is required to take account of all dumped imports even those with a margin of less than 2 percent. The investigating team notes that the 2 percent margin (actually 1.66 percent but rounded to 2 percent) relates to only one transaction involving only 97 refrigerators. The volume involved, even if excluded, would make no material difference to the analysis of injury. The investigating team also notes that the same model of refrigerator with this dumping margin, was dumped in all other transactions at margins well above 2 percent.

3.4.7 In response to the ef&c, LM Rankine reiterated its submission that the transaction with the 2 percent dumping margin should be excluded by virtue of the *de minimis* rule in Article 5.8 of the Agreement. The Ministry's view is unchanged from that recorded in the paragraph above.

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

Normal Values [REDACTED] won

Export Prices [REDACTED] won

Samsung Electronics Co. Ltd

3.4.9 There were a total of [REDACTED] transactions relating to the subject goods from Samsung to Radiola and Whirlpool in the period 1 November 1999 to 31 October 2000. Of these transactions 100 percent were dumped with a weighted average dumping margin of 34 percent, with a range of margins from 19 percent to 54 percent, expressed as a percentage of the export price.

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

Normal Values [REDACTED] won

Export Prices [REDACTED] won

Volume of Dumped Goods

3.4.11 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 the 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.

- 3.4.12 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 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*	14,371	29	13,179	37
Other Imports	35,232	71	22,086	63
Total Imports	49,603		35,265	

* Includes F&P's imports. See footnote to table 2.1. The inclusion of F&P's imports makes no material difference to the calculation of the percentage that dumped imports represent of total imports.

- 3.4.13 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 refrigerator-freezers and refrigerators from Korea are being dumped.

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 refrigerators 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 did not consider the factors which are generally accepted as the most important ones, such as sales volume and revenue, and market share. Davenports has noted that the Ministry explicitly admitted [in the Provisional Measures Report] that there was no evidence of a significant loss of sales volume and revenue or market share.
- 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 said that the Ministry's injury determination [in the Provisional Measures Report] was made on the basis of only 4 positive factors: increase in import volumes, price undercutting, price suppression and decline in profit. Davenports submitted that the Ministry did not, or did not adequately, evaluate other economic factors, as required by section 8 of the Act and 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.

Submission by Korean Government

- 4.1.16 In commenting on the Provisional Measures Report, the Korean Government submitted that an administering authority must consider all of the injury factors specified in Article 3.4 of the Agreement for any dumping duty determination, including a preliminary determination. The Korean Government said that the Ministry had not met this standard in its preliminary determination.

Ministry's Consideration of the Issues

- 4.1.17 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 necessarily 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.
- 4.1.18 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 necessarily being fatal to a finding of material injury.
- 4.1.19 The financial information used by the investigating team in its analysis of injury relates only to refrigerators 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.
- 4.1.20 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. The investigating team notes that it is not clear from the relevant panel decisions that all injury factors must be considered at the preliminary determination stage.

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 table below 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.

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*	10,997	10,451	14,371	13,179
Other Imports	29,145	34,061	35,232	22,086
NZ Industry Sales				
NZ Market				
Change in:				
- Dumped Imports		-546	3,920	
- Other Imports		4,916	1,171	
- NZ Industry Sales				
- NZ Market				
Dumped Imports as % of:				
- NZ Industry Sales				
- NZ Market				

* Includes F&P's imports. See footnote to table 2.1

4.2.3 The table shows that imports of the dumped goods increased significantly in absolute terms in 2000. Imports in April – December 2000 were close to total imports for 2000, indicating that for 2001 there will be another significant increase in absolute terms.

4.2.4 Relative to the New Zealand industry's sales and the total New Zealand market, imports of the dumped goods also increased significantly in 2000 and in 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 18,144 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 have increased significantly in absolute terms and relative to production and consumption in New Zealand in YEM 2000, April – December 2000 and 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. Accordingly, the Ministry's position is generally to compare importers' prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand manufacturer's ex-factory price, but not including cost elements relating to the distribution of goods.

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 the [REDACTED] noted that [REDACTED]. F&P said that because of the competitive pressures in the market it is unable to predict the effect on prices if the injurious dumping element is removed but would expect that the [REDACTED].

4.3.1.7 F&P said that the [REDACTED]. F&P noted for example that its model [REDACTED]. F&P has provided details of the [REDACTED] applying to each model for the month of September 2000. F&P said it used the [REDACTED]. F&P used the [REDACTED] 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 F&P provided details for the year ended 31 October 2001 of the percentage of total sales represented by each model. F&P then calculated a weighted average of the [REDACTED] used to calculate unsuppressed selling prices, weighted according to the percentage that each model represented of total sales. The weighted average percentage calculated on this basis is [REDACTED] percent, i.e., F&P's has increased its average selling prices by a weighted average of [REDACTED] percent to calculate unsuppressed selling prices.

4.3.1.9 F&P has provided a calculation that it submits is a check of the reasonableness of using its [REDACTED] to calculate unsuppressed selling prices. F&P calculated its average EBIT per unit in YEM 1998 and in YEM 2001. F&P calculated the reduction in EBIT per unit over this period as a percentage of its average selling price in YEM 2001, the percentage being [REDACTED] percent. F&P said that YEM 1998 was used as a benchmark year unaffected by dumping because the results for YEM 1999 were distorted by manufacturing problems [see details under "Price Suppression" below].

Ministry's Consideration of the Issues

4.3.1.10 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.

4.3.1.11 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 and 1999 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.

4.3.1.12 F&P does not have available its average selling prices on a model by model basis for the YEM 1998 and 1999. 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. F&P has submitted that YEM 1998 should be used as a benchmark because production problems distorted its results in YEM 1999. F&P has advised that its production problems contributed to an estimated [REDACTED] per unit reduction in EBIT in YEM 1999. The investigating team considers that by adjusting the EBIT for this amount, the results for YEM 1999 can be used. Because of the fluctuating nature of its results from YEM 1998 to YEM 1999, the investigating team considers that an average of the EBIT per unit for each year (adjusted for the production problems in YEM 1999) is the most reasonable approach. The average EBIT on this basis for these 2 years is [REDACTED] per unit. The difference between this EBIT and that for YEM 2001 is [REDACTED] which is [REDACTED] percent of the average selling price for YEM 2001.

4.3.1.13 The investigating team considers that [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 weighted average increase in prices should be close to [REDACTED] percent rather than the [REDACTED] percent calculated by F&P. The investigating team has therefore made a proportionate adjustment to the [REDACTED] provided by F&P such that the weighted average increase in prices (to calculate the unsuppressed selling prices) is [REDACTED] percent (a lower percentage than that calculated by F&P). Details of the unsuppressed selling prices (NIPs) are shown in tables below under each importer.

Differences in Size and Features

4.3.1.14 Radiola has submitted that differences in features between F&P refrigerators and imported refrigerators mean that the cost of manufacture differs and this cost difference should be taken into account when carrying out a price comparison for price undercutting purposes.

4.3.1.15 Radiola referred to an article in issue 384 of the Consumer Magazine which indicated a number of feature differences between the F&P E381T active smart model (380 litres) and the Samsung SRGV43 (390 litres). Radiola provided a comparison of features from the article which showed that the F&P model has a number of features not found in the Samsung model such as a dairy compartment, brake, butter conditioner, door alarm and sealed vegetable crisper drawers. Radiola did not quantify the cost difference between the models compared.

4.3.1.16 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.

- 4.3.1.17 In response to the above request F&P said that, after undertaking an analysis of the features in various F&P and Korean refrigerators, it considered that meaningful adjustments can not be made for different features and volume differences. F&P said that any adjustment for volume differences would result in unrealistic comparisons because the various models are not homogeneous. F&P noted that there are differences in the size of the provisions compartment and the freezer compartment, that some models have a slightly larger provisions compartment and this is offset by a smaller freezer compartment and the reverse also applies. F&P observed that some models have bottom-mounted freezers and some top-mounted freezers and the external dimensions vary between models. F&P submitted that “Along with features “inside” the refrigerator the consumer purchases a package of features rather than purchasing a certain number of litres”.
- 4.3.1.18 F&P further 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”. By way of example, F&P referred to the comparison of features between the F&P E381T model and the Samsung SRGV43 which shows that there are feature differences in both models which do not influence the selling price. F&P said, for example, the more expensive Samsung spill safe glass (crystal) shelves may have greater appeal to a consumer than the door alarm feature in the F&P model. F&P said similarly, the twist ice maker in the Samsung model is considerably more expensive than the simple ice trays in the F&P model but is a feature which provides a difference at the point of sale to the consumer rather than a difference in the selling price.
- 4.3.1.19 F&P submitted that some features in F&P’s models result in lower manufacturing costs. F&P said that based on its experience [REDACTED] and this is supported by a general move by both refrigeration and washing machine manufacturers to [REDACTED].
- 4.3.1.20 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”.
- 4.3.1.21 F&P’s response referred to above also included a comparison of most of the refrigerator models compared for price undercutting in the provisional measures report, listing the various features found in each model.
- 4.3.1.22 F&P provided to the investigating team during the verification visit details of the sizes of refrigerators, within various size ranges, that it considered were comparable for price undercutting purposes. The following table shows the

size ranges and the variations within each size range where the refrigerators are considered by F&P to be comparable.

Models (Litres)	< 100	100 – 200	200 – 300	300 – 400	400 - 500
Range (Litres) +/-	30	45	50	75	90

- 4.3.1.23 At a very late stage in the completion of the ef&c report, LM Rankine provided a further submission. LM Rankine said that it is false to proceed on the basis of an argument that a “refrigerator is a refrigerator” and ignore the practical and commercial reality that, within a general category of goods such as cars or computers or refrigerators or washing machines, there are significant differences which must be recognised if a fair and lawful application of the Act is to take place.
- 4.3.1.24 LM Rankine said that size is a factor in determining appropriate distinctions between products and therefore needs to be considered. LM Rankine argues that a small refrigerator designed for an under bench situation is a different product from a larger refrigerator not designed for that purpose.
- 4.3.1.25 As noted above under “Like Goods”, LM Rankine provided a comparison of 2 LG models (the GR131 of 94 litres and the GR151 of 129 litres) with the F&P model P120 of 120 litres [F&P record this as 115 litres]. LM Rankine has submitted that the Ministry should be comparing the GR151 with the P120, not the GR131. LM Rankine said that F&P does not manufacture any form of refrigeration under 120 litres and have always imported smaller sizes. LM Rankine submits therefore that anything under 100 litres should be excluded from the investigation. This submission was reiterated in response to the ef&c, as noted under “Like Goods” above.
- 4.3.1.26 LM Rankine said that size is not the only, or even predominant difference between models. For example, LM Rankine said that distinctions between computers can only be made on the basis of technical specifications. LM Rankine has submitted that in the case of modern whiteware, technology is a critical factor that must be taken into account. LM Rankine said that as cost and price comparisons must be made, 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 involves much higher cost componentry.
- 4.3.1.27 LM Rankine has provided a comparison of 2 LG models (the GR242 of 215 litres and the GR 282 of 245 litres) with the F&P model N249 of 248 litres. LM Rankine has submitted, on the basis of this comparison, that the GR282 should be compared with the N249, not the GR242. This submission was also reiterated in response to the ef&c, as noted under “Like Goods” above.
- 4.3.1.28 LM Rankine has provided a further comparison of the LG model GR372 of 339 litres with the F&P model E331 of 329 litres and the LG model GR432 of 392 litres with the F&P model E381 of 380 litres. LM Rankine said that both of the LG models in this comparison have manual temperature controls whereas the F&P models have a much more costly electronic temperature control. This was also reiterated in response to the ef&c as noted above under “Like Goods”.

- 4.3.1.29 As also noted above under “Like Goods”, LM Rankine has referred to the LG models GR349 and GR389. LM Rankine said that these 2 models have electronic temperature control and are slim in design. LM Rankine said there is one equivalent F&P model which is much smaller in capacity and has a cheaper retail price [the F&P model is not identified by LM Rankine]. LM Rankine stated that “these two products have been penalised because of their size and F&P do not manufacture any thing like it”. This was also reiterated in response to the ef&c as noted above under “Like Goods”.
- 4.3.1.30 In response to the ef&c Davenports said that almost all F&P models have an “active smart” control sensor and a dairy conditioner, which the Korean products do not have. Davenports also said that most of F&P’s models have bottom mounted freezers while Korean products have top mounted freezers. Davenports submitted that these differences in design features account for at least 10-20 percent of the difference in price [no details were provided showing how this percentage was calculated].
- 4.3.1.31 The Korean Government in commenting on the Provisional Measures Report, has also pointed to the claim by the Korean exporters that differences in design features made the F&P products 10 – 20 percent more expensive than the imports from Korea. The Korean Government said that if this claim by the Korean exporters is correct, then price undercutting did not occur.

Ministry’s Consideration of the Issues

- 4.3.1.32 The comparison of features between the F&P and imported refrigerators 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.
- 4.3.1.33 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 doubts if quantifying differences in production costs would have been a practical proposition. LM Rankine, in response to the ef&c (see under “Like Goods” above) 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.
- 4.3.1.34 The investigating team considers that it is likely there are some differences in the cost of production arising from the differences in features and in capacity. It is, however, difficult to establish to what extent (if at all) differences in production costs affects selling prices. The investigating team notes that there are differences in the prices of F&P models that are similar in size and

features indicating that factors other than size and features will also influence prices.

- 4.3.1.35 The investigating team notes that while there are differences in the detail of the features available, the investigating team considers that the comparisons provided by F&P nevertheless 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.
- 4.3.1.36 The investigating team also considers F&P's submission reasonable that some variation in size will not affect the selling price, provided the models are generally of a similar size. The investigating team considers that the table above provided by F&P gives a reasonable indication of the differences in capacity within which models are still comparable for price undercutting purposes.
- 4.3.1.37 In relation to the points made by LM Rankine in its submission concerning the comparison of specific models, the investigating team notes that the GR151 model was not imported over the period of investigation and consequently the investigating team does not have information relating to its price. The pricing comparisons below include a comparison of the LG GR282 with the F&P N249. The information available indicates that there are F&P models with similar electronic temperature controls to those found in the LG models GR349 and GR389 (see "Like Goods" above).

Differences in Credit Terms

- 4.3.1.38 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.
- 4.3.1.39 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

- 4.3.1.40 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 model for comparison against the

relevant F&P model. In the case of those models not shown in 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 refrigerator based on capacity and features.

4.3.1.41 In response to the ef&c, F&P said that there were some additional model comparisons it considers should have been made, as previously submitted by it. For example, F&P submitted that its model E372B should, in addition to being compared with the Samsung SRGV39, also be compared with the Samsung SRGV43 and the LG GR389SQF. F&P said that the additional comparisons would mean that the imported models are compared to both F&P's top and bottom mounted freezer models.

4.3.1.42 The investigating team does not consider that further price comparisons are necessary to demonstrate the existence of price undercutting. The additional comparisons suggested by F&P would all show price undercutting, some at greater margins and some at lesser margins than those already established. The inclusion of the additional comparisons suggested by F&P will not affect the calculation of a remedy as the remedies are based on categories which encompass the models that F&P considers should be the subject of additional comparisons.

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

Fisher & Paykel Ltd

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

4.3.1.45 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.

4.3.1.46 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 per annum.

Samsung Electronics Ltd

Radiola Corporation Ltd

4.3.1.47 Radiola advised that it purchases direct from Samsung and that [REDACTED] percent of its sales are to the Pacific Retail Group (PRG). Radiola added that approximately [REDACTED] percent of all imports are cleared through the port of Auckland and [REDACTED] Radiola said 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 _____ applies to deliveries made _____
- 4.3.1.48 F&P has submitted that the relevant point at which its prices should be compared to Radiola’s prices is at the into PRG warehouse price versus F&P’s into warehouse price. Radiola’s price is _____ for deliveries direct from the wharf to PRG’s Auckland warehouse and deliveries ex-Radiola’s warehouse. Radiola’s cost build up to selling price includes warehouse operating costs. The investigating team therefore considers that the appropriate point of comparison is F&P ex-warehouse versus Radiola’s ex-warehouse price.
- 4.3.1.49 Radiola advised that it is invoiced by Samsung on a FOB basis in _____. Radiola stated that “Up to 1 October 2000, for internal accounting purposes, Radiola costed all product imports using a “padded” _____ 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.”
- 4.3.1.50 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 rate contracts.
- 4.3.1.51 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, and selling at a loss, have been a cause of injury to F&P not related to dumping, is considered under “Other Causes of Injury” below.
- 4.3.1.52 Radiola has provided cost build up to selling price information on a quarterly basis for the year ended 31 October 2000 and provided 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.
- 4.3.1.53 Radiola advised that its credit terms are _____. 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 _____. Radiola advised that its average cost of working capital for the year ended 31 October 2000 was _____ percent.
- 4.3.1.54 The difference in the number of days credit extended by F&P and Radiola is _____ days. At _____ percent this is equivalent to an annual rate of _____ percent. Because Radiola has extended the _____ an adjustment has therefore been made to _____ Radiola’s prices by _____ percent.

4.3.1.55 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: Radiola Imports from Samsung

<i>Samsung Model</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
SRGV29 260 litres F-F, ff ¹	█	N249T 248 litres F-F, ff	█	█	█
SR30RMC 285 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
SRGV33 290 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
SR37RMC 334 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
SRGV39 365 litres F-F, ff	█	E372B 373 litres F-F, ff	█	█	█
SRGV43 390 litres F-F, ff	█	E381T 380 litres F-F, ff	█	█	█
SR44RMB 402 litres F-F, ff	█	E402B 403 litres F-F, ff	█	█	█
SRGV52 460 litres F-F, ff	█	E402B 403 litres F-F, ff	█	█	█
SRGV57 495 litres F-F, ff	█	E411T 411 litres F-F, ff	█	█	█

¹ Fridge-Freezer, frost free

4.3.1.56 The table shows that the Samsung models are undercutting the equivalent F&P model except for 2 models, the price undercutting expressed as a percentage of the F&P price ranging from █ to █ percent. The 2 Samsung models that do not undercut the equivalent F&P model account for only █ percent of Radiola's imports. In one of the cases where there is no undercutting, the equivalent F&P model █ is undercut by another Samsung model █

4.3.1.57 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: Radiola Imports from Samsung

<i>Samsung Model</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Undercutting</i>	<i>% F&P Price</i>
SRGV29 260 litres F-F, ff		N249T 248 litres F-F, ff			
SR30RMC 285 litres F-F, ff		N249T 248 litres F-F, ff			
SRGV33 290 litres F-F, ff		E331T 329 litres F-F, ff			
SR37RMC 334 litres F-F, ff		E331T 329 litres F-F, ff			
SRGV39 365 litres F-F, ff		E372B 373 litres F-F, ff			
SRGV43 390 litres F-F, ff		E381T 380 litres F-F, ff			
SR44RMB 402 litres F-F, ff		E402B 403 litres F-F, ff			
SRGV52 460 litres F-F, ff		E402B 403 litres F-F, ff			
SRGV57 495 litres F-F, ff		E411T 411 litres F-F, ff			

4.3.1.58 The table above shows the Samsung models are undercutting the non-injurious price of the equivalent F&P model in all cases.

Whirlpool (Australia) Pty Ltd

4.3.1.59 Whirlpool advised that the refrigerators it imports from Samsung are manufactured by Samsung on behalf of Whirlpool to supplement the range of refrigerators manufactured by itself. Whirlpool said it services its network of retailers via 3 account managers in Auckland, Palmerston North and Christchurch and inventory is held in 2 distribution centres in Auckland and Christchurch. The investigating team considers that the point of comparison is F&P ex-warehouse versus Whirlpool's ex-warehouse.

4.3.1.60 Whirlpool has provided its cost build up to ex-warehouse selling price for the year ended 31 October 2000 for each model imported. Whirlpool has also provided a detailed description of the capacity and features of each model. Because the Whirlpool models are sold under the Whirlpool brand, they are not covered by the list of comparable models provided by F&P.

4.3.1.61 Whirlpool advised that its credit terms are payment [REDACTED] [REDACTED]. On the basis that sales are spread evenly through the month, the investigating team has calculated the average

length of credit at █ days. Whirlpool 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.

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

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

Table 4.4: Price Undercutting: Whirlpool Imports from Samsung

<i>Samsung Model¹</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
WRN28RWG6 256 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
WRN32RWG6 286 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
WRN38RWG6 362 litres F-F, ff	█	E372B 373 litres F-F, ff	█	█	█
WRN42RWG6 384 litres F-F, ff	█	E381T 380 litres F-F, ff	█	█	█
WRN52HWG6 454 litres F-F, ff	█	E411T 411 litres F-F, ff	█	█	█
WRN57HWG6 486 litres F-F, ff	█	E411T 411 litres F-F, ff	█	█	█

¹ Sold under Whirlpool Brand

4.3.1.64 The table shows the Samsung models are undercutting only 2 of the equivalent F&P models. The 2 models where price undercutting is occurring represent, █ percent of all Whirlpool imports. Imports by Whirlpool represent only a relatively small part of all imports of Samsung models (█ percent of all Samsung imports).

4.3.1.65 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: Whirlpool Imports from Samsung

<i>Samsung Model¹</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
WRN28RWG6 256 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█

WRN32RWG6	██████████	N249T	██████████	██████████	██████████
286 litres		248 litres			
F-F, ff		F-F, ff			
WRN38RWG6	██████████	E372B	██████████	██████████	██████████
362 litres		373 litres			
F-F, ff		F-F, ff			
WRN42RWG6	██████████	E381T	██████████	██████████	██████████
384 litres		380 litres			
F-F, ff		F-F, ff			
WRN52HWG6	██████████	E411T	██████████	██████████	██████████
454 litres		411 litres			
F-F, ff		F-F, ff			
WRN57HWG6	██████████	E411T	██████████	██████████	██████████
486 litres		411 litres			
F-F, ff		F-F, ff			

- 4.3.1.66 The table above shows the Samsung models are undercutting the non-injurious price of the equivalent F&P model except in one case. In the case where there is no undercutting, the F&P model is undercut by another Samsung model.

LG Electronics Ltd

LM Rankine Trading Co Ltd

- 4.3.1.67 LM Rankine advised that it markets direct to retailers and a small number of non-retail customers (including Telebingo and the hospitality trade). LM Rankine said that distribution is carried out by ██████████

The investigating team considers the point of comparison is F&P ex-warehouse versus LM Rankine ex-warehouse.

- 4.3.1.68 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. LM Rankine 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.

- 4.3.1.69 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.

- 4.3.1.70 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.

4.3.1.71 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.

4.3.1.72 LM Rankine advised that █ 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.

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

Table 4.6: Price Undercutting: LM Rankine Imports from LG

<i>LG Model</i>	<i>Ex-Warehouse Price</i>	<i>F&P Model</i>	<i>Ex-Warehouse Price</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
GR-131SSF 94 litres Bar fridge	█	P120 115 litres Single door fridge	█	█	█
GR-242SF 215 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
GR282SF 245 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
GR349SQF 305 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
GR-372SF 339 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
GR389SQF 346 litres F-F, ff	█	E381T 380 litres F-F, ff	█	█	█
GR-432SF 392 litres F-F, ff	█	E411T 411 litres F-F, ff	█	█	█
GR403SSF 400 litres F-F, ff	█	E411T 411 litres F-F, ff	█	█	█

4.3.1.74 The table shows that the LG models are undercutting the equivalent F&P model in all cases except one, the price undercutting expressed as a percentage of the F&P price ranging from █ to █ percent. The one LG model not undercutting the equivalent F&P model accounts for █ percent of LM Rankine's imports.

4.3.1.75 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: LM Rankine Imports from LG

LG Model	Ex-Warehouse Price	F&P Model	Ex-Warehouse NIP	Undercutting	% F&P Price
GR-131SSF 94 litres Bar fridge	██████████	P120 115 litres Single door fridge	██████████	██████████	██████████
GR-242SF 215 litres F-F, ff	██████████	N249T 248 litres F-F, ff	██████████	██████████	██████████
GR282SF 245 litres F-F, ff	██████████	N249T 248 litres F-F, ff	██████████	██████████	██████████
GR349SQF 305 litres F-F, ff	██████████	E331T 329 litres F-F, ff	██████████	██████████	██████████
GR-372SF 339 litres F-F, ff	██████████	E331T 329 litres F-F, ff	██████████	██████████	██████████
GR389SQF 346 litres F-F, ff	██████████	E381T 380 litres F-F, ff	██████████	██████████	██████████
GR-432SF 392 litres F-F, ff	██████████	E411T 411 litres F-F, ff	██████████	██████████	██████████
GR403SSF 400 litres F-F, ff	██████████	E411T 411 litres F-F, ff	██████████	██████████	██████████

4.3.1.76 The table above shows the LG models are undercutting the non-injurious price of the equivalent F&P model in all cases.

Electrolux Home Products (NZ) Ltd

4.3.1.77 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 point of comparison is F&P ex-warehouse versus Electrolux ex-warehouse.

4.3.1.78 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.

4.3.1.79 Electrolux has advised that its credit terms are ██████████ terms, 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.

4.3.1.80 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.

4.3.1.81 Electolux advised that it does not hold forward exchange contracts in relation to imports of refrigerators.

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

Table 4.8: Price Undercutting: Electrolux Imports from LG

LG Model ¹	Ex-Warehouse Price	F&P Model	Ex-Warehouse Price	Under-cutting	% F&P Price
N245C 245 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
RJ300M 303 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
RJ340M 339 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█
RJ390M 392 litres F-F, ff	█	E381T 380 litres F-F, ff	█	█	█

¹ Sold under Simpson and Westinghouse Brands

4.3.1.83 The table shows that the LG models are undercutting the equivalent F&P model in all cases, the price undercutting expressed as a percentage of the F&P price ranging from █ to █ percent. Imports by Electrolux represent █ percent of all imports from LG.

4.3.1.84 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: Electrolux Imports from LG

LG Model ¹	Ex-Warehouse Price	F&P Model	Ex-Warehouse Price NIP	Under-cutting	% F&P Price
N245C 245 litres F-F, ff	█	N249T 248 litres F-F, ff	█	█	█
RJ300M 303 litres F-F, ff	█	E331T 329 litres F-F, ff	█	█	█

RJ340M	████████	E331T	████████	████████	████████
339 litres		329 litres			
F-F, ff		F-F, ff			
RJ390M	████████	E381T	████████	████████	████████
392 litres		380 litres			
F-F, ff		F-F, ff			

- 4.3.1.85 The table above shows the LG models are undercutting the non-injurious price of the equivalent F&P model in all cases.

Daewoo Electronics Co Ltd

Fisher & Paykel Ltd

- 4.3.1.86 The refrigerators imported by F&P no longer fall within the definition of the subject goods. Even if F&P had imported the subject goods, such imports would not have been included in the price undercutting analysis as it cannot be injured by its own imports.

Casmor International Ltd

- 4.3.1.87 Casmor made ██████████ (of ████ refrigerators) over the year ended 31 October 2000. Casmor advised that all of this importation was pre-sold to one retail outlet.

- 4.3.1.88 Casmor has provided its purchase price in US dollars, its import costs (including delivery costs and selling and administration costs) in NZ dollars and its selling price to the retail outlet in US dollars. The information available indicates that the refrigerators were delivered direct from the wharf to the retail outlet. The investigating team has converted the US dollar costs and prices into NZ dollars at the interbank rate at the date of import and included the cost of delivery. The investigating team considers that the point of comparison is Casmor's delivered-to-customer price versus F&P's delivered-to-customer price.

- 4.3.1.89 Casmor has advised that it did not provide any credit to its customer, payment being made by its customer on presentation of the bill of lading. The investigating team has taken the length of credit to be zero.

- 4.3.1.90 The difference in the number of days credit extended by F&P and Casmor is ███ days. Because F&P has ██████████ an adjustment has been made using F&P's cost of credit of ███ percent. At ███ percent the difference in length of credit is equivalent to an annual rate of ███ percent. Because F&P has ██████████ an adjustment has therefore been made to ████████ F&P's prices by ███ percent.

- 4.3.1.91 Casmor advised that it purchased the refrigerators in US dollars and sold them to its New Zealand customer in US dollars and therefore did not need to consider forward exchange contracts.

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

Table 4.10: Price Undercutting: Casmor Imports from Daewoo

<i>Daewoo Model</i>	<i>FIS Price</i>	<i>F&P Model</i>	<i>FIS Price</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
SFF358W 386 litres F-F, ff		E381T 380 litres F-F, ff			
SFF3585S 386 litres F-F, ff		E381T 380 litres F-F, ff			

4.3.1.93 The table shows that the Daewoo models are undercutting the equivalent F&P model in all cases.

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

Table 4.11: Price Undercutting: Casmor Imports from Daewoo

<i>Daewoo Model</i>	<i>FIS Price</i>	<i>F&P Model</i>	<i>FIS NIP</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
SFF358W 386 litres F-F, ff		E381T 380 litres F-F, ff			
SFF3585S 386 litres F-F, ff		E381T 380 litres F-F, ff			

4.3.1.95 The table above shows the Daewoo models are undercutting the non-injurious price of the equivalent F&P model in all cases.

Price Undercutting and the Margin Of Dumping

4.3.1.96 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 and FIS prices shown in the tables above and compared the result to F&P's ex-warehouse and FIS NIP. The figures are shown in the tables below.

Samsung Electronics Ltd*Radiola Corporation Ltd*

Table 4.12: Price Undercutting: Radiola Imports from Samsung

<i>Samsung Model</i>	<i>Ex-Warehouse Price + D/M</i>	<i>F&P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Undercutting</i>	<i>% F&P Price</i>
SRGV29 260 litres F-F, ff	■	N249T 248 litres F-F, ff	■	■	■
SR30RMC 285 litres F-F, ff	■	N249T 248 litres F-F, ff	■	■	■
SRGV33 290 litres F-F, ff	■	E331T 329 litres F-F, ff	■	■	■
SR37RMC 334 litres F-F, ff	■	E331T 329 litres F-F, ff	■	■	■
SRGV39 365 litres F-F, ff	■	E372B 373 litres F-F, ff	■	■	■
SRGV43 390 litres F-F, ff	■	E381T 380 litres F-F, ff	■	■	■
SR44RMB 402 litres F-F, ff	■	E402B 403 litres F-F, ff	■	■	■
SRGV52 460 litres F-F, ff	■	E402B 403 litres F-F, ff	■	■	■
SRGV57 495 litres F-F, ff	■	E411T 411 litres F-F, ff	■	■	■

4.3.1.97 The table shows that except for 3 models there is still price undercutting. In one other case the amount of price undercutting is negligible. Where there is still price undercutting after adding back the margin of dumping is an indication that anti-dumping duty at the full margin of dumping should be imposed. 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.

4.3.1.98 The cases where there is still price undercutting represent ■ percent of Samsung’s exports over the period of investigation.

Whirlpool (Australia) Pty Ltd

Table 4.13: Price Undercutting: Whirlpool Imports from Samsung

<i>Samsung Model¹</i>	<i>Ex-Warehouse Price + D/M</i>	<i>F&P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
WRN28RWG6 256 litres F-F, ff		N249T 248 litres F-F, ff			
WRN32RWG6 286 litres F-F, ff		N249T 248 litres F-F, ff			
WRN38RWG6 362 litres F-F, ff		E372B 373 litres F-F, ff			
WRN42RWG6 384 litres F-F, ff		E381T 380 litres F-F, ff			
WRN52HWG6 454 litres F-F, ff		E411T 411 litres F-F, ff			
WRN57HWG6 486 litres F-F, ff		E411T 411 litres F-F, ff			

4.3.1.99 The table shows that except for one model there is price undercutting. The case where there is still price undercutting represents percent of Samsung's exports over the period of investigation.

4.3.1.100 When both importers from Samsung are taken together, the cases where there is still price undercutting represent percent of Samsung's exports over the period of investigation.

LG Electronics Ltd*LM Rankine Trading Co Ltd*

Table 4.14: Price Undercutting: LM Rankine Imports from LG

<i>LG Model</i>	<i>Ex-Warehouse Price + D/M</i>	<i>F&P Model</i>	<i>Ex-Warehouse NIP</i>	<i>Under-cutting</i>	<i>% F&P Price</i>
GR-131SSF 94 litres Bar fridge		P120 115 litres Single door fridge			
GR-242SF 215 litres F-F, ff		N249T 248 litres F-F, ff			
GR282SF 245 litres F-F, ff		N249T 248 litres F-F, ff			

GR349SQF	305 litres	F-F, ff	E331T	329 litres	F-F, ff
GR-372SF	339 litres	F-F, ff	E331T	329 litres	F-F, ff
GR389SQF	346 litres	F-F, ff	E381T	380 litres	F-F, ff
GR-432SF	392 litres	F-F, ff	E411T	411 litres	F-F, ff
GR403SSF	400 litres	F-F, ff	E411T	411 litres	F-F, ff

4.3.1.101 The table shows there is still price undercutting in only 2 cases. The cases where there is still price undercutting represent █ percent of LG's exports over the period of investigation.

Electrolux Home Products (NZ) Ltd

Table 4.15: Price Undercutting: Electrolux Imports from LG

LG Model	Ex-Warehouse Price + D/M	F&P Model	Ex-Warehouse NIP	Under-cutting	% Price	F&P
N245C	245 litres	N249T	248 litres			
RJ300M	303 litres	E331T	329 litres			
RJ340M	339 litres	E331T	329 litres			
RJ390M	392 litres	E381T	380 litres			

4.3.1.102 The table shows there is still price undercutting except for one case. The cases where there is still price undercutting represent █ percent of LG's exports over the period of investigation.

4.3.1.103 When both importers from LG are taken together, the cases where there is still price undercutting represent █ percent of LG's exports over the period of investigation.

Daewoo Electronics Co Ltd*Casmor International Ltd*

Table 4.16: Price Undercutting: Casmor Imports from Daewoo

<i>Daewoo Model</i>	<i>FIS Price + D/M</i>	<i>F&P Model</i>	<i>FIS NIP</i>	<i>Under-cutting</i>	<i>% Price</i>
SFF358W 386 litres F-F, ff		E381T 380 litres F-F, ff			
SFF3585 S 386 litres F-F, ff		E381T 380 litres F-F, ff			

4.3.1.104 The table shows there is still price undercutting in one case. The case where there is still price undercutting represents █ percent of Daewoo's exports over the period of investigation.

Conclusion

4.3.1.105 When F&P's actual average prices are compared to the prices of the imported goods there is significant price undercutting by a large majority of imported refrigerators, the volume of imported refrigerator models found to be undercutting the equivalent F&P model representing 90 percent of all imports of the subject goods (excluding F&P's own imports).

4.3.1.106 When F&P's non-injurious prices are compared to the prices of the imported goods, there is significant price undercutting by all of the imported goods except in the case of one model.

4.3.1.107 When F&P's prices actual or non-injurious prices are compared with the margin of dumping added to the prices of the imported goods, there is still price undercutting by a majority (74 percent) of the subject goods, indicating that anti-dumping duty for the majority of exports should be imposed at the full margin of dumping.

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 F&P has provided its average selling prices for both white and stainless steel refrigerators (stainless steel refrigerators were introduced in 1999/00). The following table shows the average per unit selling prices separately for white and stainless steel refrigerators and the average selling price of white and stainless steel refrigerators combined.

Table 4.17: Price Depression: Average Selling Prices
(March Years)

	1998	1999	2000	Apr-Dec 2000
White	█	█	█	█
Stainless	█	█	█	█
Total	█	█	█	█

4.3.2.3 The table shows a small reduction in average prices of white refrigerators over the period to 2000 and then a recovery in prices in April – December 2000. There was a significant reduction in the average prices of stainless steel refrigerators from 2000 to April – December 2000. The combined average prices of white and stainless steel refrigerators increased from 2000 to April – December 2000.

4.3.2.4 In its application, F&P said that by █
█
█ F&P noted in its application that the average price of its stainless steel refrigerators had fallen but stated “This average price reduction is because █ the revenue lost because of the dumped imports”.

4.3.2.5 During the verification visit F&P advised that when stainless steel refrigerators were first launched it was for large models (400 litres plus). F&P advised that the introduction of smaller models began in April 2000 and were progressively phased in over the next few months. The introduction of the smaller (and lower priced) models in April 2000 will have reduced the average price of stainless steel models in April – December 2000. The decline in the average prices of stainless steel models in April – December 2000 may therefore simply reflect this change in sales mix.

4.3.2.6 The investigating team requested from F&P its average selling prices on a model by model basis or its average selling prices of models within certain size ranges, so that changes in average selling prices were not affected by any changes in the sales mix. This information was not available. F&P did, however, provide an analysis of the percentage of its sales within size ranges. This analysis is shown in the table below.

Table 4.18: Percentage Sales Mix
(March Years)

	1998	1999	2000
100 – 200 litres ¹	█	█	█
100 – 200 litres ²	█	█	█
200 – 300 litres	█	█	█
300 – 400 litres	█	█	█
> 400 litres	█	█	█

¹ Single door refrigerators with ice box

² Refrigerators-freezers

4.3.2.7 The major change shown by the table above is a █ in the 300 – 400 litres group and a █ in the over 400 litre group. F&P claim, however, that the major injurious impact began in 2000. Therefore, significant changes in sales mix impacting on the injury analysis should be those between 1999 and 2000. The major change between 1999

and 2000 is the [redacted] in the 300 – 400 litre group which was [redacted] in other groups. F&P has noted that the [redacted] in the 300 – 400 litre group reflects the targeting of this category by imports. Following the release of the ef&c, F&P provided sales mix data covering the April – October 2000 period. This data shows no material change from the sales mix recorded in the YEM 2000.

4.3.2.8 Because of the significant differences in selling prices between small and large refrigerators, changes in the sales mix will obviously affect the calculation of average selling prices. If the largest refrigerators (the 300 – 400 and over 400 litres categories) are taken together, there has been a [redacted] 1999 to 2000 from [redacted] percent to [redacted] percent of sales. If anything this [redacted] in the sales of larger refrigerators [redacted] in overall average prices from 1999 to 2000 whereas average prices increased over this period.

4.3.2.9 It is clear that the increase in average prices from 1999 to 2000 can be attributed to the introduction of stainless steel refrigerators. The Ministry is of the view, however, that price depression must be demonstrated taking into account all sales of like goods. It is not sufficient to show that the price of only certain models has been depressed, if that price depression is more than offset by increases in prices in other models.

4.3.2.10 F&P introduced a price increase in early October 2000 so the April – December 2000 figures will partly reflect that price increase. Since the ef&c was completed, F&P has provided an update of its financial data to 31 March 2001. This data shows for the YEM 2001 the average selling price of white and stainless steel refrigerators was \$[redacted] and \$[redacted] respectively and an overall selling price per unit of \$[redacted].

4.3.2.11 The information available shows no depression of overall average selling prices over the period from 1998 to 2001. Information on changes in the sales mix indicates that over the period from 1999 to 2000 (when injury is claimed to have commenced) such changes should if anything have [redacted] average selling prices. F&P's forecast for YEM 2001 shows no decline in overall average selling prices.

Conclusion

4.3.2.12 When the overall results are considered, i.e., including both white and stainless models, there is no evidence of price depression.

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

said that F&P has no reasonable expectation that it can increase prices immediately when costs increase.

4.3.3.8 In commenting on the Provisional Measures Report, the Korean Government referred to F&P's difficulties in 1999 relating to new door styling and manufacturing problems, and to the impact of a depreciating currency. The Korean Government said that these costs were not fully reflected in increases in prices and the Provisional Measures Report does not provide any evidence that the effect of the dumped imports prevented price increases. The Korean Government said even if there were no imports at all, F&P may not have been able to raise prices in proportion to the rises in costs because a price rise would shrink the market size and reduce revenue.

4.3.3.9 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

4.3.3.10 Total costs have increased relative to sales in April – December 2000 and in YEM 2001, indicating prices have been suppressed. It is unclear to what extent that price suppression can be attributed to F&P holding [REDACTED] but it is considered unlikely that this would account for all of the price suppression over this period.

Conclusion on Price Effects

4.3.4 There is significant price undercutting by a large majority of imported refrigerators and prices have been suppressed in April – December 2000. There is no evidence of price depression.

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.*

4.4.1 **Output and Sales**

4.4.1.1 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.

4.4.1.2 F&P has advised that production closely follows sales. A separate analysis of output has not therefore been carried out.

4.4.1.3 The following table shows sales volume and revenue.

Table 4.20: Sales of Refrigerators
(Years Ended March)

	1998	1999	2000	Apr-Dec 2000
Volume				
- Change on previous year				
- % 1998				
Ave sales per month				
- Change on previous year				
- % 1998				
Revenue (\$000)				
- Change on previous year				
- % 1998				
Ave sales per month				
- Change on previous year				
- % 1998				

Sales Volume

4.4.1.4 In the period from 1998 to 2000, the table shows that sales volumes increased each year. In the period from April to December 2000 the average sales volume per month was close to that achieved in 2000 and above the volumes in 1998 and 1999. F&P has advised however that there is a seasonal variation in demand for refrigerators, the peak demand being in the period around November to February, indicating that average monthly sales for the year ended 31 March 2001 may be higher than that achieved in April – December 2000. Information provided by F&P for April – October 2000 shows average monthly sales of \$_____, while average sales per month for November – December 2000 were \$_____, indicating that the seasonal affect on demand is significant.

4.4.1.5 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 higher than that achieved in each of the 3 previous years.

Sales Revenue

4.4.1.6 The table shows that from 1998 to 2000, sales revenue increased each year. From April to December 2000, the average monthly sales revenue was above that of each of the previous 3 years. F&P's sales revenue for the YEM 2001 was \$_____ which is higher than that achieved in each of the 3 previous years.

4.4.1.7 F&P has claimed that the price undercutting by Korean imports would have resulted in substantial volume loss had it not responded by reducing its selling prices (prior to its October 2000 price increase). F&P states that "This reduction in selling price together with the loss of volume has substantially

reduced F&P's revenues for white sales. These revenues have been propped up by the higher average selling prices of the stainless models".

- 4.4.1.8 The volume and revenue figures in the table above include both white and stainless steel models. The investigating team is of the view that material injury must be assessed in relation to data relating to the New Zealand industry's production and sale of all like goods. Material injury cannot be demonstrated by showing a significant impact on just a selected part of the industry's like goods operation if that impact is offset (or more than offset) by gains in other parts of its like goods operation.

Conclusion

- 4.4.1.9 There is no evidence of a significant loss of sales volume or revenue.

4.4.2 Market Share

- 4.4.2.1 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. There is no "entitlement" to a particular market share.

- 4.4.2.2 The table below shows actual market share and changes in market share. The table shows separately F&P's imports of refrigerators from countries other than Korea () so that any change in the pattern of such imports does not confuse the impact of the dumped imports.

Table 4.21: Market Share
(Years Ended March)

	1998	1999	2000 Apr-Dec	2000
NZ Market				
NZ Industry Sales				
Dumped Imports*	10,997	10,451	14,371	13,179
F&P Other Imports				
Other Imports				
Change in Volume:				
- NZ Market				
- NZ Industry Sales				
- Dumped Imports		-546	3,920	
- F&P Other Imports				
- Other Imports				
% Share Held By:				
- NZ Industry				
- Dumped Imports				
- F&P Other Imports				
- Other Imports				

* Includes F&P's imports. See footnote to table 2.1

- 4.4.2.3 The table shows a small decline in the New Zealand industry's market share in 2000 (when injury is claimed to have commenced) and a small recovery in market share in April – December 2000 back to the level achieved in 1999. The small decline in 2000 in the New Zealand industry's market share was

largely as a result of an increase in the market share held by dumped imports. The small increase in the New Zealand industry's market share in April – December 2000 was attributable to a decline in the market share held by other imports.

- 4.4.2.4 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	[REDACTED]
Dumped imports	[REDACTED]
F&P other imports	[REDACTED]
Other imports	[REDACTED]

- 4.4.2.5 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.
- 4.4.2.6 The information available does not show any significant decline in market share over the period from 2000 (when injury is claimed to have commenced).

Conclusion

- 4.4.2.7 There is no evidence of a significant loss of market share.

4.4.3 Profits

- 4.4.3.1 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.
- 4.4.3.2 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.
- 4.4.3.3 The table below shows an analysis of the earnings before interest and tax for both white and stainless steel refrigerators.

Table 4.22: Earnings Before Interest and Tax
(Years Ended March)

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

- 4.4.3.4 F&P states that the fall in EBIT in 1999 resulted from the production problems referred to previously under price suppression. The production problems contributed to an estimated \$ [redacted] per unit reduction in profit for 1999, or \$ [redacted]. If the 1999 EBIT is adjusted for the effect of the production problems it rises to \$ [redacted] ([redacted] percent of revenue and \$ [redacted] per unit).
- 4.4.3.5 Taking account of the impact on profit in 1999 of the production problems, the table shows that profits in total, per unit and relative to sales declined, in 1999, and increased in 2000, but were still well below that achieved in 1998. In the 9 months to December 2000 profits per unit and relative to sales, have declined significantly compared to all 3 previous years.
- 4.4.3.6 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 \$ [redacted], \$ [redacted] per unit and represented [redacted] percent of sales. The total EBIT, EBIT per unit and EBIT relative to sales for YEM 2001 are well below that achieved in 1998 and 2000 but above that recorded in 1999. If the 1999 results are adjusted as outlined above for the production problems experienced in that year, then the YEM 2001 total EBIT, EBIT per unit and EBIT relative to sales are also below that achieved in 1999.
- 4.4.3.7 F&P said that it was also [redacted]. F&P advised that the NZ dollar declined from US\$0.69 to US\$0.51 in 1999. In order to [redacted] are not reflected in its selling prices. F&P advised that [redacted] has in 1999 cost an estimated \$ [redacted] per unit (\$ [redacted] in total EBIT). [redacted]. The impact of the depreciation in the NZ dollar is therefore [redacted]. It is clear that currency depreciation has had a significant impact on the results for 1999 (a period not claimed to be affected by dumping).
- 4.4.3.8 The following is the NZ to US dollar inter-bank exchange rate taken from the OANDA internet currency converter (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

- 4.4.3.9 The list above shows that the major depreciation of the NZ dollar against the US dollar took place in 1997/98 rather than 1998/99 as advised by F&P although the major impact may not have been evident until 1998/99. The NZ dollar was relatively stable against the US dollar from 1998/99 to 1999/00 and then depreciated significantly in the period 1 April to 31 December 2000. It is therefore likely that the depreciation of the NZ dollar over the April to December 2000 period resulted in significant cost increases.
- 4.4.3.10 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.
- 4.4.3.11 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 provided a table showing the import statistics relating to compressors for refrigerators for the years 1997 to 2000. The table records the quantity, VFD and average VFD per unit and shows a large increase in the VFD per unit from 1997 to 2000. Davenports said that compressors account for more than 20 percent of the manufacturing cost of refrigerators. Davenports claimed that the import statistics table "indicates only too clearly the vulnerability of F&P to exchange rate movements in its manufacturing process and the relevance of this as a cause of the material that it is now claiming".
- 4.4.3.12 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.
- 4.4.3.13 The investigating team notes that it has considered the impact of currency depreciation on F&P's profits, as outlined above. The investigating team also 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 YEM 1998, in total, per unit and relative to sales, was higher than that achieved in any of the succeeding years. EBIT fell significantly in YEM 1999 when the NZ dollar depreciated by only 3 percent over the same period. In YEM 2000 EBIT increased from the previous year when the NZ dollar depreciated by 7 percent against the US dollar over the same period. While there may be a lag between the depreciation of the dollar and the

impact on profit, as appears to have been the case in YEM 1999, the NZ dollar has consistently depreciated over the period while profits did not.

- 4.4.3.14 The investigating team also notes that most of the refrigerators 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 refrigerator will be greater than the imported component in the ex-warehouse selling price of a F&P refrigerator which has a significant value added to the refrigerator in New Zealand. The impact of a depreciating New Zealand currency on ex-warehouse selling prices is therefore likely to be greater on Korean refrigerators. 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.
- 4.4.3.15 It is difficult for the investigating team to differentiate between the impact on profit resulting from F&P [REDACTED] and the [REDACTED] because of the presence of the subject goods in the market. The loss of profitability in the current year to date, particularly that in the April to December 2000 and YEM 2001 periods, is such, however, that it is considered unlikely that a major part of it could be attributed to an F&P decision to seek [REDACTED].
- 4.4.3.16 In response to the ef&c, Davenports said that the difficulty the investigating team referred to in attributing the decline in profit to the dumped imports means it is almost impossible to identify the cause of decline in profit. Davenports said that the Ministry nevertheless regarded the decline in profit as an important factor in material injury without examining the exact cause of the decline in profit. Davenports said that the Ministry "should have considered other contributing causes, such as exchange rates, investments, change in technology, marketing strategy, management environment etc. There is no proper evidence of a causal nexus between the allegedly dumped imports and any decline in profits".
- 4.4.3.17 In commenting on the Provisional Measures Report, the Korean Government said that an examination of the facts provided in that report lead it to the conclusion that it was the rise in the costs, due to manufacturing difficulties [in 1999] and the depreciation of the New Zealand dollar, that caused the decline in profits rather than the dumped imports.
- 4.4.3.18 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 price suppression since April 2000, indicate that the decline in profits since April 2000 is likely to be linked to the dumped imports. While the increase in import volumes has not resulted in a reduction in sales volume or market share (in a growing total market), it is considered likely that the greater volumes seeking a place in the market will have indirectly increased pressure on prices. 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

4.4.3.19 The investigating team concludes that in the April to December 2000 period and in the YEM 2001 there has been a significant decline in total EBIT, per unit EBIT and EBIT relative to sales which is likely to be attributable to the dumped imports.

4.4.4 **Productivity**

4.4.4.1 Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

4.4.4.2 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.

4.4.4.3 In the same submission referred to above, F&P said in a separate part of its submission that as imports forced prices down in various refrigerator model sizes it introduced the [REDACTED]. F&P said that this had the [REDACTED]. F&P submitted that if the dumped imports had not driven margins down "then F&P would have been able to continue [REDACTED] which would have ensured that productivity per employee was able to be increased".

4.4.4.4 F&P has not provided quantitative data to substantiate its claims in the paragraph above. The investigating team does not consider this statement constitutes sufficient evidence of a loss of productivity and concludes there is no evidence of an adverse impact relating to this injury factor.

4.4.5 **Return on Investments**

4.4.5.1 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.

4.4.5.2 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 1998 and forecast EBIT for YEM 2001, as a percentage of total assets used in its New Zealand refrigeration operation at March 1998 and March 2001 respectively. The percentage return on assets calculated on this basis for YEM 1998 and 2001 is [REDACTED] and [REDACTED] percent respectively. No information was provided for YEM 1999 and 2000.

4.4.5.3 The investigating team concludes there is evidence of a decline in the return on assets from YEM 1998 to YEM 2001.

4.4.6 Utilisation of Production Capacity

4.4.6.1 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.

4.4.6.2 At a very late stage in the completion of the ef&c report, F&P stated that “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], utilisation of production capacity has remained constant.”

4.4.6.3 The investigating team concludes there is no evidence of an injurious impact on capacity utilisation.

Factors Affecting Domestic Prices

4.4.6.4 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

4.4.6.5 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.

4.4.6.6 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 for the majority of the subject goods should be imposed at the full margin of dumping.

4.4.7 Other Adverse Effects

4.4.7.1 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

4.4.7.2 F&P submitted that prior to the effects of dumping, in YEM 1998 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.

4.4.7.3 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:

1998	\$ [redacted] million
1999	\$ [redacted] million
2000	\$ [redacted] million

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

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

Inventories

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

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

Employment

- 4.4.7.7 F&P said that in [redacted]. F&P said that prior to 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 refrigeration factory had its own dedicated team of engineering, design and marketing expertise as did the washing 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].

- 4.4.7.8 F&P provided a copy of an internal report at the end of September 2000 and February 2001. The reports show that permanent indirect refrigeration 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 refrigeration and washing machine plants. F&P said that in September 2000 there were [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.

- 4.4.7.9 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 there is no evidence of a reduction in sales volumes, so loss of throughput in the factory was presumably not a factor in the staff reductions.

- 4.4.7.10 The investigating team concludes that it is unlikely that the reduction in staff numbers can be materially attributed to the effects of dumping.

Wages

- 4.4.7.11 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.

- 4.4.7.12 The investigating team concludes there is evidence of a small impact on wages through a reduction in the bonus.

Growth

- 4.4.7.13 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.

- 4.4.7.14 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

- 4.4.7.15 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.

- 4.4.7.16 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

- 4.4.7.17 F&P said that future investment will depend on F&P [REDACTED]. F&P said that the impact of dumping has meant that the [REDACTED]. F&P said it has looked at [REDACTED].

- 4.4.7.18 The investigating team concludes there is no evidence of an actual curtailment of 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 not varied significantly 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 F&P stated in its application that “Prior to the dumping imports from Australia provided F&P with a level of competition normally expected between suppliers. The price undercutting of the dumped imports has meant that Australian suppliers have had to reduce their prices to meet the dumped Korean prices and have substituted some of their models with OEM [original equipment manufacturer] branded models made in Korea (e.g. Westinghouse)”.
- 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 have been significant volumes of refrigerators imported from Australia for some years. F&P said that it was only since the financial year commencing 1 April 1999 that the impact of Korean imports began to be evident in its accounts. F&P has submitted that in this and subsequent periods dumping has prevented it from recovering cost increases and maintaining margins on the F&P models targeted by the dumped imports.

- 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 The market share table shows that imports from other countries, excluding F&P's own imports, increased significantly from 1998 to 1999 and in 2000 were at about the same level as 1999. In the 9 months ended December 2000, the market share held by imports from other countries (excluding F&P's own imports) declined significantly, the decline in market share largely being taken up by the dumped imports from Korea. The evidence indicates that imports from other countries have not increased significantly in the period since material injury is claimed to have commenced.
- 4.5.7 LM Rankine has submitted that price pressure from Australian competitors is the major factor impacting on whiteware pricing in New Zealand. As examples of this LM Rankine has cited examples of washing machines (no refrigerator examples were provided) 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 response to the ef&c.
- 4.5.8 In view of the submissions made by LM Rankine, the investigating team sent a questionnaire seeking information from the only major importer of refrigerators from Australia, Electrolux Home Products (NZ) Ltd, on the pricing of its Australian imports into the New Zealand market. A partial response to this questionnaire was received but this information was not in a form that could be usefully used in this report.
- 4.5.9 The investigating team also analysed NZCS data relating to the importation of refrigerators from Australia and Korea to calculate the average value for duty (VFD) per refrigerator for each statistical key covering the goods subject to investigation. This analysis shows that in 7 out of the 9 statistical keys, the average VFD per refrigerator is higher for refrigerators imported from Australia. The average VFD per refrigerator across all statistical keys is also higher for imports from Australia than for imports from Korea. The investigating team is aware that averages of this nature will not necessarily provide an indication on a model by model basis of comparable prices, but the data does indicate that Australian prices at the import level are not lower than Korean prices.

Demand or Consumption Changes

- 4.5.10 LM Rankine has submitted that the New Zealand market is undergoing a significant change. LM Rankine said that younger consumers are less impressed by old brand loyalties but are motivated increasingly by technological options and diversity. LM Rankine further noted that such consumers are also significantly motivated by the much greater and more transparent availability of information in the marketplace due to extensive advertising. LM Rankine has submitted that consumers are therefore

increasingly interested in, and demanding products such as those imported by it from LG which have their own unique niche in the market. LM Rankine has submitted 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 was occurring as a result.” LM Rankine believe consumers are shifting loyalty as a result of conscious decisions about the quality of the product that they are purchasing.

- 4.5.11 If the changes in the market place identified by LM Rankine are in fact occurring, the investigating team considers it likely that such changes will, by their nature, have taken place gradually. It is therefore considered unlikely that changes of this nature will have materially contributed to the decline in F&P’s performance evident in April – December 2000.

Restrictive Trade Practices and Competition

- 4.5.12 F&P considers there is no evidence that restrictive trade practices of, and competition between, overseas and New Zealand producers are causing injury.
- 4.5.13 Submissions made by several importers and a submission on behalf of the Korean suppliers, discuss in some detail the effects on the marketplace of the exclusive dealer arrangement (EDA) operated by F&P. The tenor of these comments is that the EDA constitutes a restrictive trade practice. The EDA and the submissions made are discussed below.
- 4.5.14 The investigating team has no evidence that restrictive trade practices are having an adverse impact on F&P.

Developments in Technology

- 4.5.15 F&P stated in its application “There is no evidence of technology developments that are relevant”.
- 4.5.16 In connection with like goods, LM Rankine has submitted that LG refrigerators contain technologically innovative features that are not found in F&P refrigerators. In the absence of any specific information relating to the impact such features may have on consumers purchasing decisions, it is not possible for the investigating team to draw any conclusion on what impact (if any) this may have had on F&P.

Export Performance and Productivity

- 4.5.17 F&P stated in its application that “The material injury analysis has excluded F&P’s export business and there is therefore no evidence of F&P’s export business impacting on the domestic business”.
- 4.5.18 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., the production of refrigerators in New Zealand and their subsequent sale on the New Zealand market. F&P’s problems with forward exchange contracts are discussed separately below.
- 4.5.19 Radiola has stated that by comparison with all of its competitors F&P still operates a regional management structure which it considers 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.

- 4.5.20 Radiola has also referred to F&P's recent announcement that it would be making up to 200 middle management redundant, none of whom, reportedly, are in manufacturing. Radiola has observed that this is a "staggeringly high" level of surplus capacity in F&P's sales and administration.
- 4.5.21 Radiola summarises its submission regarding F&P productivity by stating that together with high R&D expenditure and (by world standards) low production volumes it considers excessive overheads to be a prime driver of F&P's pricing and by inference therefore of the material injury claimed by F&P to have been caused by dumped imports.
- 4.5.22 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

- 4.5.23 The narrowing of the definition of the goods subject to investigation means that F&P no longer imports the subject goods. F&P stated that "F&P imports refrigerators from Australia. Other imports are related to sample shipments". The investigating team notes that the refrigerators F&P imports from Australia are not subject goods (not being from Korea). F&P's imports from Korea and Australia consequently do not fall within the scope of section 8(2)(f) of the Act.

Other Factors

Forward Exchange Contracts

- 4.5.24 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.
- 4.5.25 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.

- 4.5.26 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.
- 4.5.27 In the limited time available, the investigating team has selected at random 2 models, the SRGV39 and the SRGV52 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 SRGV39 and SRGV52 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 SRV39 would increase from ___ to ___ percent and the SRGV52 from _____ to _____ percent.
- 4.5.28 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.
- 4.5.29 As outlined above under “Price Undercutting”, forward exchange contracts have not been a relevant consideration for other importers.

Importer’s Marketing Strategy

- 4.5.30 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 _____
_____. Radiola submitted that the Ministry [in the provisional measures report] made no allowance for it _____
_____ 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 “_____ whether or not those products are “dumped goods””.
- 4.5.31 Radiola has submitted that to fairly reflect the effect of it _____
_____ such that an EBIT per unit of ___ 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 _____ percent as this is the return on whiteware reported by F&P for the 6 months ended 30 September 2000. Radiola submitted that _____, “_____ and the material damage arising from Radiola’s _____ 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 _____ percent.

Exclusive Dealer Arrangements

Submissions by F&P

4.5.38 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.

4.5.39 In its application F&P noted that [REDACTED],
[REDACTED]
[REDACTED]
[REDACTED].

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

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

4.5.42 F&P said that if products are marketed outside of an EDA you are at the “[REDACTED]” [REDACTED]. By way of example, F&P said that in Australia, where EDAs 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].

4.5.43 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].

- 4.5.44 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.
- 4.5.45 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]. For example, the report for May 1997 states: "[redacted]". F&P also provided CM research market share data for the period July 1996 to November 2000 to demonstrate the [redacted].
- 4.5.46 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.
- 4.5.47 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".
- 4.5.48 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.
- 4.5.49 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.
- 4.5.50 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].
- 4.5.51 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

- 4.5.52 A joint submission was made by Davenports on behalf of Samsung, LG, Daewoo and EIAK (“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.
- 4.5.53 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 which 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.
- 4.5.54 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 Email [Electrolux] would have a much larger share of the market. Radiola now believes, 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.
- 4.5.55 Radiola said that its impression is that the major competition for large F&P retailers are 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.
- 4.5.56 Radiola said that the Pacific Retail Group is growing its business and the total number of its outlets are 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.

- 4.5.57 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.
- 4.5.58 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 Email [Electrolux] in Pacific Retail Group shops.
- 4.5.59 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.
- 4.5.60 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."
- 4.5.61 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 which 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."

- 4.5.62 LM Rankine said that only a small number of multi-branded stores are able to offer a wide range of refrigeration. LM Rankine provided a list of its estimate of the number of retail outlets stocking F&P refrigerators and those stocking refrigerator brands imported from Korea. The list shows [redacted] outlets for F&P refrigerators 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. LM Rankine said that it appears that F&P has included in its figures The Warehouse and all hardware stores which sell appliances which LM Rankine considers to be misleading and incorrect. LM Rankine noted that The Warehouse has been excluded from its list of retail outlets as it sells only 2 small bar fridges one of which is a camping model. LM Rankine said that the number of outlets stated by F&P in its application is well above the normal number supplied by it.
- 4.5.63 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 uses the EDA to control its dealer network by only letting a set number of outlets sell in each region.
- 4.5.64 Whirlpool has observed that the New Zealand whiteware market is unique in the world insofar as the use of an EDA is permitted. Whirlpool has noted that in its application, F&P has defined the market as F&P EDA outlets, non-EDA outlets, and The Warehouse. Whirlpool said that the inclusion of The Warehouse could mislead a casual observer to conclude that over 366 outlets are available for marketing whiteware appliances outside of the EDA. Whirlpool said that The Warehouse is not relevant to the question of dumping as products marketed by this outlet are not manufactured in Korea (the brand sold by The Warehouse being AEG which is imported from Europe).
- 4.5.65 Whirlpool said it would not dispute the number of EDA outlets (259) or the number of non-EDA outlets (294 excluding The Warehouse) shown by F&P in its application, but pointed out that EDA outlets account for approximately 65 percent of the total volume in the New Zealand market. Whirlpool submitted that the effect that the consolidation of the whiteware market has within 259 outlets is that all importers (in this instance 10) potentially vie for market share within a very restricted sector. Whirlpool said that this could lead to discounting within the confined market of non-EDA stores by the 10 competing organisations seeking market share within a restricted sector.

Ministry's Consideration of the Issues

- 4.5.66 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 December 2000, although the fluctuating nature of the prior period results somewhat obscures that picture.

- 4.5.67 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 them 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.
- 4.5.68 Radiola has commented that without the EDA other brands would have a larger share of the market. Radiola went on to say, however, that it believes the EDA is beginning to work against F&P. Radiola attributed this to competition between major F&P dealers which has impacted on their profitability and consequently on F&P ability to improve its margins. Radiola has not identified exactly when it considers the EDA began to work against F&P.
- 4.5.69 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.
- 4.5.70 The investigating team accepts that the type of change that Radiola and LM Rankine consider has taken place is not by nature something that can be precisely placed in time and is likely to be incremental.
- 4.5.71 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 deterioration in performance evident in the April to December 2000 period cannot be materially attributed to the EDA.

Research & Development Expenditure

- 4.5.72 Radiola has submitted that F&P has invested considerable funds on research and development (R&D) on developing its active smart technology including a very expensive redevelopment of its door design. Radiola referred to a NZ Herald article of June 1999 in which reference is made to F&P's spending on R&D. Radiola has submitted that F&P "must recover this investment over production volumes which are well below even its Australian rival Email, let alone world players such as Samsung, LG and Electrolux."
- 4.5.73 Information provided by F&P shows that its expenditure on R&D, and the way in which R&D is accounted for, had not changed significantly over the period

from 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 contributed to the injury evident in April – December 2000.

Other Matters

- 4.5.74 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.
- 4.5.75 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.
- 4.5.76 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.
- 4.5.77 The late submission by LM Rankine is 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

- 4.5.78 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) Import volumes of the dumped goods have increased significantly in absolute terms 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 the equivalent models produced by the New Zealand industry.
- (c) When F&P's non-injurious prices are considered, the dumped imports are undercutting the equivalent models produced by the New Zealand industry in all but one case.
- (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 still price undercutting by the majority of the subject goods, indicating that for the majority of the subject goods anti-dumping duty should be imposed at the full margin of dumping.
- (e) The New Zealand industry's prices have not been depressed. The New Zealand industry's prices have been suppressed in April – December 2000 and in YEM 2001.
- (f) Consequent upon the volume and price effects, there is evidence of an adverse economic impact reflected in a significant decline in profits in April – December 2000 and in YEM 2001 and a decline in return on investments.
- (g) There is no evidence of a significant decline in sales volume. There is no evidence of a decline in sales revenue, a loss of market share, a decline in productivity, or utilisation of production capacity.
- (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 for the majority of the subject goods, anti-dumping duty should be imposed at the full margin of dumping.
- (i) There is evidence of an adverse impact on cash flow and wages. There is no evidence of an adverse impact attributable to dumping on inventories, employment, growth, ability to raise capital, and investments.
- (j) Factors other than the dumped imports have not materially contributed to the decline in profits in April – December 2000 and in YEM 2001 or to the adverse impact on cash flow and wages.

5. CONCLUSIONS

5.1 On the basis of the information available, it is concluded that:

- (a) Refrigerators and refrigerator-freezers from Korea are being dumped;
and
- (b) By reason thereof material injury to the 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 still price undercutting by the majority (74 percent) of the subject goods, indicating that anti-dumping duty for the majority of exports should be imposed at the full margin of dumping. 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 prices and normal values 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 has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and 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 refrigerator-freezers that are imported into New Zealand, the refrigerator-freezers have been divided into 5 different categories, depending on their capacity. The categories are as follows:

Table 6.1: Refrigerator Categories

Category	Capacity(Litres)
1	80 - 100
2	101 - 200
3	201 - 300
4	301 - 400
5	401 - 500

6.2.8 There are a range of different sizes of refrigerators imported (94-495 litres), their dumping margins vary from 3 to 85 percent. Due to the range of dumping margins and sizes, a reference price method is therefore considered 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 duty that is at the full margin of dumping for the majority of the models exported over the period of investigation.

6.3.2 In order to assess the extent of any price undercutting, prices of the imported and domestically produced refrigerators 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 price.

Calculation of F&P Ex-warehouse NIP

- 6.3.3 Following the release of the ef&c Report, F&P provided information on their sales volumes of refrigerators 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 refrigerator-freezers 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 refrigerators in category 1 (see "Like Goods" above). The P120 model refrigerator manufactured by F&P, which has a capacity of 115 litres, has been used to calculate weighted average ex-warehouse NIP for category 1. The following table shows the weighted average ex-warehouse F&P NIP on a category by category basis.

Table 6.2: F&P NIP

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

Calculation of Reference Prices

- 6.3.4 The model by model price undercutting comparison showed that a lesser duty was appropriate for a minority of models imported. Because of this, it is necessary to establish if a lesser duty should apply in any of the 5 categories referred to above.
- 6.3.5 The investigating team calculated the ex-warehouse prices of the subject goods imported into New Zealand from LG, Samsung and Daewoo. For the purpose of comparing prices with F&P's NIPs in the five categories mentioned above, the investigating team has calculated weighted average prices of the imported subject goods on a category by category basis, weighting each price by the volume of imports in each category for the year ended 31 October 2000.
- 6.3.6 After establishing the weighted average ex-warehouse or FIS prices, the weighted average dumping margins for each exporter in each category were added to these prices and a comparison was carried out with the F&P NIP for the 5 categories. The weighted average dumping margins for the five categories were calculated on the same basis as the ex-warehouse or FIS prices i.e. weighting each dumping margin by volume of imports over the period of investigation. The following tables show the weighted average ex-warehouse or FIS prices (including dumping margins) compared to the F&P NIP for LG, Samsung and Daewoo in the 5 categories.

Table 6.3: Price Undercutting: LG Exports to NZ

Category	Ex-Warehouse Price (\$NZ) DM	Ex-warehouse + F&P NIP(\$NZ)	Under-cutting (\$NZ)	% F&P Price
1				
2				
3				
4				
5				

Table 6.4: Price Undercutting: Samsung Exports to NZ

Category	Ex-Warehouse Price (\$NZ) DM	Ex-warehouse + F&P NIP(\$NZ)	Under-cutting (\$NZ)	% F&P Price
1				
2				
3				
4				
5				

Table 6.5: Price Undercutting: Daewoo Exports to NZ

Category	Ex-Warehouse Price (\$NZ) DM	F&P + NIP(\$NZ)	FIS Under-cutting (\$NZ)	% F&P Price
1				
2				
3				
4				
5				

6.3.7

The above tables show that the LG ex-warehouse prices in category 3 and 4 and Samsung and Daewoo ex-warehouse prices in category 4 are undercutting the F&P NIP in those categories, indicating that the anti-dumping duty should be set at the full margin of dumping. The investigating team considers that this should be by way of a normal value (value for duty equivalent) NV (VFDE). Normal values for this investigation has been established under section 4 of this report. In order to calculate the weighted average NV (VFDE), the weighted average normal value was calculated for the categories over the period of investigation. Any cost incurred after the exporter's ex-factory to the FOB level is added to the weighted average normal value. In this case the weighted average inland freight cost and port

services charges were added to the weighted average normal value amount to arrive at the NV (VFDE) figure for the 5 categories.

- 6.3.8 There was no price undercutting in LG category 1 and Samsung category 3 and 5, indicating that anti-dumping duty should be imposed at less than the margin of dumping as such a lesser duty will remove the injury attributable to dumping. A NIFOB, rather than a full margin of dumping would be appropriate for these categories.
- 6.3.9 A NIFOB is calculated by establishing a NIP and deducting from the NIP those costs and profit margin that the importers 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 refrigerators are sold at either the ex-warehouse or FIS level (depending on the level of trade), its sale price equates to the NIP.
- 6.3.10 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.
- 6.3.11 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 or FIS 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, 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.
- 6.3.12 All importers provided information on cost build up to selling price of refrigerators imported from Korea for the year ended 31 October 2000, including selling and administration expenses. [REDACTED]
[REDACTED]
all of their sales of the subject goods over the period of investigation.
- 6.3.13 The investigating team considers that where anti-dumping duty is imposed at a full margin of dumping, and is therefore based on the normal value, it is appropriate it should be established in Korean Won as that is the currency in which the normal value is set.
- 6.3.14 The Ministry is of the view that where a Korean producer did not export refrigerators in a particular category, that a NIFOB be calculated for that category, as this will ensure that any imports in these categories will not sell below F&P's NIP. In those cases the costs used were 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 and 5, Samsung in category 1 and 2, and Daewoo in category 1, 2, 3 and 5.

6.3.15 The Ministry is also of the view that where an importer sold on the New Zealand market at a loss, a weighted average reasonable profit margin be calculated based on the weighted average profit margins of those importers that sold at a profit. All the importers provided information on profit margins before the imposition of provisional measures.

6.3.16 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]

6.3.17 The investigating team was of the view that [REDACTED] profit margins be ignored when calculating the weighted average profit margin as [REDACTED] volume of imports was extremely low compared to other importers and its profit margin was [REDACTED] percent. Such a profit margin would have provided an unrealistic weighted average profit margin across the 5 categories for the purposes of calculating the NIFOBs.

LG Electronics

6.3.18 Table 6.3 shows that the LG ex-warehouse prices in category 3 and 4 are undercutting the F&P NIP, indicating that a Normal value (Value for Duty Equivalent) method of imposing duty is appropriate for these categories.

6.3.19 The following table shows the NV (VFDE) calculation for LG Category 3 and 4 exports.

Table 6.6: NV (VFDE) for LG (Korean Won)

Category	Weighted Avg. NV	Weighted Avg. Inland Freight	Weighted Avg. Port Charges	NV (VFDE)
3	[REDACTED]	[REDACTED]	[REDACTED]	232,530
4	[REDACTED]	[REDACTED]	[REDACTED]	370,886

6.3.20 As noted above, there were no price undercutting in category 1 for refrigerators imported from LG, indicating that a duty should be set using a NIFOB mechanism.

6.3.21 The following table shows the NIFOB calculation for LG Category 1 exports.

Table 6.7: NIFOB for LG – Category 1 (\$NZ)

F&P Ex-factory NIP	[REDACTED]
Less Costs & Margins after FOB to Ex-Warehouse	[REDACTED]
- Overseas Freight	[REDACTED]

- Port Service Charge & Wharfage	█
- Overseas Insurance	█
- Customs Duty	█
- Customs Clearance fees	█
- Cartage to Store	█
- Devanning Fees	█
- Other import Costs	█
- Documentation Fee for Bill of Lading	█
- Storage & Handling Costs	█
- Selling and Admin Costs	█
- Reasonable Profit Margin (█)	█
Category 1 NIFOB	222.54

6.3.22 The above LG category 1 NIFOB is based entirely on LM Rankine annual cost information as Electrolux, who is the other importer from LG, did not import refrigerators in this category. A █ percent weighted average profit margin was calculated for LM Rankine from the cost build-up information provided by LM Rankine for its imports in this category.

6.3.23 There were no exports in categories 2 and 5 from LG to New Zealand during the period of investigation. As noted above, where there were no exports in a category, the Ministry is of the view that a NIFOB for that category should be calculated.

6.3.24 There were no exports in category 2 by any of the Korean exporters. To calculate the category 2 NIFOB, the investigating team calculated category 3 and 4 weighted average annual cost from ex-warehouse to FOB for LG. The difference between category 3 and 4 weighted average annual cost from ex-warehouse to FOB was █ percent. The category 2 weighted average annual cost from ex-warehouse to FOB was calculated on the basis of the proportionate difference between category 3 and 4, i.e. at █ percent of the category 3 weighted average annual cost from ex-warehouse to FOB, which was NZ\$█. A reasonable weighted average profit margin of █ percent was added to this. The following table shows the calculation of LG Category 2 NIFOB.

Table 6.8: NIFOB for LG – Category 2 (NZ\$)

F&P Ex-Factory NIP	█
Less Cost and Margin after FOB to Ex-Warehouse	█
- Weighted Avg. Annual Costs for Category 3 (LG)	█
- Weighted Avg. Annual Costs for Category 4 (LG)	█
- Difference in Weighted Avg. Cost between Category 3 and 4	█
- % Difference between Category 3 and 4	█
- Weighted Avg. Annual Costs for Category 2 (LG)	█
- Reasonable Profit Margin (█)	█
Category 2 NIFOB	415.54

6.3.25 In order to calculate LG category 5 NIFOB, the investigating team used the Samsung category 5 weighted average annual cost from ex-warehouse to FOB as there were no exports by LG in this category (and also none by Daewoo). A reasonable weighted average profit margin of █ percent was used. The following table shows the NIFOB calculation for LG category 5 exports.

Table 6.9: NIFOB for LG - Category 5 (NZ\$)

F&P Ex-Factory NIP		█
Less Cost and Margin after FOB to Ex-Warehouse		█
- Weighted Avg. Annual Costs Category 5 (Samsung)	█	
- Reasonable Profit Margin	█	
Category 5 NIFOB		815.11

Samsung Electronics

6.3.26 Table 6.4 indicates that a NV (VFDE) method of imposing duty is appropriate for category 4. The following table shows the NV (VFDE) calculation for Samsung category 4 exports.

Table 6.10 NV (VFDE) for Samsung (Korean Won)

Category	Weighted Avg. NV	Weighted Avg. Inland Port Charges Freight	Weighted Avg. NV (VFDE)
4	█	█	█ 377,856

6.3.27 The NIFOB for categories 3 and 5 were calculated by establishing a NIP and deducting from the NIP those costs and margins that Radiola and Whirlpool incur or is properly entitled to an allowance for, after FOB to the point in the market at which the imported goods compete with the industry's NIP. █
 █
 █. The following tables show the NIFOB calculation for Samsung category 3 and 5 exports.

Table 6.11: NIFOB for Samsung – Category 3 (NZ\$)

F&P Ex-factory NIP		█
<i>Radiola</i>		
Less Weighted Avg. 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 as per P&L sheet	█	
- Weighted Avg. Reasonable Profit Margin	█	
Radiola NIFOB		█
<i>Whirlpool</i>		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		█
- Overseas Freight	█	
- Overseas Insurance	█	
- Customs Duty	█	
- Port Clearance Fees	█	
- Cartage to Store	█	
- Devanning Fees	█	
- Other Import Fees	█	
- Other	█	
- Freight Mgmt Fees	█	
- Selling and Admin Cost	█	
- Advertising and discount	█	
- Warranty and Obsolescence	█	
- Weighted Avg. Reasonable Profit Margin	█	
Whirlpool NIFOB		█
Category 3 NIFOB		474.85

6.3.28 The Samsung category 3 NIFOB was based on the Radiola and Whirlpool category 3 NIFOB. The two NIFOB's were calculated separately and then weighted to calculate Samsung category 3 NIFOB.

6.3.29 The Samsung category 5 NIFOB was calculated in the same way as category 3 NIFOB as follows:

Table 6.12: NIFOB for Samsung – Category 5 (\$NZ)

F&P Ex-Factory NIP		█
<i>Radiola</i>		
Less Weighted Avg. 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	█	
- Selling and Admin Costs	█	
- Store Costs as per P&L sheet	█	
- Weighted Avg. Reasonable Profit Margin	█	
Radiola NIFOB		█
<i>Whirlpool</i>		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		█
- Overseas Freight	█	
- Overseas Insurance	█	
- Customs Duty	█	
- Port Clearance Fees	█	
- Cartage to Store	█	
- Devanning Fees	█	
- Other Import Fees	█	
- Other	█	
- Freight Mgmt Fees	█	
- Selling and Admin Cost	█	
- Advertising and discount	█	
- Warranty and Obsolescence	█	
- Weighted Avg. Reasonable Profit Margin	█	
- Whirlpool NIFOB		█
Category 5 NIFOB		815.11

6.3.30 There were no exports by Samsung in categories 1 and 2 to New Zealand during the period of investigation. As noted above, where there were no exports in a category, the Ministry is of the view that NIFOBs for that category should be calculated using other producers information in the same category.

6.3.31 The weighted average annual cost information used in calculating NIFOB for Samsung category 1 below is the same as the LG category 1 average annual cost incurred by LM Rankine. Daewoo category 1 information is not used, as there were no exports by Daewoo in category 1. A reasonable weighted average profit margin of █ percent was used. The following table shows the NIFOB calculation for Category 1 Samsung exports.

Table 6.13: NIFOB for Samsung – Category 1 (NZ\$)

F&P Ex-Factory NIP		█
Less Weighted Avg. Cost and Margin after FOB to Ex-Warehouse		█
- Weighted Average Annual Cost	█	
- Reasonable Profit Margin	█	
Category 1 NIFOB		232.77

6.3.32 In order to calculate the Samsung category 2 NIFOB, the investigating team calculated category 3 and 4 weighted average annual cost from ex-warehouse to FOB for Samsung. This weighted average annual cost was based on cost incurred by Radiola and Whirlpool in these categories. The

difference between category 3 and 4 weighted average annual cost from ex-warehouse to FOB was █ percent. The category 3 weighted average annual cost from ex-warehouse to FOB was calculated on the basis of the proportionate difference between category 3 and 4, i.e. at █ percent of category 3 weighted average annual cost from ex-warehouse to FOB, which was NZ\$█. A reasonable weighted average profit margin of █ percent was added to the costs to calculate the NIFOB for Samsung categories 1 and 2. The following table shows the NIFOB calculations for categories 1 and 2 Samsung exports.

Table 6.14: NIFOB for Samsung - Category 2 (NZ\$)

F&P Ex-Factory NIP		█
Less Weighted Avg. Cost and Margin after FOB to Ex-Warehouse		█
- Weighted Avg. Annual Cost for Category 3	█	
- Weighted Avg. Annual Costs for Category 4	█	
- Difference in Weighted Avg. Cost between Category 3 and 4	█	
- % Difference between category 3 and 4	█	
- Weighted Avg. Annual Costs for Category 2 (Samsung)	█	
- Reasonable Profit Margin	█	
Category 2 NIFOB		424.49

Daewoo Electronics

6.3.33 Table 6.5 above shows that the Daewoo only exported in category 4. There is price undercutting in category 4, indicating that a NV (VFDE) is appropriate for this category. The following table shows the NV (VFDE) calculation for Daewoo category 4 exports.

Table 6.15: NV (VFDE) for Daewoo (Korean Won)

Category	Weighted Avg. NV	Weighted Inland Freight	Avg. Weighted Avg. Port Charges (VFDE)	NV
4	█	█	█	382,224

6.3.34 As there were no exports in categories 1, 2, 3 and 5, a weighted average NIFOB was calculated for these categories based on the weighted average annual cost information from LG and Samsung in the same categories. A reasonable weighted average profit margin of █ percent (across the 5 categories) was applied to the weighted average annual cost for these categories. The following tables show the NIFOB calculations for categories 1, 2, 3, and 5 Daewoo exports.

Table 6.16: NIFOB for Daewoo Category 1 (NZ\$)

F&P Ex-Factory NIP		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		
- Weighted Avg. Annual Cost		
- Weighted Avg. Reasonable Profit Margin		
Category 1 NIFOB		232.77

6.3.35 The Daewoo category 1 NIFOB was calculated on weighted average annual cost information from LG rather than a weighted average annual cost of LG and Samsung as LG is the only company that exports to New Zealand in this category. Details are shown in the table below.

6.3.36 The Daewoo category 2 NIFOB was calculated from the LG and Samsung category 2 weighted average annual cost information, weighted using LG and Samsung's category 3 and 4 import volume figures. The following table shows Daewoo category 2 NIFOB calculation.

Table 6.17: NIFOB for Daewoo – Category 2 (NZ\$)

F&P Ex-Factory NIP		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		
- Weighted Avg. Annual Cost		
- Weighted Avg. Reasonable Profit Margin ()		
Category 2 NIFOB		420.14

6.3.37 The following table shows the Daewoo category 3 NIFOB which was calculated using the LG and Samsung category 3 weighted average annual costs because both LG and Samsung exported refrigerators to New Zealand in this category. A weighted average annual cost for Daewoo category 3 was calculated using the LG and Samsung costs weighted by volume of imports, and a weighted average reasonable profit margin of % percent was applied to it.

Table 6.18: NIFOB for Daewoo – Category 3 (NZ\$)

F&P Ex-Factory NIP		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		
- Weighted Avg. Annual Cost		
- Weighted Avg. Reasonable Profit Margin		
Category 3 NIFOB		470.60

6.3.38 The Daewoo category 5 NIFOB was calculated based on weighted average annual cost information from Samsung in the same category as it was the only exporter of refrigerators to New Zealand in this category. A % percent

profit margin was added to the total weighted average annual cost. Details are shown in the table below.

Table 6.19: NIFOB for Daewoo – Category 5 (NZ\$)

F&P Ex-Factory NIP		
Less Weighted Avg. Costs and Margin after FOB to Ex-Warehouse		
- Weighted Avg. Annual Cost (Samsung)		
- Weighted Avg. Reasonable Profit Margin		
Category 5 NIFOB		815.11

Other Exporters

6.3.39 In deciding what duties should be imposed on “other” exporters of refrigerators 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,....”

6.3.40 The investigating team limited its examination to those exporters of refrigerators from Korea which represented 98 percent of exports (by volume) of the subject goods over the year ended October 2000.

6.3.41 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 refrigerators from Korea as this approach is reasonable and consistent with Article 9.4 of the WTO Agreement.

6.3.42 As there were no exports in Category 2 from Korea, the weighted average dumping margin as a percentage of export price for this category is calculated from information on normal values and export prices of the other 4 categories.

6.3.43 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. LG Categories 3 and 4 and Samsung and Daewoo category 4

reference prices are expressed in Korean Won as they are NV (VFDE) figures. The remaining reference prices are expressed in \$NZ.

Table 6.20: Proposed Reference Price Levels for Specified Suppliers and Percentage Rates of Duty for Other Suppliers Category

	1 (80-100 Litres)	2 (101-200 Litres)	3 (201-300 Litres)	4 (301-400 Litres)	5 (401-500 Litres)
LG	222.54	415.54	232,530	370,886	815.11
Samsung	232.77	424.49	474.85	377,856	815.11
Daewoo	232.77	420.14	470.60	382,224	815.11
Other Suppliers	71%	40%	25%	49%	48%

Retrospective Application of Final Duties

- 6.3.44 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.
- 6.3.45 The mixture of reference prices, NV (VFDE), NIFOB and weighted average dumping margin as a percentage of export 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

- 6.3.46 Any anti-dumping duties imposed will impact only on the refrigerators 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.
- 6.3.47 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.
- 6.3.48 The imposition of final duties may therefore result in consumers not having the same access to Korean refrigerators. If imports from Korea resume it is likely that consumers will face a significant increase in prices. Refrigerators imported from other countries will not be affected by the duties and consumers will therefore continue to have the same access to refrigerators from other countries. Other countries that are significant suppliers of refrigerators to the New Zealand market include Australia, the United States, Italy and Japan.

7. RECOMMENDATIONS

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

1. That the Minister determine pursuant to section.13 of the Dumping and Countervailing Duties Act 1988 that in relation to the importation or intended importation of refrigerators from Korea:
 - (a) the goods are being dumped; and
 - (b) by reason thereof material injury to an industry has been or is being 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 refrigerators 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 ss.9, 13 and 14 of the Act.

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Investigating Team
Trade Remedies Group