

TRADE MEASURES BRANCH
CUSTOMS ACT 1901 – PART XVB

CERTAIN WASHING MACHINES
EXPORTED FROM
THE REPUBLIC OF KOREA

STATEMENT OF ESSENTIAL FACTS NO. 63

17 December 2002

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ABBREVIATIONS & ACRONYMS

ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of Customs
Customs	The Australian Customs Service
CTMS	cost to make and sell
Daewoo	Daewoo Electronics Co Inc
Electrolux	Electrolux Home Products Pty Ltd
F&P	Fisher & Paykel Australia Holdings Ltd
FLM	front loading washing machine
FOB	free-on-board
GUC	goods under consideration
Korea	The Republic of Korea
LGE	LG Electronics Inc
LGEAP	LG Electronics Australia Pty Ltd
Minister	Minister responsible for Customs
NIP	non-injurious price
OEM	original equipment manufacturer
Omega	Omega Smeg
Samsung	Samsung Electronics
SEF	statement of essential facts
SPIV	sales person incentive voucher
the Act	the <i>Customs Act 1901</i>
the goods	the goods the subject of the application
TLM	top loading washing machine
USP	unsuppressed selling price
WTO	World Trade Organization
YEM	year ending March

1 INTRODUCTION

2 This statement of essential facts (SEF) relates to a dumping investigation into
3 certain washing machines exported to Australia from the Republic of Korea
4 (Korea). The Australian Customs Service (Customs) initiated the investigation
5 following an application by Fisher & Paykel Australia Holdings Ltd (F&P). F&P
6 has a subsidiary that manufactures washing machines in Australia.

7 The investigation was notified in *The Australian* on 15 July 2002 and in Australian
8 Customs Dumping Notice (ACDN) No. 2002/34.

9 Customs examined exports of washing machines to Australia during the period
10 1 January 2001 to 30 June 2002 (the investigation period) to determine whether
11 dumping had occurred. Customs examined details of the Australian market from
12 1 April 1998 to 30 June 2002 (the injury period) to determine whether, and to
13 what extent, dumping had caused material injury to the Australian industry
14 producing like goods.

15 Customs is normally required to place on the public record, within 110 days of
16 initiation, an SEF on which it proposes to base its recommendations to the
17 Minister responsible for Customs (Minister). Due to complications with the
18 investigation Customs requested an extension of the deadline for placing the SEF
19 on the public record to on or before 17 December 2002. The Minister agreed,
20 under s. 269ZHI of the *Customs Act 1901* (the Act), to the extension.

21 Interested parties are given 20 days to respond to issues raised in the statement.

22 In normal circumstances Customs must, within 155 days of the initiation of an
23 investigation, report to the Minister and recommend whether to impose dumping
24 duties and, if so, the level of duties. Due to the extension of time granted in
25 respect of the SEF, the report to the Minister is now due on or before 31 January
26 2003.

2 PURPOSE

This statement sets out the essential facts on which Customs will base its recommendations to the Minister. Interested parties may comment on the matters being considered by Customs in formulating the report and recommendation.

Responses to this statement should be made by 6 January 2003. Customs is not obliged to have regard to any submissions in response to this statement that are received after 6 January 2003 if to do so would prevent timely preparation of its report to the Minister.

Submissions should be limited to the issues of fact as outlined in this document. Because of the statutory time limit in which to report to the Minister, it will generally not be possible for Customs to consider new issues or facts raised at this stage.

Submissions should be sent to:

Director Operations 3
Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Interested parties responding to this SEF must include a non-confidential version of their submission for the public record.

As well as non-confidential submissions by interested parties, and the SEF, the public record contains non-confidential versions of Customs' reports made during the investigation. Those reports deal with issues such as normal value, export price and injury. This SEF should be read in conjunction with those documents.

Any interested party wishing to examine the public record before lodging a submission in response to this statement should contact Trade Measures Office Management staff on (02) 6275 6547.

All ACDNs and SEFs are available on the Internet at:

<http://www.customs.gov.au/goto/notices>

3 THE GOODS UNDER CONSIDERATION

3.1 THE GOODS

The applicant described the goods under consideration (GUC) as fully automatic household washing machines (top and front loading) with a dry linen capacity not exceeding 12 kg—the capacity being determined by standard AS/NZS2040. The application excluded twin tub washing machines, combined washer dryers and commercial washing machines whether or not operated by a form of payment.

3.2 TARIFF CLASSIFICATION

The imported goods are classified to 8450.11.00 statistical codes 40, 03, 04 and 8450.20.00 statistical code 08 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty applicable to the goods exported from Korea is 5%.

3.3 IMPORTS

3.3.1 Nominated country

The applicant nominated Korea as the country against which anti-dumping action was sought.

3.3.2 Exporters/manufacturers

Customs identified that there were three Korean manufacturers—LG Electronics Inc. (LGE), Daewoo Electronics Co., Inc (Daewoo) and Samsung Electronics (Samsung)—who were the supply source for exports of the GUC to Australia from Korea. Each of these manufacturers was also an exporter to Australia. A fourth exporter had the GUC manufactured in Korea on an original equipment manufacturer (OEM) basis—Customs understands the manufacturer to have been Samsung.

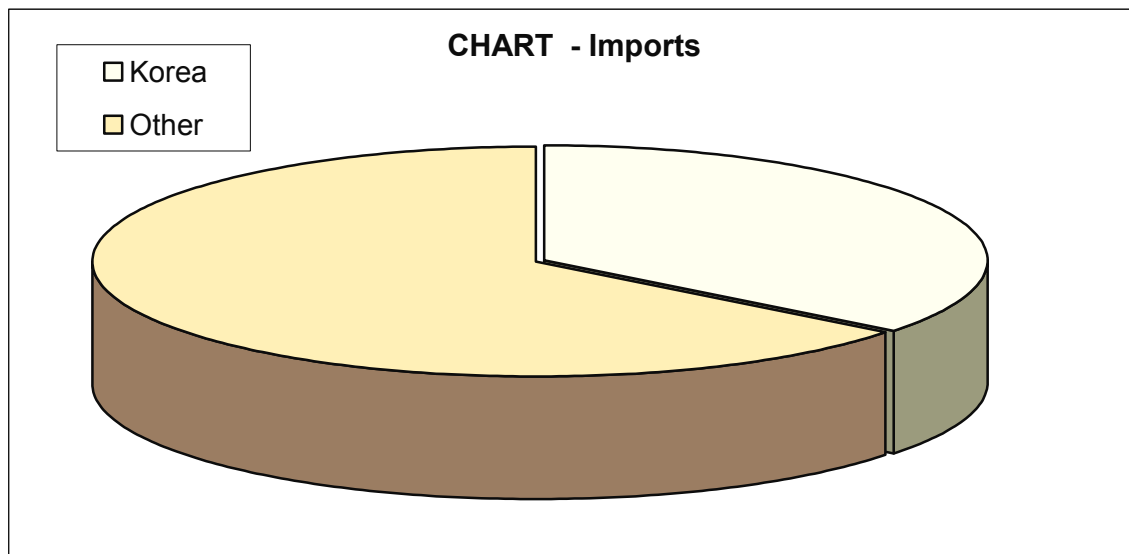
3.3.3 Importers

Customs identified seven importers of the GUC from Korea. One importer sourced supply from two exporters, but the other six sourced from a single exporter.

3.3.4 Volume of imports

To determine the volume of imports during the investigation period Customs examined its commercial database. This information was refined by verified data obtained from the importers and exporters visited by Customs.

Customs calculated that the volume of imports of washing machines as defined by the applicant, from all sources, was about 450,000 units during the investigation period. The following chart depicts the proportion of imports from Korea compared with other countries.



1

2 **3.3.5 Product information**

3 The purpose of the GUC is to wash clothing and other fabric products. The GUC
 4 comprise top loading washing machines (TLMs) and front loading washing
 5 machines (FLMs). The washing bowl of FLMs is on a horizontal axis and access
 6 to it is through the front of the machine. For TLMs, the bowl is on a vertical axis
 7 and it is accessed through the top of the machine. There is a wide range of
 8 models of washing machines that are distinguished by various characteristics.

9 Capacity is an important characteristic that distinguishes between models. The
 10 washer capacity standard in Australia requires the manufacturer to specify the
 11 maximum dry weight of clothes that can be washed while satisfying certain
 12 criteria, such as soil removal. Customs found that there were models of the GUC
 13 with capacities of 4.5kg, 5.0kg, 5.5kg, 6.0kg, 6.5kg, 7.0kg 7.5kg, 8.0kg, 8.5kg,
 14 9.0kg and 9.5kg.

15 Models of the GUC may also be distinguished by other characteristics such as:

- 16 ▪ washing action (friction, turbo, drum)
- 17 ▪ motor (direct, indirect)
- 18 ▪ rpm (for front loaders)
- 19 ▪ tub material (stainless steel, plastic)
- 20 ▪ body colour (plain, white, metallic, spray, stainless)
- 21 ▪ door material (plain, white, spray, chrome)
- 22 ▪ consumer features, for example options relating to delayed start,
 23 wash speed, wash temperature, rinsing, spin speed and water saving.

24 The water stirring movement in the TLMs exported to Australia from Korea is
 25 typically achieved by use of a pulsator.

26 **3.3.6 Manufacturing process**

27 Customs inspected the manufacturing process for the GUC at LGE and Daewoo.

1 The GUC are manufactured on assembly lines that are highly automated. For a
2 TLM (the majority of exports), the process typically involves the following stages:

- 3 ▪ the sheet metal for the cabinet is shaped and painted and dried (if
4 purchased raw);
- 5 ▪ the outer tub is assembled;
- 6 ▪ motor is assembled;
- 7 ▪ motor, outer tub, inner tub and pulsator are assembled;
- 8 ▪ the assembly is fitted into the cabinet;
- 9 ▪ the control panel cabling is attached to the cover assembly;
- 10 ▪ the backing plate is then added;
- 11 ▪ the base plate, control panel and lid are attached; then
- 12 ▪ testing and quality control.

13 For FLMs, the sequence of assembly is different, for example the motor may be
14 fitted towards the end of the product assembly, but essentially the same
15 processes and materials are employed.

4 LIKE GOODS AND THE AUSTRALIAN INDUSTRY

4.1 LIKE GOODS

Australia can take anti-dumping action when goods are exported to Australia at dumped prices and, because of that, injury is caused (or threatened) to an Australian industry producing like goods. Like goods means goods that are identical to the allegedly dumped goods or that have characteristics closely resembling those of the allegedly dumped goods.

Customs considers TLMs are like goods to FLMs.

4.1.1 Production of washing machines

Customs visited several manufacturing plants and observed the production of TLMs in Australia and TLMs and FLMs in Korea. Washing machines are manufactured using more or less automated assembly lines. The components may or may not be manufactured on site. The assembly sequence may differ slightly from line to line but is essentially similar.

4.1.2 The issues

Washing machines come in many models with various features and capacity ratings. There are two types of fully automatic washing machines subject to the application, viz. FLMs and TLMs. Both are exported to Australia from Korea but only TLMs are produced in Australia. TLMs are manufactured with either an agitator or a pulsator to create water turbulence.

The issue of like goods must be resolved before Customs can properly identify, and assess, any causal link between dumped exports and any material injury sustained by Australian industry.

Various interested parties expressed their views to Customs either in written submissions or directly during Customs' visits to their premises. In the latter circumstances the views expressed were recorded in Customs' visit reports.

The most contentious issue in respect of like goods was the applicant's identification of TLMs made in Australia as like goods to the FLMs exported from Korea.

A secondary view was expressed that if TLMs were included as like goods to imported FLMs, then so too should twin tub washing machines and washing machines incorporating dryers. Customs is of the view that twin tub washing machines are not fully automatic because the clothes have to be manually transferred from the washing tub to the spinning tub. Customs is also of the view that washing machines incorporating dryers have an extra and different essential characteristic in that they perform the added function of drying clothes after washing them.

Another view expressed was that TLMs with an agitator are not like goods to TLMs with a pulsator.

1 Customs must decide whether TLMs produced in Australia are like goods to
2 TLMs and FLMs exported to Australia from Korea. To do so, Customs must also
3 decide whether TLMs with an agitator are like goods to TLMs with a pulsator.

4 **4.1.3 World Trade Organization (WTO)**

5 The WTO, at Article 2.6 of the *Agreement on Implementation of Article VI of the*
6 *General Agreement on Tariffs and Trade 1994* (Dumping Agreement) provides:

7 *Throughout this Agreement the term ‘like product’ (‘produit similaire’)*
8 *shall be interpreted to mean a product which is identical, ie. alike in*
9 *all respects to the product under consideration, or in the absence of*
10 *such a product, another product which, although not alike in all*
11 *respects, has characteristics closely resembling those of the product*
12 *under consideration.*

13 **4.1.4 Australia’s legislation**

14 Section 269T of the *Customs Act 1901* defines “like goods”, in relation to goods
15 under consideration, as:

16 *goods that are identical in all respects to the goods under*
17 *consideration or that, although not alike in all respects to the goods*
18 *under consideration, have characteristics closely resembling those*
19 *of the goods under consideration.*

20 **4.1.5 Customs' approach**

21 For practical reasons, Customs does not assign ‘identical’ its literal meaning. That
22 could lead to the unrealistic situation where a mere colour change would make
23 otherwise identical goods not ‘like goods’. Customs views ‘identical’ as meaning
24 ‘having the same essential characteristics’.

25 Some guidance may be taken from the comments of the GATT Panel in the
26 *Japan – Taxes on Alcoholic Beverages* case ¹ where the Panel commented:

27 *‘In the view of the Panel, like products should be viewed as a subset*
28 *of directly competitive or substitutable products. The wording (“like*
29 *products” as opposed to “directly competitive or substitutable*
30 *products”) confirmed this point, in the sense that all like products*
31 *are, by definition, directly competitive or substitutable products,*
32 *whereas all directly competitive or substitutable products are not*
33 *necessarily like products.’*

34 One can look to the market place to ascertain whether two products are directly
35 competitive or substitutable. If they are not, they cannot be ‘like goods’. If they
36 are, one can look to physical and technological characteristics to ascertain if they
37 are a subset of ‘like goods’ within that set of directly competitive or substitutable
38 goods.

¹ *Japan – Taxes on Alcoholic Beverages*, Report of the Panel, 1996, Trade Law Reports, Volume 1, Issue 2, p 215

1 This approach is consistent with Australian Customs Service Manual Vol.22,
2 Division 2, para 2.2.3(14) which says:

3 *Although no one factor is in itself sufficient to ascertain if goods are*
4 *like goods, Customs takes into consideration:*

5 ***Physical characteristics, such as size, weight, shape,***
6 ***appearance.*** *Are they identical? Do they have characteristics*
7 *closely resembling the imported goods under consideration? Are*
8 *they in the same tariff classification? How significant are the*
9 *differences?*

10 ***End-use/substitutability.*** *End-use/substitutability is an important*
11 *characteristic. Goods having the same end uses and which are*
12 *substitutes may be found to be like goods.*

13 **4.1.6 Industry's claims**

14 In its application F&P claimed its TLMs are like goods to TLMs and FLMs
15 exported to Australia from Korea. It addressed two questions, viz:

16 *“Are F&P’s top loading automatic washing machines like goods to*
17 *the Korean top loading automatic washing machines?”* and

18 *“Are F&P’s top loading automatic washing machines like goods to*
19 *the front loading automatic washing machines?”*

20 In summary, F&P claimed that its TLMs are like goods to the Korean TLMs
21 because, whilst not identical in terms of drive mechanisms, methods of creating
22 water turbulence and features such as spin speeds and energy ratings, the
23 differences are not significant and F&P’s TLMs still have characteristics closely
24 resembling the Korean TLMs. F&P also claimed its TLMs and the Korean TLMs
25 have the same end use, are substitutable and compete in the same market.

26 With regard to F&P’s TLMs being like goods to the Korean FLMs, F&P made
27 similar claims in respect of end use, substitutability and market non-separation.
28 In respect of physical characteristics, it claimed the major difference between
29 TLMs and FLMs is access to the machine. It further claimed that whilst TLMs
30 generally have bowls on a vertical axis and FLMs have bowls on a horizontal
31 axis, there are TLMs (not the subject of this application) that have bowls on a
32 horizontal axis. The essence of F&P’s claim was that, whilst TLMs and FLMs
33 have physical differences, the differences are minor and the goods have the
34 same essential characteristics and end uses, are substitutable and compete in
35 the same market in Australia.

36 At the industry verification visit of 23-26 July 2002, Customs requested F&P
37 further justify its claim that TLMs are like goods to FLMs.

38 In response, F&P provided material from *Choice Consumer Magazine* in the form
39 of reports of tests carried out on various models of major brands of TLMs and
40 FLMs, in which all models tested, TLM and FLM, were compared across a range
41 of characteristics to attribute an overall rating to each model.

1 Customs also sought comment from Electrolux Home Products Pty Ltd
2 (Electrolux), the other member of the Australian industry producing washing
3 machines.

4 Electrolux indicated its agreement with F&P's claims, specifically in respect of
5 TLMs and FLMs:

- 6 ▪ having the same wash cycles;
- 7 ▪ being constructed in similar manner; and
- 8 ▪ competing in the same market, as evidenced by Choice Magazine
9 comparisons.

10 **4.1.7 Exporters' claims**

11 LGE made a submission to Customs in which the 'like goods' issue was
12 addressed.

13 LGE claimed TLMs are not like goods to FLMs and TLMs with agitators are not
14 like goods to TLMs with pulsators. In summary, LGE claimed the definition of like
15 goods requires:

- 16 ▪ identification of the GUC and the physical, technological, operational
17 and performance characteristics thereof;
- 18 ▪ identification of the goods manufactured by Australian industry and
19 the characteristics thereof; and
- 20 ▪ comparison of the characteristics of the above.

21 Then, if the characteristics are identical or closely resemble each other, there is
22 an Australian industry producing like goods.

23 LGE further claimed tariff classification, substitutability, functional equivalence,
24 cross elasticity of demand and other market tests may indicate whether certain
25 goods share similar characteristics, but are not themselves characteristics of the
26 goods and cannot be determinative of whether one good has characteristics
27 closely resembling the characteristics of another good, which requires a
28 comparison of the actual characteristics of the goods in question.

29 LGE's claims are predicated on the above assumptions and concentrate on
30 highlighting differences (minor or otherwise) in the characteristics specified above
31 between the various washing machines. In respect of TLMs vs FLMs, LGE
32 emphasises the following differences in 'characteristics' as defined above:

- 33 ▪ physical–FLM is smaller, and washing and detergent are added
34 through the front, precluding addition after start of the cycle;
- 35 ▪ technological–FLM uses gravity versus agitator or pulsator for TLM;
- 36 ▪ operational–FLM action by rotation of horizontal tub versus TLM using
37 agitator moving in stationary vertical tub; and
- 38 ▪ performance–FLM takes longer, uses less energy and water, causes
39 significantly less damage to clothes and requires special detergent.

40 Daewoo did not address like goods in its submission. It did comment during
41 Customs' verification visit. It strongly contended that its washing machines sold

1 on the domestic market were not like goods to the exported goods. It said that
2 the models made for the Australia market had a lower level of features.

3 **4.1.8 Importers' views**

4 Omega Smeg (Omega), a division of Major Electrical Appliances Pty Ltd, mainly
5 commented on customer perceptions and market issues. It claimed that washing
6 machines are designed to wash clothes but influences of performance,
7 environmental considerations, robustness of construction and origins of
8 construction influence the purchasing decision.

9 Omega also said lower priced machines in each size category were essentially a
10 commodity product with lower margins and buyer preference was often based on
11 price. Whilst commenting that FLMs generally were in a separate market to
12 TLMs, Omega said that more recently the base model FLMs (spin speed 500 to
13 600 rpm) were considered to be competing directly with the Australian made TLM
14 market segment. It also said if pricing patterns of FLMs continue all models
15 would be competing directly with TLMs in five years.

16 Hitachi Australia Ltd commented that, notwithstanding the advantages and
17 disadvantages of the various types of washing machine, at the end of the day the
18 retailer is selling the machine, whether FLM or TLM, for the same purpose—to
19 wash clothes.

20 The views expressed by LG Electronics Australia Pty Ltd (LGEAP) were the same
21 as those of LGE.

22 **4.1.9 Buyers' views**

23 'Buyers' comprised buying groups and retailers.

24 Because of the conflicting views expressed by Australian industry, exporters and
25 importers, Customs also sought the views of seven buyers of washing machines
26 in the Australian market.

27 The views expressed by buyers were mixed. The consensus was that TLMs and
28 FLMs traditionally occupied separate market segments but that this situation is
29 changing.

30 Some buyers claimed not to sell TLMs and FLMs in direct competition (although
31 some do). The majority view was that TLMs and FLMs occupy different spaces in
32 catalogues and on the store floor. Whilst this was observed to be so, in
33 catalogues TLMs (usually described as washers) and FLMs (usually described as
34 front loaders) often shared a page (as did dryers). Customs' observation was that
35 a similar situation prevailed in retail stores—TLMs may have been occupying
36 separate floor space but were adjacent to FLMs (and often dryers too).

37 One buyer fairly well summed up the majority perspective as follows:

- 38 ■ The washing machines market in Australia has traditionally been
39 heavily skewed towards TLMs with an agitator washing action. These
40 were favoured for the simple reason it is the type of machine that
41 most people were brought up with;

- 1 ▪ Via marketing and greater consumer awareness of the different
2 features and benefits, this trend is beginning to change. More
3 consumers are now prepared to weigh the claimed benefits of
4 pulsator TLMs and FLMs against those of the traditional agitator
5 TLMs; and
- 6 ▪ Perhaps the biggest change in the market in recent times is the
7 growing acceptance of FLMs at the expense of TLMs.

8 **4.1.10 Customs' conclusions**

9 After considering all the comments provided by interested parties and examining
10 other relevant matters, including views expressed by GATT panel members,
11 Customs is of the view that the TLMs made in Australia and the TLMs and FLMs
12 imported from Korea have essentially the same characteristics and that the
13 demonstrated differences in technology, construction and performance are not
14 significant enough to characterise them as differences in essential characteristics.

15 *The New Collins Concise Dictionary Of The English Language* defines "essential"
16 as:

17 *"vitally important; absolutely necessary; basic; and fundamental"*

18 In Customs' view the essential characteristics of the TLMs produced in Australia
19 and the TLMs and FLMs imported from Korea are that:

- 20 ▪ their sole function is to wash clothes and other fabric products;
- 21 ▪ they are designed for domestic use;
- 22 ▪ they are fully automatic;
- 23 ▪ washing is performed by creating turbulence in a drum containing
24 water and detergent; and
- 25 ▪ they partially extract the water by spinning the drum.

26 **4.2 AUSTRALIAN INDUSTRY**

27 Section 269TB(1) of the *Customs Act 1901* specifies that an application for
28 publication of a dumping duty notice may be lodged where, among other things,
29 there is, or may be established, an Australian industry producing like goods.

30 **4.2.1 Produced in Australia**

31 Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded
32 as produced in Australia:

- 33 • they must be wholly or partly manufactured in Australia; and
- 34 • where the goods have been partly manufactured in Australia, then at least
35 one substantial process in the manufacture of the goods must be carried
36 out in Australia.

37 The applicant, F&P, claimed it produced washing machines in Australia that were
38 like goods to the imported goods. Customs inspected the company's
39 manufacturing facilities and observed the production of washing machines.

1 Customs verified product information, including the cost to make, provided by
2 F&P in its application. Customs is satisfied that washing machines are wholly
3 manufactured in Australia.

4 Customs is satisfied that the conditions of s. 269T(2) and (3) are met.

5 **4.2.2 Australian manufacturers**

6 In its application, F&P claimed it and Electrolux were the only Australian
7 manufacturers of washing machines.

8 As mentioned, Customs inspected F&P's manufacturing facilities and was
9 satisfied the company produced washing machines. Customs did not visit
10 Electrolux's manufacturing facility but inspected its manufacturing records. No
11 interested party disputed the claim that Electrolux was an Australian manufacturer
12 of washing machines.

13 During the investigation Customs contacted importers and retailers of washing
14 machines in Australia and did not find evidence that suggested there are other
15 Australian producers of washing machines.

16 Customs was satisfied that there is an Australian industry manufacturing washing
17 machines and that industry consists of F&P and Electrolux.

18 **4.2.3 Support for the application**

19 Section 269TB(6) of the Act requires that the application be supported by a
20 sufficient part of the Australian industry producing like goods. The application is
21 taken to be supported by 'a sufficient part of the Australian industry' when the
22 person(s) who produce or manufacture the goods in Australia and who support
23 the application:

- 24 • accounts for at least 50 per cent of the total production of that part of the
25 domestic industry that have commented; and
- 26 • accounts for at least 25 per cent of the total production of like goods.

27 The applicant, F&P, was one of the two Australian producers. The other
28 Australian producer, Electrolux, neither supported nor opposed the application.

29 Customs was satisfied the requirements of s. 269TB(6) were met and initiated the
30 investigation.

5 AUSTRALIAN MARKET

5.1 MARKET STRUCTURE

5.1.1 Market suppliers

The Australian market consists of FLMs and TLMs, although the Australian industry does not manufacture FLMs. Washing machines sold in Australia must comply with standard AS/NZS2040 that, based on claimed dry linen capacity, measures washing performance and energy consumption standards.

TLMs were manufactured in Australia by Electrolux and F&P and were exported to Australia from a number of countries including Korea.

Electrolux commenced manufacture in February, 2001 following its purchase of Email. Email had purchased Southcorp's whitegoods business in April, 1999. It subsequently closed Southcorp's manufacturing facility in Meadowbank and integrated that business with its own facility in Beverly.

FLMs were not manufactured in Australia. However, the Australian industry sourced FLMs on an OEM basis from a number of countries. FLMs were manufactured in Korea and exported to Australia. However, a significant proportion of the FLMs exported to Australia were manufactured in European countries.

5.1.2 Retailer networks

The majority of washing machines sold in Australia are through retailer outlets to household users. Customs was advised that part of the Australian industry sells washing machines, ex factory, to construction firms.

Customs visited seven large retailers/buying groups during its investigation to discuss marketing, rebates and general issues pertaining to the Australian market. The companies visited varied in organisational structure. All were large with many outlets spread generally across Australia. Five had centralised buying whilst others had individual stores with a degree of buying and pricing autonomy.

Customs was advised that large distribution chains cause downward pressure on retail selling prices by providing Australian consumers the opportunity to 'shop around' for the best price. Manufacturers achieve volume but sacrifice margins using large distribution chains. Customs was advised that the Australian market for washing machines is competitive and that the Australian consumer is likely to visit three to four retailers to compare price and product before making a purchase.

Four of the companies visited expressed views on the merger of the Southcorp brands with Email's Major Appliances business. The merger did not remove the strong competition that existed between the brands. The brands compete strongly having separate sales teams and marketing structures.

1 **5.1.3 Marketing**

2 The companies visited had different opinions in regard to the marketing of the
3 goods and like goods. Some regarded TLMs and FLMs as a separate market,
4 others did not. The companies that identified separate markets said they
5 segregated TLMs from FLMs for advertising and floor space and had different
6 pricing structures for FLMs.

7 Two companies expressed the view that washing machines with fully electronic
8 controls commanded a price premium over machines with dials and push buttons.
9 Furthermore, price premiums were obtained for TLMs from United States of
10 America and for FLMs from Europe.

11 The same companies viewed brand strength as important for achieving good
12 retail prices. They said when LGE introduced its product line it struggled because
13 of its limited range. By increasing its range, improving brand awareness and
14 educating the consumer in relation to its products, it was able to improve pricing.
15 They thought Samsung had not had the same brand awareness impact and is
16 regarded as an entry model.

17 It was the view of five companies that the FLM market is growing fast due to
18 consumers' increased environmental concerns. The growth was attributed to
19 FLMs having a smaller environmental impact than the TLMs, increased capacity
20 and unit compactness.

21 Importers and Australian industry meet with the retailers and buying groups
22 regularly (usually monthly or quarterly) to discuss a number of items. The
23 meetings can be characterised as buyer meetings, which give importers and
24 Australian industry opportunities to sell the virtues of their products, and feedback
25 meetings where price points of particular washing machines, rebates, stretch
26 targets and market analysis are discussed.

27 **5.1.4 Rebate structures**

28 During visits to these companies, Customs was advised that rebates provided by
29 the importer or manufacturer are in the form of rebates off invoice price, stretch
30 target incentives, and sales person incentive vouchers (SPIVs), and were widely
31 used. In regard to washing machine sales, SPIVs were not readily identifiable and
32 not used by all companies. SPIVs are not identifiable due to the range of options
33 available to these companies for using SPIV incentives.

34 One company stated that, from month to month, no manufacturer has dominated
35 washing machine selling prices. Another said some models that are low priced,
36 (e.g. because of a lack of features or brand awareness), described as 'low-priced
37 entry models', were considered commodity products with low margins and buyer
38 preference was often based on price. Another stated each product has a
39 'standard go price' (i.e. retailer's selling price) that is often not achieved,
40 particularly on the entry-level products. Two companies indicated F&P has been
41 aggressive with its pricing to grow market share.

1 **5.2 MARKET SIZE**

2 Companies generally cited relatively steady sales with little growth for some
3 years. The main reason for sales was cited as replacement of existing machines.

4 Customs estimated the market size for the goods and like goods by adding the
5 sum of verified unit sales from the Australian industry to the sum of verified import
6 data from importer records and the sum of the balance of imports from Customs
7 commercial database for each respective period. Due to Email's acquisition of the
8 Southcorp brands, followed by Electrolux's purchase of Email's Major Appliance
9 business, Australian industry unit sales data for the year end March 1999 was
10 incomplete.

11 From information provided by interested parties, Customs estimated the
12 Australian market as follows.

13

Australian Market - Units				
12 Month periods	March 2000	March 2001	December 2001	June 2002 6 months annualised
Sales units	575,000	620,000	590,000	630,000

14
15 The above table indicates a rise in sales from March 2000 to March 2001 of 8%,
16 a fall in sales to December 2001 of 5% with sales increasing by 7% in the
17 following period.

18 Companies visited had various opinions about the seasonality of sales. The
19 opinions varied from little seasonality to noticeably increased sales volume
20 occurring between March and July.

6 THE DUMPING INVESTIGATION

In its application, F&P named exports from Korea as being sourced from three manufacturers—LGE, Daewoo and Samsung. Customs decided to investigate exportations from each of these companies for the purpose of deciding whether or not to recommend the publication of a dumping duty notice. Exporter questionnaires were sent to each of the companies. Two companies—LGE and Daewoo—returned completed questionnaires within the time allowed by Customs. The third manufacturer—Samsung—advised that it would not be completing the questionnaire.

Customs identified seven importers of the GUC from Korea. Customs visited five of the importers to obtain and verify relevant information. One importer declined to cooperate in the investigation and was not visited. Another importer had imported only modest amounts and not in the second half of the investigation period. This importer also was not visited.

6.1 LG ELECTRONICS INC.

6.1.1 Export price

Using its commercial database Customs identified imports of the GUC from LGE during the investigation period. There were three importers of the GUC from LGE. The goods imported were both TLMs and FLMs.

Customs visited the three importers. Customs gathered order and import documentation (including purchase order, freight and port documentation, commercial invoice from LGE and evidence of the amount paid to LGE) relating to a wide selection of these imports. As well, Customs obtained information relating to the sale of the imported goods (including invoice to purchaser and evidence of receipt of payment) and importers' expenses. Customs was satisfied that these importers were the beneficial owners of the goods upon entry to Australia.

LGE provided details of its export sales to Australia during the investigation period in its response to the exporter questionnaire. Customs conducted a verification visit to LGE and confirmed these details and the details provided by importers.

Customs found that sales of the imported goods by one of the importers were all profitable. Another importer had both profitable and loss-making sales, however overall the sales were profitable. The loss making sales were mostly in the first half of the investigation period. For the third importer, the majority of sales were assessed to be marginally unprofitable and losses unlikely to be recovered within a reasonable time.

The sales to the latter importer involved three parties. This importer did not order washing machines from LGE. It placed its orders with a related company in Japan, who in turn ordered the goods from LGE. The importer received an invoice from, and paid, the related company. The importer advised the related company when and where to ship the goods and the related company subsequently

1 informed LGE. LGE arranged for the goods to be transported to the port and
2 placed on board the ship.

3 In these circumstances identification of the exporter is complicated. Goods are
4 regarded as exported when they leave the country of export, i.e. at the ship's rail.
5 The term exporter is not defined in the Act or the WTO Dumping Agreement.
6 Some guidance was provided by the Federal Court in an appeal in the case of
7 Companhia Votorantim de Celulose e Papel (Celpav) vs the ADA. Customs
8 considered this guidance, as summarised at section 2.3.3 of the Customs Manual
9 Vol. 22. Customs found that LGE: established the free-on-board (FOB) price from
10 Korea; delivered the GUC to the carrying vessel; paid the costs involved; and was
11 identified on the packing lists and bills of lading as the exporter. Customs
12 concluded that LGE was the exporter.

13 Therefore, in the case of these transactions the importer purchased the goods
14 from a third party and not from the exporter. As such, export prices cannot be
15 ascertained under s. 269TAB(1)(a) or (b).

16 Customs examined transactions between LGE and the Japanese intermediary.
17 Customs found that the sales were profitable. There was no evidence that the
18 parties were related or otherwise associated, except in their respective
19 commercial capacities as seller and buyer. There was no evidence of any
20 consideration (other than price) or reimbursement or provision of benefit in
21 respect of the export price. Customs concluded that the sales were arms length
22 transactions.

23 As noted earlier, goods purchased by the importer from the Japanese
24 intermediary were sold in Australia at a marginal loss. Further, the importer and
25 the Japanese intermediary were related. Customs closely examined the
26 circumstances of the transactions between the two companies to determine
27 whether the sales were arms length and concluded that they were.

28 Considering all the circumstances of the exportations, Customs will recommend
29 that export prices for the goods exported to this importer be ascertained under
30 s. 269TAB(1)(c) of the Act using FOB export prices from Korea.

31 The export transactions between LGE and the other two importers involved two
32 parties. The arrangements made it clear who was the exporter and importer. For
33 each importer: the orders were placed with LGE, who invoiced and received
34 payment for the goods; LGE arranged for the goods to be taken to the port for
35 export; it arranged transport to Australia; and it was designated as the exporter on
36 the bills of lading. Customs concluded that LGE was the exporter in these
37 transactions.

38 One of these two importers, LGEAP, was a wholly owned subsidiary of LGE.
39 Customs compared LGE's sales prices to LGEAP with the other two importers
40 and concluded that prices to LGEAP were not influenced by the relationship
41 between the two parties.

42 Customs also found a reimbursement arrangement between LGE and LGEAP
43 relating to advertising expenses and warranty expenses. The arrangements had
44 been in place for a number of years and were quantifiable and transparent in the
45 accounts of LGE and LGEAP. Customs does not consider these reimbursements

1 to be a rebate of price paid and, in accordance with s. 269TAA(1A), is of the view
2 that the reimbursements do not make the sales non-arms length.

3 For transactions between LGE and LGEAP, Customs concluded that the goods
4 were exported to Australia otherwise than by the importer and were purchased by
5 the importer from the exporter in arms length transactions. Customs will assess
6 export prices under s. 269TAB(1)(a) of the Act.

7 The sales to the third importer of the GUC were assessed to be profitable. This
8 importer had no relationship or association with LGE, other than that of buyer and
9 seller respectively of the goods. Customs found no evidence of any consideration
10 (other than price) or reimbursement or provision of benefit in respect of the export
11 price.

12 For transactions between this importer and LGE, Customs concluded that the
13 goods were exported to Australia otherwise than by the importer and were
14 purchased by the importer from the exporter in arms length transactions.
15 Customs will assess export prices under s. 269TAB(1)(a) of the Act.

16 **6.1.2 Normal value**

17 In determining normal values for LGE, Customs considered verified information
18 that was provided by LGE in its response to the exporter questionnaire and in
19 Korea.

20 As noted earlier, LGE is a manufacturer of the GUC. In the domestic market, the
21 majority of LGE sales are directly to retailers. It does not sell through distributors.

22 LGE sells a wide range of models of washing machines in the domestic market.
23 During the period of investigation it sold 102 models that were like goods to the
24 GUC. Due to the large range of models and the number of transactions (more
25 than 500,000) for those models, Customs did not examine all sales. Instead
26 Customs selected certain domestic models to compare with the exported models
27 and examined all sales of the selected models. Thirteen models were selected
28 and more than 60,000 transactions examined.

29 To select the domestic models, Customs separated models into groups based on
30 similar capacity ratings to the models exported to Australia. Within each group,
31 Customs examined eight characteristics of the various models to identify the
32 domestic model most suitable to compare with the particular export model. These
33 characteristics were:

- 34 ▪ washing principle (top or front loading)
- 35 ▪ drying function (with or without dryer)
- 36 ▪ washing capacity
- 37 ▪ motor (induction, direct drive, universal, brushless dc)
- 38 ▪ rpm
- 39 ▪ tub material (stainless steel, plastic)
- 40 ▪ body painting (white/plain, metallic, spray)
- 41 ▪ door material (white/plain, metallic, spray, chrome)

1 As well as machine characteristics, other factors such as cost to make and sales
2 volumes were used to ensure that the model selected was the most appropriate
3 to compare to the export model. If the selected model was not sold in any quarter
4 where there was an export to Australia, the next 'most like' domestic model was
5 used for comparison.

6 Customs tested, by model and in aggregate, the quantity of domestic sales of like
7 goods that were selected for comparison with exports to Australia against the
8 quantity of export sales to which they were to be compared. In all cases the
9 quantity of sales was sufficient for the purpose of determining normal values.

10 Customs tested the profitability of all sales of each selected model against the
11 actual cost to make and sell the model.

12 Where the quantity of sales below their cost to make and sell exceeded 20% of
13 total sales, the sales below actual cost were tested against the weighted average
14 cost to make and sell the model throughout the investigation period. The quantity
15 of sales below cost to make and sell and weighted average cost to make and sell
16 for each model was then tested against total domestic sales of the model to
17 determine if they exceeded 20% of sales. Where this occurred, the sales that
18 were below both cost and weighted average cost were discarded.

19 The quantity of sales remaining was tested against the quantity of export sales to
20 which they were to be compared. If there remained insufficient sales the sales
21 were discarded and domestic models that passed the ordinary course of trade
22 and sufficiency of sales tests were examined and the model most like the export
23 model was used.

24 Customs did not identify any market factor that would render domestic sales to be
25 unsuitable within the meaning of s. 269TAC(2)(a)(ii) of the Act.

26 Customs concluded that the prices paid for domestic sales of the selected like
27 goods were suitable for assessing normal values, and therefore proposes to
28 assess normal values in accordance with s. 269TAC(1) of the Act.

29 Under s. 269TAC(8), where the normal value is the price paid or payable for like
30 goods and that price and the export price are affected differently by certain
31 situations (refer s. 269TAC(8)(a)(b) and (c)) the price paid or payable for like
32 goods is to be adjusted.

33 Customs considers the following adjustments are necessary to ensure fair
34 comparison with export prices:

- 35 ▪ credit (negative adjustment)
- 36 ▪ physical differences (specification) (mostly negative, some positive)
- 37 ▪ inland freight (negative)
- 38 ▪ after sales service (warranty)(positive)
- 39 ▪ sales commission (negative)
- 40 ▪ advertising (positive in 2001, but negative in 2002)
- 41 ▪ sales promotion (negative)
- 42 ▪ installation (FLMs only, negative)

- 1 ▪ sales force (negative)
- 2 ▪ warehousing (negative)
- 3 ▪ duty (negative)
- 4 ▪ export charges (positive)

5 For most price adjustments, the amount claimed by LGE for the adjustment was
6 based on the relevant cost expressed as a percentage of gross invoice value.
7 However under s. 269TAC(8), the adjustment should be made against the price
8 paid or payable for like goods. Customs considered that the price paid or payable
9 was not the gross invoice value but the amount paid after discounts and rebates.
10 Accordingly, Customs recalculated the adjustments based on the amount paid
11 after discounts and rebates.

12 In addition to the adjustments described above, LGE claimed adjustments for
13 level of trade and packing. Customs considered that differences for level of trade
14 were effectively accounted for in other adjustments, in particular sales force and
15 warehousing, while packing differences were accounted for in the physical
16 difference adjustment. Customs will not recommend that these adjustments be
17 made.

18 In conclusion, Customs will assess normal values under s. 269TAC(1) of the Act
19 with adjustments, as described above, to the price paid or payable under
20 s. 269TAC(8).

21 **6.1.3 Dumping margin**

22 Customs used weighted average export prices and normal values of comparable
23 models over the investigation period to assess a dumping margin for each model.

24 Dumping margins calculated for models exported to Australia fell within the range
25 from +20% to -40%.

26 To assess whether the product was exported to Australia at dumped prices
27 Customs must calculate a combined weighted average dumping margin for all
28 models.

29 The dumping margin for the product for the investigation period was in the range
30 0% to -10%.

31 **6.2 DAEWOO CORPORATION**

32 **6.2.1 Export price**

33 Using its commercial database Customs identified imports of the GUC from
34 Daewoo during the investigation period. There were two importers of the GUC
35 from Daewoo. Seven models of TLMs were imported.

36 Customs visited both importers. Customs gathered order and import
37 documentation (including purchase order, freight and port documentation,
38 commercial invoice from Daewoo and evidence of the amount paid to Daewoo)
39 relating to a wide selection of these imports. As well, Customs obtained
40 information relating to the sale of the imported goods (including invoice to

1 purchaser and evidence of receipt of payment) and importers' expenses.
2 Customs was satisfied that these importers were the beneficial owners of the
3 goods upon entry to Australia.

4 Daewoo provided details of its export sales to Australia during the investigation
5 period in its response to the exporter questionnaire. Customs visited Daewoo and
6 confirmed these details and the details provided by importers.

7 Customs found that sales by the importers were profitable. Both importers
8 claimed not to be related or otherwise associated with Daewoo, except in their
9 commercial roles as buyer and seller of the goods. Customs did not find evidence
10 to the contrary. There was also no evidence of any consideration (other than
11 price) or reimbursement or provision of benefit in respect of the export price.
12 Customs concluded that the export sales between Daewoo and each of the
13 importers were arms length transactions.

14 Customs was satisfied that Daewoo was the exporter of the goods: Daewoo
15 manufactured the goods; arranged packing and transport of the goods to the port;
16 was identified as the shipper on the bill of lading; invoiced the importers; and
17 received payment from them, for the goods.

18 Customs concluded that the goods were exported to Australia otherwise than by
19 the importers and were purchased by the importers from the exporter in arms
20 length transactions.

21 Customs will assess export prices under s. 269TAB(1)(a) of the Act.

22 **6.2.2 Normal value**

23 In assessing normal values for Daewoo, Customs considered verified information
24 that was provided by Daewoo in its response to the exporter questionnaire and in
25 Korea.

26 As mentioned earlier, Daewoo is a manufacturer of the GUC. In the domestic
27 market, Daewoo sold to distributors, buying agents and retailers in the
28 investigation period.

29 Daewoo sells a wide range of models of washing machines in the domestic
30 market—during the period of investigation it sold 81 models that were like goods to
31 the GUC. Customs reduced the number of models for examination to 32 by
32 eliminating certain models (for example, discontinued lines and others with small
33 sales volumes; a new technology model not exported to Australia). The remaining
34 32 models captured 97% of sales.

35 For comparison of domestic and export sales, Customs decided to group models
36 on the basis of capacity, mindful that the capacity ratings were different in Korea
37 and Australia. Three groups were selected—Korean models 5.5 kg capacity (for
38 comparison with 4.5 kg models exported to Australia); Korean models 8.5 kg
39 capacity (for comparison with 6.5 kg, 7.0 kg and 7.5 kg models exported to
40 Australia); and Korean 10.0 kg models (for comparison with the 8.0 kg model
41 exported to Australia).

42 Customs found that the volume of domestic sales, in aggregate and by group,
43 was sufficient for the purpose of determining normal values.

1 Customs tested the profitability of all domestic sales of the 32 selected models.
2 Customs found that 45% of sales were at a loss and that all models had sales at
3 a loss to varying degrees—for 22 models, sales at a loss exceeded 20% of sales
4 of that model.

5 For the models where loss-making sales exceeded 20% of total sales, the sales
6 below cost were tested against the weighted average cost to make and sell the
7 model throughout the investigation period. The quantity of sales that remained at
8 a loss was then compared with total sales of the model to determine if they
9 exceeded 20% of sales.

10 Where this occurred, as was the case for nineteen models, all sales below both
11 cost and weighted average cost were discarded. The volume of remaining
12 domestic sales, in aggregate and by group, was tested and found to be sufficient
13 for the purpose of determining normal value.

14 Customs examined domestic sales in the context of s. 269TAA and concluded
15 that domestic sales during the investigation period were arms length transactions.

16 Customs did not identify any market factor that would render domestic sales
17 unsuitable within the meaning of s. 269TAC(2)(a)(ii) of the Act.

18 Customs concluded that prices paid or payable for domestic sales of the selected
19 like goods were suitable for assessing normal values, and therefore normal
20 values should be assessed in accordance with s. 269TAC(1) of the Act.

21 Under s. 269TAC(8), where the normal value is to be determined using the price
22 paid or payable for like goods and that price and the export price are affected
23 differently by certain situations (refer s. 269TAC(8)(a)(b) and (c)) the price paid or
24 payable for like goods is to be adjusted.

25 Customs considers the following adjustments are necessary to ensure fair
26 comparison with export prices:

- 27 ▪ credit terms (negative adjustment)
- 28 ▪ level of trade (for some sales - negative adjustment)
- 29 ▪ physical differences (some models positive, others negative)
- 30 ▪ after sales service (negative)
- 31 ▪ sales promotion and advertising (negative)
- 32 ▪ bad debts (negative)
- 33 ▪ duty (negative)
- 34 ▪ inland freight (positive)
- 35 ▪ port charges (positive)

36 In addition to the above adjustments, Daewoo claimed adjustments for
37 commissions (domestic), salesmen's salaries, sales incentives and inventory and
38 warehousing. Customs considered that for the first three claims, the level of trade
39 adjustment effectively accounted for the differences, while for the claim for
40 inventory and warehousing Customs was not satisfied with quantification of the
41 cost or that price had been affected. Customs will not recommend that that these
42 adjustments be made.

1 In conclusion, Customs will assess normal values under s. 269TAC(1) of the Act
2 with adjustments, as listed above, to the price paid or payable under
3 s. 269TAC(8).

4 **6.2.3 Dumping**

5 Customs used weighted average export prices and normal values of comparable
6 models over the investigation period to assess dumping for Daewoo.

7 Dumping margins calculated for models exported to Australia fell within the range
8 from +15% to -5%.

9 The dumping margin for the product for the investigation period was in the range
10 2% to 10%.

11 **6.3 SAMSUNG**

12 **6.3.1 Export price**

13 Using its commercial database Customs identified imports of the GUC from
14 Samsung during the investigation period. There was one buyer of the GUC from
15 Samsung. Customs was also informed during the investigation that two other
16 buyers in Australia may have purchased the GUC from a supplier who sourced
17 the washing machines from Samsung on an OEM basis. However, Customs was
18 unable to verify this. Customs understands that Samsung currently exports six
19 different capacity models of the GUC to Australia.

20 As noted earlier, Samsung did not complete an exporter questionnaire. The
21 importer of the GUC also did not cooperate. In its investigation of exports by
22 Samsung, Customs used information obtained from Customs' commercial
23 database; other sellers in Korea; F&P's application; and other relevant sources.

24 Customs' commercial database revealed: that Samsung was the supplier of the
25 GUC; that Korea was the source of supply of the goods; and the name of the
26 owner of the goods on arrival in Australia. It is therefore likely that, in terms of
27 s. 269TAB of the Act, the supplier was the exporter and the owner was the
28 importer of the GUC. However, since neither the supplier nor the owner
29 cooperated in the investigation Customs was unable to be satisfied in this regard.
30 In addition, Customs understands that the supplier and owner have a relationship
31 or association and therefore Customs could not draw any conclusions regarding
32 arms length transactions.

33 Because sufficient information was not furnished, or was not available, Customs
34 was unable to assess export prices of the GUC from Samsung under
35 s. 269TAB(1)(a), (b) or (c) of the Act. Therefore Customs will recommend that the
36 Minister determine export prices under s. 269TAB(3) of the Act, having regard to
37 all relevant information.

38 **6.3.2 Normal value**

39 As Samsung did not cooperate in the investigation Customs had no information
40 relating to domestic sales of like goods by Samsung. Customs was unable to
41 verify that there were domestic sales by Samsung or to conduct tests of arms

1 length, ordinary course of trade or suitability of sales. Accordingly, Customs
2 could not assess normal values for Samsung under s. 269TAC(1) of the Act.

3 Nor did Customs have sufficient information regarding costs or sales to third
4 countries to assess normal values for Samsung under s. 269TAC(2)(c) or (d) of
5 the Act.

6 Customs concluded that there were sufficient relevant sales by each of these
7 other sellers to determine normal values for Samsung using the prices paid or
8 payable for those sales. Given the circumstances described above, Customs
9 considered that the normal value of goods exported to Australia by Samsung
10 should be determined under s. 269TAC(6) of the Act, using price paid or payable
11 for like goods sold by other sellers.

12 Since Samsung did not provide any information relating to domestic or export
13 sales Customs was unable to assess whether any price adjustments were
14 appropriate to reflect differences in terms or circumstances between domestic
15 and export sales. Therefore Customs will not make recommendations regarding
16 adjustments.

17 In conclusion, Customs will assess normal values for Samsung under
18 s. 269TAC(6) of the Act with no price adjustments.

19 **6.3.3 Dumping**

20 Customs used weighted averages of export prices and normal values of
21 comparable models over the investigation period to assess dumping margins for
22 each model exported to Australia by Samsung.

23 Dumping margins calculated for models exported to Australia fell within the range
24 from +25% to +50%.

25 The dumping margin for the product was in the range +35% to +45%.

26 **6.4 OTHER EXPORTERS**

27 Customs' commercial database indicated that there was another exporter of the
28 GUC from Korea during the investigation period. Customs understands that this
29 exporter arranged for the goods to be manufactured in Korea on an OEM basis.
30 The volume of exports by the exporter was relatively small and the exporter has
31 not exported to Australia in 2002. The exporter did not make a submission to the
32 investigation and Customs did not select this exporter for investigation.

33 Customs proposes to assess export price and normal values for residual
34 exporters.

35 **6.5 NEGLIGIBLE DUMPING MARGINS**

36 Section 269TDA(1) of the Act requires the CEO to terminate an investigation, in
37 relation to an exporter, where there has been:

- 38 • no dumping by the exporter; or
- 39 • where there has been some dumping of goods but the dumping margin for
40 the exporter is negligible (*de minimus*), i.e. where the dumping margin

1 calculated according to s. 269TACB of the Act, expressed as a percentage
2 of the weighted average of export prices, is less than 2%.

3 The results of Customs' investigation, as set out above, show that the provisions
4 of s. 269TDA(1) have been satisfied for LGE. Therefore, subject to the Minister's
5 determination in respect of dumping, Customs will recommend termination of the
6 investigation in respect of LGE.

7 The provisions of s. 269TDA(1) have not been satisfied for Daewoo or Samsung.

8 **6.6 NEGLIGIBLE VOLUMES OF DUMPED GOODS**

9 Section 269TDA(3) of the Act provides that:

10 *if the volume of goods exported to Australia, over a reasonable*
11 *examination period (whole or substantial part of the investigation*
12 *period), from a particular country, that have been dumped is*
13 *negligible, the CEO must terminate the investigation so far as it*
14 *relates to that country.*

15 This section defines a negligible volume of dumped goods as that which, when
16 expressed as a percentage of the total Australian import volume, is less than 3%.

17 Customs found that the volume of dumped imports from Korea during the
18 investigation period was more than 3% of the total Australian import volume
19 during that period.

20 The provisions of s. 269TDA(3) of the Act have not been satisfied.

7 THE ECONOMIC CONDITION OF THE INDUSTRY

7.1 INTRODUCTION

The injury period nominated by Customs was from 1 April 1998 to 30 June 2002.

Customs referred to Australian Bureau of Statistics (ABS) data to examine Australian economic conditions that, in summary, were reasonably robust.

Customs used verified importer and Australian industry data, data from market survey companies and the ABS to examine injury claims.

Customs examined price trends, volume trends, profit and profitability and other economic performance criteria.

Customs notes that although F&P nominated the injury period as beginning from YEM 1999, the rationalisation that occurred in the Australian industry at that time has meant that appropriate records for the Australian industry as it existed then were not available. Electrolux provided information from 1 April 1999. Prior to then, Customs estimated figures for the industry based on best available information.

7.2 INDUSTRY'S CLAIMS

7.2.1 F&P

F&P indicated in its application a number of aspects of its business have been affected by the washing machines imported from Korea, namely price depression, price suppression, price undercutting, volume effects and reduced profitability.

F&P claimed the volume effect of the dumped imports became evident YEM 1999. In the following 12 months F&P started to feel price effects. It claimed price effects limited the ability of the Australian industry to gain market share.

Washing machines imported from Korea targeted the volume end of the market, around 5.5 kg capacity, and F&P's profits in this range were significantly affected. Whilst the target market was around the 5.5 kg capacity, the 6.5 kg and 7.0 kg market were also affected.

Due to 'aggressive price undercutting' F&P made significant cost reductions to compete with both domestic and imported washing machines. Despite this, there was no improvement in profitability as the cost savings were lost to the price undercutting.

F&P employed technology such as electronic controls and direct drive in all Australian manufactured models. F&P said the technology should be able to command a premium, however prices were reduced to a barely sustainable level due to the dumped imports from Korea.

Another injury factor claimed by F&P was its return on investment, which it claimed is well below what would be expected in the absence of dumping. Furthermore, its ability to raise new capital investment will be constrained due to reduced profitability of the business.

1 **7.2.2 Electrolux**

2 Electrolux indicated that it has 'lost market share and has suffered erosion of
3 prices due to competition'. It provided Customs with an estimate of the impact of
4 price reductions and loss of market share. Electrolux did not attribute these
5 effects to allegedly dumped imports, only to 'competition'.

6 **7.3 PRICE EFFECTS**

7 To examine general price trends for washing machines, Customs used, inter alia,
8 price data from market survey companies. This data indicated a marked price
9 drop in all capacities from YEM 1997 to YEM 1999.

10 Customs found that the retail prices of all washing machines fell from YEM 1999
11 to YEM 2002, but not as significantly as in the period from 1997 to 1999. The
12 smallest price reductions were in TLMs and FLMs below 5.0 kg capacity.

13 Customs was advised by an importer that one factor that could have affected
14 prices in the market was the phasing out of Wholesale Sales Tax on washing
15 machines in the period leading up to GST implementation on 1 July 2000.
16 Customs contacted the Australian Taxation Office, who advised that Wholesale
17 Sales Tax on washing machines (12%) was not phased out but was removed on
18 30 June 2000.

19 **7.3.1 Price undercutting**

20 Price undercutting occurs where the imported product sells below its Australian
21 equivalent.

22 Customs examined price information provided by the Australian industry and
23 importers but could not identify that any particular entity or product or source of
24 imports was generally undercutting prices in the market.

25 Customs considers that this injury claim was not substantiated.

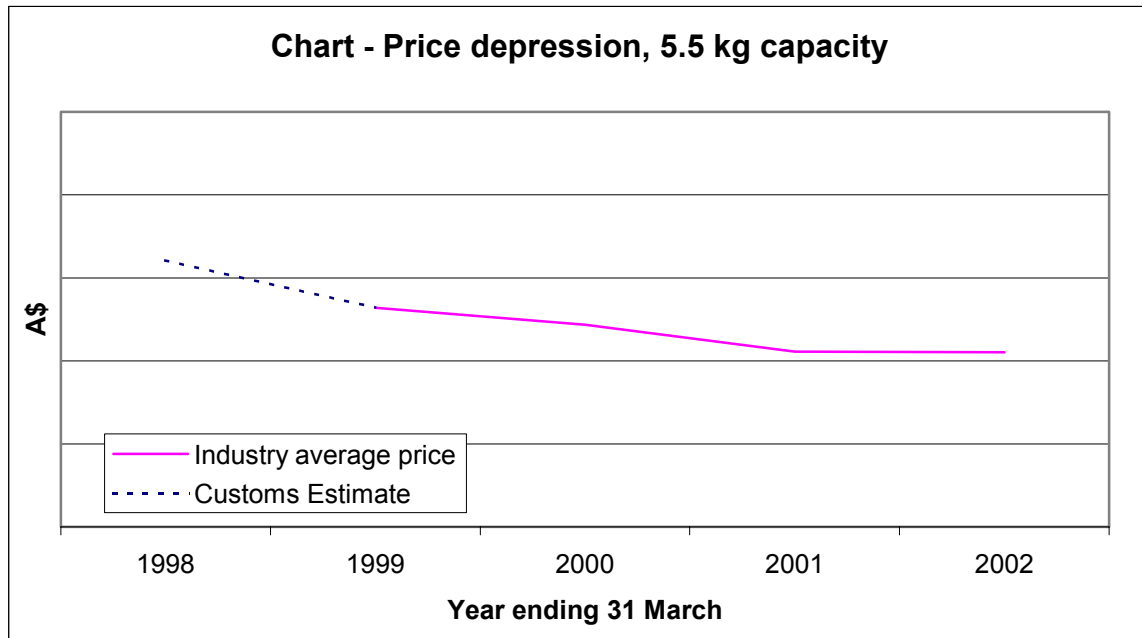
26 **7.3.2 Price depression**

27 Price depression occurs when the Australian industry, for some reason, lowers its
28 prices.

29 Verified data from F&P showed price depression over the injury period. The price
30 for F&P's washing machine with the largest sales volume dipped during the
31 period from January 2001 to June 2002 then recovered to slightly below the
32 January 2001 price but significantly below the 1998 selling price. Prices for other
33 F&P models followed the market trend of significant reductions from YEM 1997 to
34 YEM 2001, but improved during the investigation period.

35 Electrolux provided a unit price based on all washing machines sold for various
36 periods to June 2002. The unit price was a calculation of revenue divided by
37 sales. The trend since YEM 1999 to the six months to June 2002 was a slight
38 decrease in price. Customs calculated a weighted average unit price, per kg
39 capacity, for each Electrolux brand from unit sales and unit selling prices over the
40 investigation period. A small downward price trend was demonstrated.

1 Customs examined average selling prices of the industry for individual models. A
 2 pattern of price depression for most models was revealed. The average price
 3 trend for the 5.5 kg capacity TLMs, which is the most popular selling capacity, is
 4 graphed below. The chart shows that average prices of the capacity machine
 5 have declined throughout the injury period.



6
7
8 Customs is satisfied the Australian industry suffered price depression.

9 **7.3.3 Price suppression**

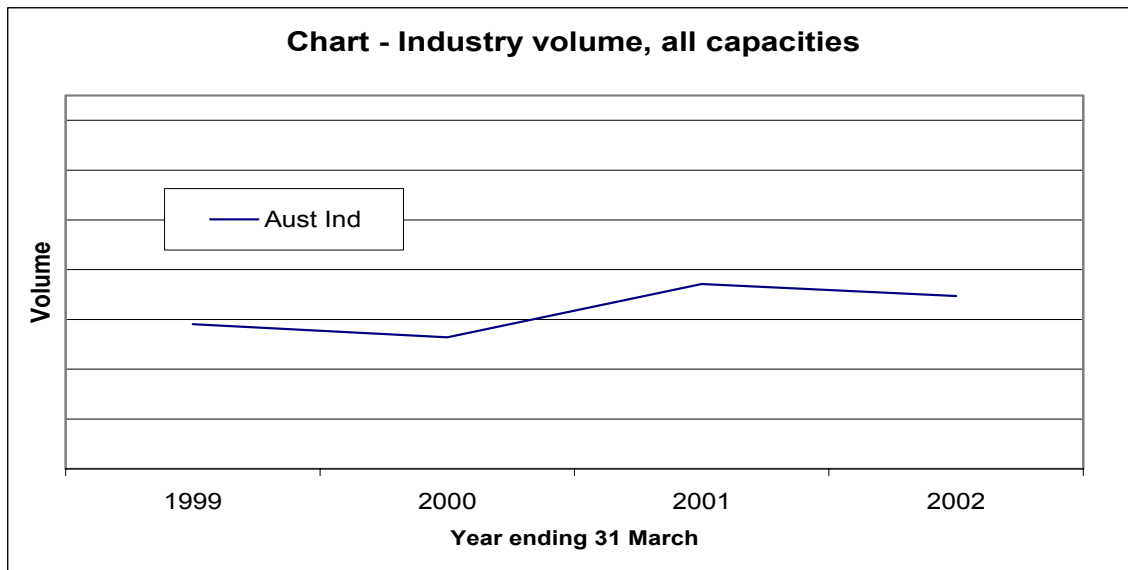
10 Price suppression occurs when the margin between a company's prices and
 11 costs is reduced (or, if costs are higher than prices, the margin increases).

12 The industry provided data, which Customs verified, on its average domestic cost
 13 to make and sell (CTMS) washing machines. Customs compared the CTMS with
 14 average domestic selling prices of various models and capacities over the injury
 15 analysis period. Customs found that overall the Australian industry is not suffering
 16 price suppression.

17 **7.4 VOLUME EFFECTS**

18 **7.4.1 Sales volume**

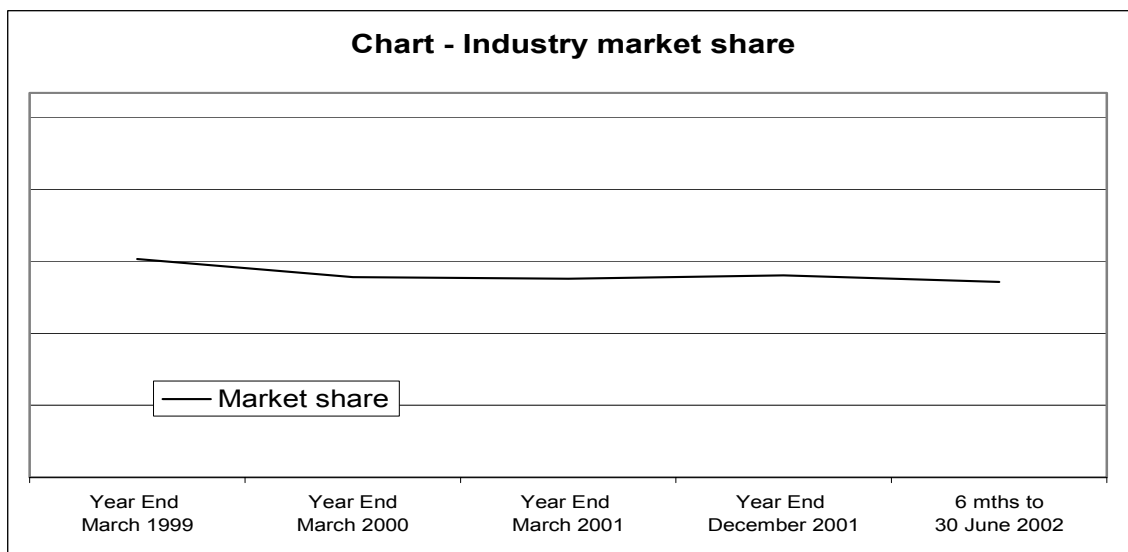
19 Verified sales volumes figures for F&P and Electrolux were used to graph the
 20 following chart showing the trend of the industry's sales volumes over the injury
 21 period. The chart covers all like goods.



1
2 The chart shows that although sales volumes declined slightly in the years ending
3 31 March 2000 and 31 March 2002, the industry moderately increased its sales
4 volumes over the injury period.

5 **7.4.2 Market share**

6 The Australian industry's market share is graphed below.

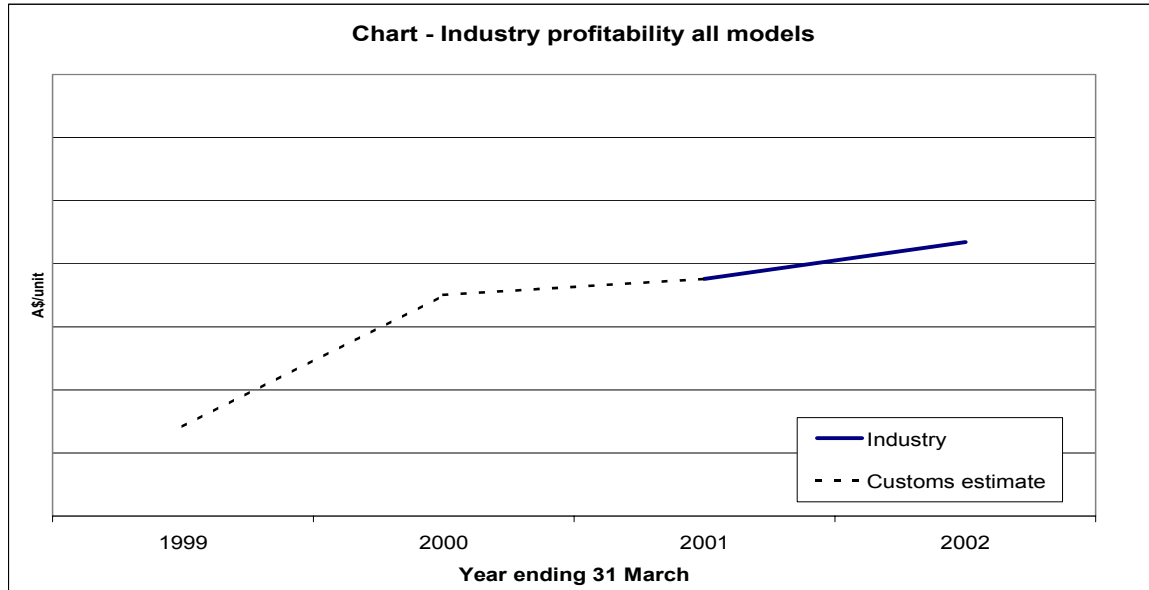


7
8 The graph shows that the industry's market share has declined slightly across the
9 injury period.

10 **7.5 PROFIT AND PROFITABILITY**

11 Australian industry provided profit data since 1999. Customs analysed the data
12 and noticed a profit improvement in the industry since that time.

13 Profitability, measured by unit profit or loss as a proportion of unit sales revenue,
14 is graphed below. The graph shows a continued rise over the period.



Customs concluded the Australian industry has not suffered injury in the form of declining profits or profitability.

7.6 OTHER INJURY FACTORS

Electrolux did not make injury claims other than those noted above.

F&P claimed that it suffered other injuries. These are discussed below.

Degree Of Utilization Of Capacity

F&P claimed that the Cleveland plant has never run at full capacity.

Customs examined this claim during its verification visit to F&P and concluded F&P suffered under-utilization of capacity.

Investment In the Industry

F&P's Australian washing machine plant represents a very large capital investment. This investment has not delivered the return originally expected and if revenues do not improve, then the value of this investment will continue to be significantly diminished.

Customs agrees that F&P's investment is substantial but is unable to draw conclusions in respect of future revenues and value of investment.

Ability To Raise Capital

F&P believes its ability to raise capital has been diminished as a result of low profitability experienced for washing machines.

Customs' examination of this claim was inconclusive.

Liquidity and employment

F&P did not discuss liquidity as a factor in its material injury analysis.

F&P stated that the continuing reduced volumes and lack of profitability threatens its ability to maintain employment at its current level.

1 While Customs accepts that employment levels and production (and sale)
2 volumes are interdependent Customs was unable to conclude that F&P has
3 suffered employment injury.

4

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 AUSTRALIAN INDUSTRY'S CLAIMS

F&P claimed, in its application, that the part of the Australian industry represented by manufacturers other than F&P suffered significant losses in production volume and market share from 1998. It attributed these losses to corresponding increases in Korean imports.

F&P also claimed significant price reductions from 1999, which it attributed to price undercutting by dumped exports from Korea.

F&P also claimed reduced profits and profitability as a result of the above.

Electrolux claimed injury as a result of price depression and loss of market share, both resulting from non-specific competition.

8.2 EXPORTERS' CLAIMS

8.2.1 LGE

In LGE's submission, it claimed that the Australian industry has not been materially injured by washing machines exported from Korea by LGE. LGE's submission stressed that its washing machines could not have caused material injury because they were not sold to Australia at dumped prices.

LGE's analysis of the Australian market revealed a competitive environment where there have been a number of new market entrants and a consolidation of the Australian industry from three manufacturers to two. Competition in the market forced a major price drop during the period from 1997 to 1999 for all models and a significant drop in the 5.5 kg and 6.0 kg segment. The price drop was well before the Korean units entered the Australian market in any significant numbers.

LGE claimed market analysis indicated that washing machines from Korea could not be the source of injury. From April 2000 to March 2002, TLM market share fell 2.9%. Premium overseas brands experienced significant increases in sales value over the same period whilst Korean brands maintained, or marginally increased, sales values.

LGE claimed its washing machine prices in each of the kilogram capacities have been constant over the investigation period. They were often above the Australian industry prices, negating any price depression or price undercutting claims. Its analysis indicates that the average sale prices for Australian produced models were consistently less than Korean models throughout the investigation period. It is competition within Australian industry that is causing injury in the form of price depression and loss of volume and market share.

LGE asserts that F&P was able to increase sales volume from December 1998 to March 2001 in the 5.5 kg and 6.0 kg washing machine segment at the expense of Electrolux brands. In the 6.5 kg and 7.0 kg segment, the reverse was true. LGE claimed that F&P has succeeded in increasing sales volume and value in some market segments at the expense of Electrolux and *vice versa*.

1 LGE expressed a view that F&P is volume driven and so has to pay close
2 attention to target management to maintain prices. In its submission, LGE said
3 target management has undermined the pricing structure of F&P's washing
4 machines.

5 The retailer network chosen by F&P was cited by LGE as a possible cause of
6 depressed selling prices and high selling costs. According to LGE, distribution
7 channels must be selected with care because of the common practice of offering
8 discounts and rebates. Multi-layered discount and rebate structures associated
9 with certain retailers result in larger overall costs to the supplier. This affects
10 profitability on each washing machine sold. Price depression and price
11 suppression experienced by F&P are due, in part, to its selection of retailers
12 known within the industry as having low retail selling prices and multi-layered
13 discount and rebate structures.

14 **8.2.2 Other exporters**

15 Other exporters did not comment on injury or causal link.

16 **8.3 IMPORTERS' CLAIMS**

17 LGE's claims were supported by LGEAP. Other importers did not comment on
18 injury or causal link.

19 **8.4 CUSTOMS' ASSESSMENT**

20 As reported earlier in this SEF, Customs found that Australian industry had
21 suffered significant injury in the forms of price depression and loss of market
22 share.

23 Customs examined and analysed prices in the market during the injury period.
24 Whilst there was price depression, no evidence was presented, nor did Customs
25 analyses demonstrate, that any one source or brand was responsible for the
26 trend. There was nothing in the information available to Customs to show that the
27 price depression was caused by other than normal market competition.

28 Customs found that volume targets and discount and rebate arrangements
29 described by LGE (see section 8.2.1) were a feature of the overall market, not
30 confined to F&P, and that differences in distribution channels did not affect the
31 arrangements.

32 Customs acknowledges that there is some doubt about early estimates of
33 Australian production and sales because of the unavailability of some figures
34 obscured by acquisitions and rationalisation in the industry. Despite this,
35 Customs found that F&P's estimates of the market, and its consequent
36 conclusions about the overall volume effects occurring in respect of sales of
37 Australian production, differed significantly from Customs findings.

38 Customs also analysed market shares during the injury period, concentrating on
39 Australian production, exports from Korea and 'other exports'. The following chart
40 demonstrates that the market share gained by Korean exports was mainly at the
41 expense of other exports.



1

2 Customs concluded Australian industry had lost, and Korean exports had
 3 significantly gained, market share during the period. Customs concluded the
 4 increased exports from Korea were responsible for the majority of Australian
 5 industry's loss of market share. Analysis of Korean exports, which increased
 6 fourteen fold from 1997 to mid-2002 (extrapolated), demonstrates that the
 7 increase was mainly due to exports from LGE.

8 As reported above, Customs found the goods exported by LGE were not at
 9 dumped prices. In Customs' view the goods that were exported at dumped prices,
 10 representing less than 5% of the Australian market during the investigation
 11 period, were not of sufficient volume to cause material injury to the Australian
 12 industry.

13 **8.4.1 Conclusion**

14 From the available evidence Customs concluded that price related material injury
 15 suffered by Australian industry was caused by normal market competition and
 16 that volume related material injury suffered by Australian industry was caused by
 17 exports from Korea but not by exports from Korea at dumped prices.

18 **8.5 OTHER POSSIBLE CAUSES OF INJURY**

19 Customs found a marked drop in washing machine prices from 1997 to 1999,
 20 before Korean exports assumed a significant presence in the Australian market.
 21 From this time there was considerable rationalisation within Australian industry.
 22 There was also significant competition between Australian industry participants
 23 and even between brands represented by different business divisions of the same
 24 Australian manufacturer. Customs formed the view that these factors would have
 25 contributed to reducing prices in the market.