

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation Nos.:
LARGE RESIDENTIAL WASHERS) 701-TA-488 and
FROM KOREA AND MEXICO) 731-TA-1199-1200
) (Preliminary)

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1 reporter.

2 Finally, speakers will not be sworn in, but
3 are reminded of the applicability of 18 U.S.C. 1001
4 with regard to false or misleading statements and to
5 the fact that the record of this proceeding may be
6 subject to Court review if there is an appeal.

7 Are there any questions?

8 (No response.)

9 MS. DeFILIPPO: Hearing none, we will
10 proceed with the opening statements.

11 Mr. Greenwald, welcome. Please join us, and
12 when you're ready please begin with your opening
13 statement.

14 MR. GREENWALD: Thank you, Ms. DeFilippo.
15 Commission staff, good morning. My name is John
16 Greenwald from the law firm of Cassidy Levy Kent. We
17 are here to represent Whirlpool in this proceeding.

18 Nine months ago we appeared before you in a
19 Bottom-Mount Refrigerator case, another appliance, and
20 in that case Samsung and LG argued essentially that
21 their dumping was beside the point of the Commission's
22 investigation because sales of bottom-mount
23 refrigerators are not sensitive to price discounting.
24 In your preliminary determination you rejected that
25 argument on all of its counts, and you did so for good

1 reason.

2 This case involves the same sets of issues.

3 Like refrigerators, the market for washers is
4 sensitive to changes in price. Like refrigerators,
5 the economics of producing washers depends on two
6 things: One, enough demand to fill capacity and,
7 second, pricing that is sustainable relative to cost
8 and changes in costs.

9 Once again we have an industry that is
10 clearly injured, and once again we have compelling
11 evidence of causation in the forms of: 1) Over the
12 period of investigation a very sharp rise in imports.
13 2) Uncontrovertible evidence of major lost sales and
14 3) The effects of price suppression in a period of
15 rising costs that have destroyed the value of the
16 business.

17 There are, however, some twists in this case
18 that were not present in Refrigerators that I would
19 like to talk about too. First, Whirlpool made a
20 decision at the beginning of the period of
21 investigation to repatriate its production of
22 high-efficiency front-load washers. Second, Whirlpool
23 pioneered the development of high-efficiency top-load
24 washers, which has become the fastest growing segment
25 of the market, and Samsung and LG only recently

1 introduced their own high-efficiency top-load washers
2 into the market.

3 Because of this, there is no significant
4 decline in Whirlpool's sales, and the growth of
5 Whirlpool's domestic sales of high-efficiency washers
6 has been significant. What I suspect is likely to
7 happen is that Respondents will try to use these facts
8 to argue that any injury that Whirlpool can
9 demonstrate must be attributable to factors other than
10 subject imports.

11 If that is in fact the way their argument
12 unfolds, please bear in mind the following four
13 points: First, repatriation necessarily means an
14 increase in U.S. production. If you want to bring
15 jobs back to this country, production will grow. The
16 test is not whether repatriated production is
17 increasing, but rather whether the dumped and
18 subsidized imports have an impact on repatriated
19 production that destroys the economics of it.

20 Second, while it is true that Samsung and LG
21 only recently began to market their own washers, their
22 own high-efficiency top-load washers, it is equally
23 true that when you look at the data what you will find
24 as soon as they entered the market the value of that
25 part of Whirlpool's business simply disappeared.

1 Third, we have presented evidence of lost
2 sales, and the evidence is irrefutable. And, fourth,
3 I would like you to pay particular attention to the
4 data in this most recent Black Friday. During this
5 past Black Friday, that is 2011, Samsung and LG
6 discounted heavily, and they did so essentially for
7 the full month of November. You have collected
8 information on their November sales. Whirlpool, by
9 contrast, did not discount deeply, nor did it discount
10 for the same length of time.

11 You have collected data on Whirlpool's Black
12 Friday sales. Those data stand for the proposition
13 that: 1) Price discounting does matter, as Whirlpool
14 asserts and 2) If you discount, if you change relative
15 pricing, if you change the value perceived and the
16 offer to the consumer, your sales will rise and your
17 competitors' sales will fall.

18 When sales fall, capacity utilization drops.
19 When prices are discounted, pressure on the other
20 competitors' pricing in the marketplace increases, and
21 under those circumstances with rising costs the
22 economics of even a well run domestic business are not
23 sustainable.

24 MS. DeFILIPPO: Thank you, Mr. Greenwald.

25 We will now have opening statement by

1 Respondents. Mr. Connelly, are you talking to us
2 first?

3 MR. CONNELLY: Yes, I am.

4 MS. DeFILIPPO: Excellent. Please proceed
5 when you're ready.

6 MR. CONNELLY: Good morning. I'm Warren
7 Connelly with the Akin Gump law firm, and I'm going to
8 present opening remarks on behalf of Samsung and LG.

9 Whirlpool's petition contains at least five
10 fundamental defects that compel a negative
11 determination in this preliminary phase. First,
12 Whirlpool has incorrectly defined the like product as
13 all large residential washers. In fact, there are
14 three like products: Conventional top-load washers
15 with agitators, second, high-efficiency top-load
16 washers and, third, high-efficiency front-load
17 washers.

18 The three categories have significant
19 physical differences. They sell at different price
20 points, and they appeal to different types of
21 consumers. Conventional washers are much cheaper, but
22 they are not energy efficient. The Commission's
23 finding in the Refrigerators case that top-mount and
24 side-by-side refrigerators were not the same like
25 product as bottom-mount models compels the same result

1 here.

2 The like product definition is important
3 because Whirlpool thoroughly dominates the market for
4 conventional washers, which constitute more than half
5 of the entire market. In contrast, neither Samsung
6 nor LG sells any conventional washers in the United
7 States, and neither company has any intent to do so in
8 the future.

9 HE washers, on the other hand, are the
10 product category in which substantially all
11 competition occurs between the domestic industry and
12 subject imports. So to lump statistics on
13 conventional washers with statistics on HE washers
14 would provide a distorted picture of very different
15 industry segments with very different dynamics. HE
16 top-load and HE front-load washers are also separate
17 like products for reasons that we will explain in
18 detail.

19 Now the second defect. Whirlpool is not
20 suffering material injury, and Whirlpool for all
21 intents and purposes is the domestic industry. The
22 traditional indicia of material injury strongly
23 support a negative determination no matter how the
24 like product is defined. These indicia include
25 production, shipments, employment and financial

1 performance.

2 One critical aspect of Whirlpool's financial
3 condition is the enormous federal tax credit that it
4 earns for producing energy-efficient washers, which is
5 as high as \$225 per unit. We estimate that this tax
6 credit will generate \$200 million in benefits on
7 washers in 2011 alone. This is pure profit, and it
8 must be considered in any analysis of Whirlpool's
9 condition.

10 The third defect. The confidential pricing
11 data are going to reveal a dramatically different
12 picture from what Whirlpool has claimed concerning the
13 extent of underselling by subject imports, and when
14 you conduct the underselling analysis it is essential
15 to reflect all of the indirect discounts and rebates
16 that Whirlpool provides.

17 The petition focuses on front-end direct
18 discounts offered by Samsung and LG, but it is well
19 known that Whirlpool is a much greater user of
20 back-end indirect discounts. Equally important, in
21 the HE segment price is frequently not a significant
22 purchase factor.

23 Consumer surveys repeatedly find that the
24 primary purchase motivators are capacity, quality,
25 reliability, energy efficiency, fit, feel and finish.

1 Samsung and LG are viewed by consumers as superior in
2 those qualities. Needless to add, Whirlpool does not
3 mention any of these surveys, much less provide them.

4 The fourth defect. The market situation in
5 the HE segment is just the reverse of how Whirlpool
6 has described it. Beginning in 2009, before Samsung
7 and LG entered the HE top-load segment, Whirlpool
8 sought to increase its HE top-load sales with
9 aggressive pricing. Whirlpool is frequently the price
10 leader on front-load sales as well, and we'll discuss
11 just how aggressively Whirlpool has priced both its
12 top-load and front-load models, especially on Black
13 Friday, even in Black Friday 2011. So it is the
14 Korean and Mexican producers that have had to react to
15 Whirlpool's low prices during the most recent
16 promotions and not vice versa.

17 Finally, Whirlpool has tried to spin its
18 decision to move front-load production from Germany
19 and Mexico back to the United States as an element of
20 its injury case. However, unless Whirlpool provides
21 the Commission with a complete explanation of the
22 reasons for its move, along with a complete accounting
23 of all of the costs it incurred in making that move,
24 the argument should not be considered.

25 As the record now stands, you don't have a

1 basis to make a reliable judgment as to the effect of
2 any subject imports on Whirlpool's own formerly
3 nonsubject imports, which it has turned into domestic
4 production.

5 My last point. By the end of today's
6 conference, you, in our view, will come to understand
7 that the reality in the washers market is very
8 different from how Whirlpool has described it. Thank
9 you.

10 MS. DeFILIPPO: Thank you very much, Mr.
11 Connelly.

12 We will now move into the presentation by
13 Petitioners. Mr. Greenwald, if you and your group
14 would like to go on up to the table?

15 Good morning, gentlemen. Thank you all for
16 being here. Mr. Greenwald, when you're ready please
17 feel free to begin.

18 MR. LEVY: Good morning. It's good to see
19 you all again. For the record, my name is Jack Levy
20 of the law firm Cassidy Levy Kent, counsel for
21 Petitioner Whirlpool Corporation, and I'm joined today
22 by my partner, John Greenwald.

23 We've assembled an expert panel of industry
24 witnesses for you today. Let me briefly introduce
25 each of them for you. Leading our panel is Marc

1 Bitzer, President of Whirlpool North America and
2 Executive Vice President of Whirlpool Corporation, who
3 will be providing our affirmative presentation for the
4 ITC staff conference.

5 He is joined by several of his colleagues
6 with particular subject matter expertise, and I trust
7 that you'll find them a valuable resource during the
8 question and answer period. We have Norbert Schmidt,
9 Senior Director of Fabric Care, and we have Casey
10 Tubman, Merchandising Director for Fabric Care. These
11 gentlemen have expert knowledge in the areas of
12 strategic planning and product development and in the
13 marketing, merchandising and sales areas relating to
14 large residential washers.

15 We also have with us a senior member of
16 Whirlpool's in-house legal team, Thomas Schwyn, Vice
17 President and Associate General Counsel for the North
18 America Region, who has been with the company for more
19 than 25 years and who also has a rich knowledge of the
20 industry and the products. And finally, we have our
21 economic experts, Dr. Richard Boyce of Econometrica
22 International and my colleague, Carl Moyer of Cassidy
23 Levy Kent.

24 Let me briefly preview for you the testimony
25 of Marc Bitzer. He will describe the product, large

1 residential washers, which is a single like product,
2 and discuss demand trends in the industry. He will
3 describe the economics that govern the industry, and
4 he will provide you with an overview of the structure
5 of the market, including the producers in the U.S. and
6 overseas and the channels of distribution.

7 He'll explain the way in which LRWs are
8 sold, and he'll briefly explain the role that features
9 such as color, capacity and energy efficiency -- the
10 features, the role that they play in consumer
11 purchasing decisions. The point here is that
12 consumers look to a combination of both features and
13 price to assess the total value of an LRW.

14 Finally, he'll describe for you how
15 Whirlpool has been injured and provide a very detailed
16 account of how subject imports have caused that injury
17 in the various LRW market segments throughout the
18 period of investigation and also during Black Friday
19 of 2011.

20 Whirlpool has worked very hard to prepare
21 its petitions and to assemble the questionnaire data
22 that you require for your analysis, and I trust that
23 you'll find today's presentation very helpful and
24 informative. So with that very brief introduction,
25 I'd like to turn things over to Dr. Marc Bitzer,

1 President of Whirlpool North America.

2 MR. BITZER: Good morning, My name is Marc
3 Bitzer. I'm President of Whirlpool North America. I
4 appeared here nine months ago, and I recognize some
5 faces.

6 In April we talked about how two Korean
7 companies, Samsung and LG, destroyed market value in
8 the Bottom-Mount Refrigerators in the United States.
9 Today I'm appearing here to talk about our large
10 residential washer business, and I will just refer to
11 it as LRW because I know it's not an easy term, and to
12 describe the impact that imports from Samsung and LG
13 are having on our financial performance and our 3,500
14 plant workers in Clyde, Ohio.

15 Before I go any further, I just want to
16 thank you for listening and paying attention to our
17 petition. It is a very important matter for us, and
18 we appreciate you taking the time for it. Let me just
19 begin by saying a few words about Whirlpool.
20 Whirlpool was founded in 1911 actually with the
21 development of an electric wringer washer in Benton
22 Harbor, Michigan, so we are a washer company from our
23 roots, and you can see on Exhibit 1 it was our first
24 product. We don't sell it anymore, but it was very
25 successful at that time.

1 Actually this past November we celebrated
2 our 100th anniversary as a company, and even today
3 Whirlpool is still headquartered in Michigan actually
4 just a few miles from where we started producing that
5 wringer washer. We currently employ more than 23,000
6 people in the United States, globally 68,000. Our
7 brands include Whirlpool, Maytag, Jenn-Air,
8 KitchenAid, Amana just to name a few.

9 We're a global manufacturer with annual
10 revenues in excess of \$18 billion, and we're the
11 world's leading house appliance company. But even as
12 we have globalized, our American roots have grown
13 deeper. Today we have operations across America, and
14 you see that on the map here, including facilities in
15 Ohio where we have more than 10,000 workers, Iowa,
16 Tennessee, Michigan, Indiana, Arkansas and Oklahoma.

17 More than 80 percent of what we sell in the
18 United States is produced in the United States. And
19 again, on this visual here you see. You get a
20 perspective of our brand portfolio and our geographic
21 footprint.

22 Our company wouldn't have succeeded at
23 competing for an entire century without a track record
24 of quality, customer service and innovation. You may
25 not believe me at this point, and I guess it was also

1 suggested in the previous statement, but just go on
2 line on Consumer Reports, which is probably publicly
3 recognized as the only independent source for relevant
4 consumer data.

5 And if you would go under washers you would
6 find that in front-load washers Whirlpool occupies the
7 top three of the top five rankings, including the
8 number one. In the top-load washer category our
9 products occupy four of the top five rankings. So I
10 guess it's fair to say we have all the different high
11 performing products.

12 Whirlpool continues to invest in our plants
13 and our people. Our company recently recommitted to
14 invest \$1 billion -- and these are not operating
15 expenses. These are capital investments and R&D
16 investments -- including more than \$175 million in our
17 washer plant in Clyde, Ohio. So at a time when many
18 are declaring American manufacturing is dead, we are
19 very proud of our commitment to our American
20 manufacturing jobs.

21 Now, with that introduction, I would like to
22 begin talking about the product at issue and the like
23 product, large residential washers. As you know, the
24 scope of this investigation covers three washer
25 configurations: Front-load washers, top-load

1 high-efficiency and conventional top-load washers.

2 And you see that on Exhibit 4.

3 Let me first talk about front-load washers,
4 which are all high-efficiency machines, but are
5 positioned typically at the premium end of the market,
6 and they typically cover a retail price point of \$499
7 to up to \$2,099. These units are accessible through a
8 front door, can contain a wide variety of features and
9 generally rotate on a horizontal, but also on a tilted
10 axis. So it's not purely horizontal. There's also a
11 number of tilted axes.

12 Whirlpool has been producing and selling
13 front-load washers for more than 50 years. This is
14 also a segment of the market where Samsung and LG have
15 discounted their products most aggressively and they
16 have already established a very substantial position
17 in the U.S. market over the past five years.

18 The second configuration in the middle is
19 high-efficiency top-load washers. Let me be clear.
20 By high-efficiency I'm referring to both energy
21 consumption and water usage as defined in an industry
22 norm. High-efficiency top-loaders occupy a relative
23 new and fast-growing segment in the market, and retail
24 prices typically range from \$499 to \$1,999.

25 These units can contain a wide variety of

1 features. These units are accessible from the
2 top-door lids and generally rotate on a vertical axis.
3 However, there are also some units with a horizontal
4 axis, so you would see both configurations.

5 The third LRW configuration is conventional
6 top-loaders. Yes, these units are not technically
7 high-efficiency according to industry norms, but some
8 units -- and that is wrong from previous statements --
9 are energy efficient and qualify for E-Star. In fact,
10 several hundred thousand units of what we sell. And
11 lastly, that was a very significant part of our work.
12 So it is an energy efficient product. It qualifies
13 for E-Star, not for high-efficiency, and that's under
14 the Department of Energy efficiency standards.

15 These units typically have an agitator in
16 the middle of a drum and consume a slightly higher
17 volume of water. Conventional top-loads are generally
18 priced in the range of \$299 to \$799. Now, consumers
19 do readily switch between these product configurations
20 based on perceived overall value, including feature,
21 color and price.

22 If you just look at Exhibit 5 where you have
23 an LG advertisement for both top-load and front-load
24 washers, the ad tells consumers that both
25 configurations deliver significant consumer value, and

1 it's ultimately your choice between these LRW
2 configurations. You would also typically find in
3 stores very often the top-load and the front-load
4 washer next to each other, referring to it's your
5 choice. You would also find in a number of consumer
6 surveys consumers switching between front and top and
7 between top and front.

8 Each of these LRW configurations is mass
9 produced in the same plant and share the same common
10 fabrication shops. In essence, you have a cabinet,
11 you have a washer drum which is married, as we say,
12 within the factory, and it typically comes off in the
13 same factory so we produce it under the same roof, and
14 most competitors produce also under the same roof.

15 In terms of U.S. demand trends, what we see
16 is that demand for LRWs has actually been relatively
17 stable from the beginning to the end of the period of
18 investigation with some minor fluctuations. You see
19 that on Exhibit 6. You see here that we summarize the
20 U.S. demand data for front-load and top-load washer
21 segments.

22 First of all, as you see on the top the
23 overall industry has been relatively flat. You see,
24 however, growth in the top-load high-efficiency
25 segment -- that's the middle segment -- and some

1 recent declines in front-load segments and
2 conventional top-load, which again reconfirms a point
3 that consumers are switching between these different
4 segments. Whirlpool overall expects that demand for
5 LRWs would grow moderately, driven primarily by
6 consumers' desire to replace or upgrade their existing
7 washing machines.

8 Next, let me just make a couple or several
9 base points about the economics of our business. So
10 first let me talk about investment economics in our
11 business. Without getting into proprietary data, the
12 point I want to make is that this is a business that
13 requires substantial fixed cost investments. So
14 typically when you invent or invest in a new washer
15 platform, a new front-load or top-load, you easily
16 invest about \$100 million capital and \$50 to \$80
17 million engineering. So we're talking about very
18 significant fixed cost investments.

19 As a result of that you have two very
20 important business implications. The first one,
21 because you have such enormous fixed cost investments
22 you need to maximize capacity utilization in order to
23 basically leverage that fixed cost base and to
24 effectively manage your unit cost. In other words,
25 when you lose volume, it hurts you not just on the

1 revenue line. It hurts you also on the product cost
2 line because the entire depreciation and fixed cost
3 leverage works against you.

4 The second point is because the up-front
5 investment costs are so substantial we are governed by
6 the very fundamental principle of reinvestment
7 economics, i.e. you make a capital outlay, you have to
8 pay for that capital at one point. You've got to
9 generate a return. And typically what we expect is it
10 has to at a minimum break even after about four years.
11 That isn't agreed. That is just very basic because
12 typically these platforms last on the market four or
13 five years, so of course you want to have a return
14 prior to introducing a new platform.

15 The other point that I want to stress at
16 this point is what we're experiencing and have
17 experienced over the last couple years, the cost/price
18 squeeze. This is a business where you have very
19 significant purchase material components -- that's
20 steel, resins, electronics -- and they comprise the
21 vast majority of our manufacturing costs.

22 Just in the last year, we've witnessed a
23 dramatic increase in our raw materials, more than 20
24 percent, although Whirlpool has not been able to raise
25 prices commensurate with these material cost increases

1 due to very aggressive price competition from Samsung
2 and LG. The economics of production in this market
3 demand are simply not sustainable.

4 So let me just give you a brief overview of
5 the structure of our market. So today Whirlpool
6 represents more than 90 percent of the U.S.
7 production, the other U.S. manufacturers being GE,
8 Alliance and Staber Industries. At the beginning of
9 the period of investigation other significant U.S.
10 producers included Electrolux, Bosch and Fisher
11 Paykel, but each of these companies have since
12 shuttered their large residential washer manufacturing
13 operations. Bosch has exited the U.S. LRW business
14 entirely, and Electrolux and Fisher Paykel have moved
15 production overseas.

16 At the same time that other producers have
17 exited U.S. production, Whirlpool has actually
18 repatriated its production of front-load washers to
19 Clyde, Ohio, which may sound a little bit
20 counterintuitive, and I will explain it later on. Of
21 course, our U.S. production capacity of front-loaders
22 is actually expanding.

23 Domestic producers currently supply about
24 two-thirds of the market with the other major sources
25 being Korea, Mexico, which represents nearly the rest

1 of the market, and nonsubject imports mostly from
2 China and Germany have represented as much as
3 8 percent of U.S. consumption in recent years, but
4 today are representing less than 3 percent.

5 From Korea you have Samsung and LG as the
6 major suppliers, although there are some volume and we
7 see some volume from Daewoo. From Mexico, LRW
8 producers include Samsung, Electrolux and Whirlpool,
9 although Whirlpool has made a strategic decision to
10 stop exporting LRWs to the U.S. market entirely later
11 this year and to refocus that plant on other markets.

12 Germany also produces LRWs, but again we
13 have made a strategic decision to stop exporting LRWs
14 to the U.S. later this year. The German plant will
15 actually be retooled by another company to produce
16 solar cells. In China, a company called Little Swan
17 produces front-load washers for sale under the GE
18 brand, and these products have not been a very
19 important factor in the U.S. markets. There are also
20 some very small top-load volumes from high end China.

21 Finally, to complete the description of how
22 the LRW market works, I just want to briefly describe
23 the channels of distribution. So large residential
24 washers are to a large extent sold to consumers
25 through retail channels, and that's including Sears,

1 Lowes, Home Depot, H.H. Gregg or Bray & Scarff here in
2 the D.C. area. There are also LRWs sold through what
3 we call the contract channel, which is largely the
4 residential builder market.

5 Now, the way in which washers are marketed
6 through retailers in our terminology to the trade is
7 common to other household appliances, and it's similar
8 to the case which we had in April. So basically a
9 manufacturer suggests a nonbinding retail price for
10 their product, the so-called MSRP, and we typically
11 offer retail as a profit margin which is expressed as
12 a percentage of the so-called minimum advertised price
13 or MAP.

14 And during promotion periods, manufacturers
15 generally lower their MAPs and provide additional
16 promotional support to somehow preserve a retailer's
17 profit market. Now, there are in addition other
18 incentives that we refer to as back ends, and they're
19 generally not tied to specific SKU sales.

20 So now let's talk about the conditions of
21 competition between Whirlpool and subject imports.
22 The first point I want to emphasize is that in the
23 appliance industry features matter. I know we had
24 this discussion before, and let me maybe correct
25 myself. It's not just the appliance industry. It's

1 probably every single consumer durable.

2 If you buy a car you would expect that a
3 fully loaded car with a V-8 engine is more expensive
4 than a less loaded car with a V-4 engine. If you buy
5 a TV, you would expect that a 70-inch flat screen 3D
6 TV is more expensive than a 24-inch. If you buy an
7 iPad or iPod you would expect that a 160 gigabytes is
8 more expensive than a 60. And exactly the same is
9 true for household appliances.

10 The point here is that consumers ascribe
11 significant value to product features, and competition
12 in the marketplace occurs on the basis of total value.
13 That is, the features offered at a particular price
14 point. Just to give you an illustration of the kind
15 of features that matter, please refer to Exhibit 7,
16 which shows a front-load washer marketed by Samsung.

17 Here you can see that Samsung is emphasizing
18 the importance of such features as color, capacity,
19 vibration reduction technology, steam, energy
20 efficiency and others. Now, features cost money in
21 the production, and Samsung and LG have been including
22 premium features in their models at lower and lower
23 price levels that we believe are heavily dumped and
24 subsidized.

25 The second point I want to make, which I

1 hope will be fairly obviously, is price matters. That
2 is, consumer choice among various product offers is
3 highly sensitive to promotion prices. As I will
4 discuss later in my testimony, Samsung heavily
5 promoted certain front-load washers during Black
6 Friday of 2011. The inevitable result was that sales
7 volume for its promoted SKUs increased by more than
8 830 percent from October/November, but sales volume
9 for the nonpromoted SKUs declined over the same
10 periods. These changes in demand were unquestionably
11 driven by pricing.

12 With that overview of the industry, let me
13 just emphasize that Whirlpool's U.S. business for
14 large residential washers has been injured. This is
15 true for the large residential washer category as a
16 whole, and it's equally true for each of the
17 front-load and top-load configurations. The details
18 of our financial performance are of course
19 proprietary, but when you read our confidential
20 questionnaire response I don't think there can be any
21 serious question that Whirlpool's results have been
22 dismal and we have been severely injured.

23 Now, given that there was a reference made
24 to the energy tax credits and that seems to be a
25 recurring theme, let me also demystify that story. We

1 had been trying to do that already in April, so let me
2 do it again. Energy tax credits have been introduced
3 by the government of the United States to support and
4 promote the production of energy efficient appliances.
5 We did that.

6 The statement was earlier made that energy
7 tax credits are pure profit. That is simply wrong.
8 It's simply wrong. Everybody knows energy tax credits
9 you can utilize if and only if you make a profit. So
10 if you don't make a profit there's nothing you can
11 utilize, so just to demystify this one. The current
12 situation overall from financial perspective is simply
13 not sustainable for us or for our workers. I will
14 discuss in the next element subject imports are a
15 problem.

16 Now, to understand the impact that imports
17 have had on our U.S. production I should first note
18 that the U.S. industry has lost market share over the
19 entire period of investigation. The trend is shown in
20 Exhibit 8, and you see here the overall U.S.
21 production 2008, 2009, 2010, and you see 2011 the
22 first nine months. I also would like to point out
23 that once you would include the entire 2011, including
24 the Q4 data which is not yet fully available, we
25 expect the results would resemble much more of a 2010

1 picture. So, yes, there has been a market share
2 decline over the extended period.

3 Now, in order to understand what's going on
4 at a more granular level, I think it is useful to talk
5 about large residential washers by category. So let
6 me just start with the front-load category. The
7 front-load category, that's essentially a story of
8 Whirlpool's decision to repatriate production into the
9 U.S., which has economically gone awfully wrong. Let
10 me just explain that.

11 Whirlpool began the period of investigation
12 supplying front-load products from its manufacturing
13 facilities in Germany and Mexico. We did not at that
14 time produce any front-load washers in the United
15 States. In 2008, Whirlpool made the strategic
16 decision to invest more than \$100 million in
17 production of front-load washers in Clyde, Ohio, and
18 this decision was predicated on relatively
19 conservative assumptions about prevailing U.S. market
20 prices for front-load washers and the expected return
21 on investment.

22 Now, given that the question was raised
23 earlier so why did you make a decision to move
24 products from Germany to the U.S., so let me just
25 maybe explain that a little bit. At that time, I was

1 actually in charge of all European operations, so I
2 know that situation very well.

3 We started originally referring to the
4 production as a world washer in Germany because that
5 factory was largely tooled as front-load and some top-
6 loaders also. That business became very successful,
7 and we actually had a very successful growth of that
8 business.

9 In 2007 and 2008, we made a fundamental
10 assessment, as we do regularly, what is the long-term
11 production site of such a front-load business,
12 particularly in a growing environment. We came to the
13 conclusion that in a normal undistorted market
14 environment the economics of labor arbitrage or other
15 product cost/benefits are far outweighed by logistics
16 costs, i.e., the cost of importing from Europe to U.S.
17 were not justified at all, and from a long-term
18 perspective it made much more sense to produce it
19 either in U.S. or Mexico. We had an honest
20 assessment.

21 Now, the ultimate decision was made to
22 produce in the U.S. That was a borderline decision
23 between Mexico and U.S., but we did it for the sake of
24 preserving our factory in Clyde and expanding it. So
25 that's the full background. Again, that decision was

1 made in the context of logistic cost, labor cost and
2 the market price environment, which in 2008 looked
3 very, very different than in 2010.

4 Now, in 2010, in October 2010, when our
5 front-load manufacturing operations actually came on
6 stream in Ohio we encountered unprecedented U.S.
7 market conditions that can no longer support the
8 economics of our investments. You see that here in
9 Exhibit 9.

10 Now, average retail prices for Samsung and
11 LG front-loaders decreased by nearly 25 percent or
12 more than \$200 during that period of investigation,
13 and all this at a time when costs were rising. Now,
14 let me also explain, because that point was also made
15 earlier. This business used to be very profitable for
16 us. It was not in our intention or interest to take
17 down a business from prices where you made a lot of
18 profits in the past.

19 Another important point is worth noting
20 here. Whirlpool data shows a significant rise in U.S.
21 front-load production and U.S. market share precisely
22 because of a decision to repatriate production from
23 its plants in Mexico and Germany. Of course, when
24 U.S. production volumes start at zero they have
25 nowhere to go but up. It's just the simple logic.

1 However, the increase of U.S. production is
2 less than the decline of front-load imports from
3 Mexico and Germany. Put another way, even with a rise
4 in our U.S. production, Whirlpool as a company is
5 still losing U.S. market share to Samsung and LG in
6 the front-load segment of the LRW market.

7 Significantly, we also lost a substantial
8 private label contract to LG representing a
9 significant share of the total front-load market, and
10 there's no question that we lost the sale on the basis
11 of price. Simply put, we have reached a point that we
12 can no longer justify our substantial investment in
13 American manufacturing. This is evidenced also by the
14 fact that other U.S. front-load producers -- Bosch and
15 Electrolux -- have exited U.S. manufacturing for
16 front-loaders.

17 Today we are the last American front-load
18 washer manufacturer left standing, and the outlook is
19 bleak. Whirlpool did exactly what the President and
20 Congress asked us to do. Basically we made a decision
21 to repatriate U.S. manufacturing and create American
22 jobs, but what we see is that the economics of such
23 business decisions are being destroyed by dumped and
24 subsidized imports.

25 Now, the story on the top-load categories is

1 a bit different. With respect to high-efficiency
2 top-loaders, which is a popular growth segment among
3 consumers -- Whirlpool invented the first HE top-load
4 washers in 1999 and has pioneered their product
5 configuration for more than a decade. In 2006, we
6 launched our Oasis platform, which represents a
7 premium segment of the HE top-load category. Even
8 today, our Oasis models dominate the Consumer Reports
9 ranking, and until recently our Oasis platform was a
10 tremendous financial success.

11 In 2010, LG launched a similar product line
12 under its own brand, and in 2011 Samsung also entered
13 the market with a comparably featured product. Now
14 referring to Exhibit 10, we have witnessed an
15 unprecedented, rapid decline in price as a result of
16 import competition from LG and Samsung. Just to
17 highlight, the curves look very similar. What is very
18 different is the X axis. What you saw before were
19 years and these are now quarters, so we saw an
20 acceleration of a price decline we've never seen
21 before.

22 The exhibit shows retail prices for
23 comparable LG and Samsung products in the marketplace.
24 In the case of LG, in a little more than a year LG
25 retail prices declined more than \$250 or more than 15

1 percent. In the case of Samsung, in a little more
2 than six months Samsung retail prices declined nearly
3 \$150 or more than 15 percent.

4 As a result of the aggressive pricing from
5 LG and Samsung, our Oasis platform is no longer
6 profitable. Making matters worse, Whirlpool has lost
7 an important P&L, private label, contract to supply a
8 substantial portion of the U.S. market, and the
9 inescapable explanation for the lost sales is price.

10 Now with regards to conventional
11 top-loaders, the fact is yes, we have not seen any
12 conventional top-load washers from the subject
13 countries competing head-to-head with our domestic
14 offerings, but make no mistake. When subject imports
15 depress prices for high-efficiency top-loaders there
16 is an undeniable cascading effect down the entire
17 continuum of our product lineup. Exhibit 11 clearly
18 illustrates that point.

19 You will also see in the confidential
20 version of our petition describes an example where we
21 lost a sales opportunity for conventional top-loads to
22 an HE top-load from LG, so without question we're
23 seeing overlapping competition across washer
24 configurations. In sum, even if there are no
25 conventional top-load imports, subject imports have

1 certainly negatively affected pricing and volumes in
2 this category and have certainly been a cause of
3 injury to Whirlpool's large residential washer
4 business.

5 Finally, if you have any doubt as to whether
6 this harmful behavior from Samsung and LG is a thing
7 of the past and, however, price is the driving factor
8 behind consumer purchasing decision, you need to only
9 examine the stunning events from this past Black
10 Friday, November 2011. Exhibit 12 contains a sample
11 of heavily discounted front-load and top-load washers
12 from Samsung and LG by as much as 50 percent.

13 Now, if you turn to Exhibit 13, let me just
14 explain what you see here. You see on the left side
15 you see front-load SKUs or front-load sales which have
16 been deeply discounted, deeply discounted in the range
17 of more than \$150 just month over month, i.e., from
18 October to November. On the right you see the rest,
19 i.e., SKUs which have not been deeply discounted \$150
20 from October to November.

21 What we can see is that Samsung's sales
22 volumes for deeply discounted SKUs skyrocketed from
23 October to November by 67,000 units or 830 percent.
24 LG's sales volumes for deeply discounted SKUs
25 increased from October to November by 17,500 units or

1 430 percent. There's one caveat. In the data that
2 you see, LG is likely understated because that data
3 source does not fully cover sales from one of LG's
4 biggest accounts, Home Depot.

5 Now referring to the chart on the right,
6 this shows the front-load washers where Samsung, LG
7 and Whirlpool retail prices were not heavily
8 discounted for Black Friday, were promoted by less
9 than \$150. What we can see is that the sales volume
10 for Samsung and LG SKUs declined from October to
11 November, while the sales volumes for Whirlpool SKUs
12 remained relatively flat month over month.

13 Now, what this exhibit shows, among other
14 things, is that price matters, and it actually matters
15 very greatly. The exhibit also demonstrates how
16 Whirlpool clearly lost substantial market share to
17 Samsung and LG in November 2011, precisely because we
18 declined to discount our products as heavily as LG and
19 Samsung. In short, the connection between imports and
20 our lost sales during Black Friday 2011 should be
21 perfectly clear.

22 Now, as bad as the current situation is, all
23 indications are that Samsung and LG intend to make
24 things even worse. Please refer to Exhibit 14, which
25 is an exhibit which we showed you last year in the

1 Refrigerator case and we slightly updated it. What
2 you can see here is a series of quotes from Samsung
3 and LG about their plans to become number one in the
4 appliance industry.

5 According to the reports, Samsung last year
6 invested \$1 trillion yuan or \$1 billion in its
7 appliance business, and they expect that they
8 eventually pay off somewhat. Along the same lines, in
9 January 2011 Earnings Call Samsung reported that
10 within the next three years they expect their
11 appliance business to become eventually profitable.

12 Both Samsung and LG have each proclaimed the
13 same goal to become the biggest producers of home
14 appliances, including large residential washers. The
15 point was most recently reinforced as of Monday of
16 this week by LG. What is so disturbing is that they
17 are apparently willing to accomplish this by selling
18 below cost, effectively buying U.S. market share over
19 a sustained period of time. This behavior is
20 uneconomic and is only made possible by a combination
21 of government subsidies and a protected home market in
22 Korea which Samsung and LG are using to support their
23 exports.

24 Let me just end here with just some final
25 thoughts. For decades, Whirlpool has competed

1 successfully against such world class manufacturing
2 companies and appliance companies like General
3 Electric and Electrolux. We're not afraid of
4 competition.

5 The problems which we're encountering today
6 are unprecedented and call into question the
7 sustainability of American manufacturing generally.
8 We have the largest and most efficient washer factory
9 in the world in Clyde, Ohio. We are committed to
10 invest in America and support manufacturing jobs, but
11 our ability to invest in America remains seriously in
12 doubt as long as Samsung and LG can sell into the U.S.
13 at prices that are dumped and subsidized, unless of
14 course antidumping and countervailing duty orders are
15 put in place.

16 With that I want to thank you for your
17 attention, and I look forward to your questions.

18 MR. LEVY: Jack Levy again from Cassidy Levy
19 Kent for Petitioner. There really isn't that much
20 more to add for our affirmative presentation.
21 Whirlpool has painted for you a picture of a global
22 company rooted in Michigan that is diligently doing
23 its part to lead America into a new century, one of
24 product innovation and new manufacturing jobs.

25 They have committed to \$1 billion in

1 investments in American manufacturing, including LRWs,
2 but so far its investment plans are backfiring
3 terribly, and the reason is that subject imports have
4 destroyed the economics of reinvestment for its LRW
5 business, and subject imports are suppressing market
6 prices in an environment of rising material costs.

7 As you know, Electrolux, Fisher & Paykel and
8 Bosch have all closed their U.S. plants during the
9 period of investigation. Many hundreds of American
10 jobs have been lost. In the case of Bosch, the
11 Department of Labor has already determined that
12 imports contributed importantly to the plant closure,
13 resulting in the approval of trade adjustment
14 assistance.

15 Now Whirlpool is the last major LRW
16 manufacturer left standing in America, and the
17 situation is untenable. In reviewing the
18 questionnaire data, I don't think there could be any
19 question that Whirlpool is already materially injured.
20 Given the clear evidence of lost OEM sales already on
21 the administrative record, the threat of future injury
22 is palpable.

23 We are requesting these antidumping and
24 countervailing duty investigations because there's an
25 urgent need to impose discipline on Samsung and LG

1 pricing and a need to restore hope and opportunity to
2 an industry that's currently under siege and to
3 thousands of American workers in Clyde, Ohio, who
4 deserve the chance to compete on a level playing
5 field.

6 So thank you for your time and for your
7 commitment to enforcing our laws. Our panel looks
8 forward to your questions.

9 MS. DeFILIPPO: Thank you very much, Mr.
10 Levy, and thank you to the panel for being here today.
11 It's always very, very helpful to have company
12 officials come and explain to us their product and be
13 available for questions. I know it's not easy getting
14 away from your jobs, so we very much appreciate it.

15 With that we will start staff questions, and
16 I will start with Ms. Martinez.

17 MS. MARTINEZ: Good morning. Thank you all
18 for being here. I will start off by asking do you
19 believe there are any significant U.S. producers
20 missing from the data set at this point?

21 MR. LEVY: We have reviewed as of yesterday
22 the EDIS docket and noted that Electrolux has not yet
23 completed a U.S. producer's questionnaire response or
24 I believe a U.S. importer questionnaire response.
25 Their participation in the marketplace is material to

1 an accurate and complete analysis during the period of
2 investigation.

3 MR. GREENWALD: Let me elaborate a bit on
4 that. Electrolux left the U.S. market. Their major
5 product, as I understand it, was the high-efficiency
6 front-load washers. They were producing in the United
7 States before Whirlpool was.

8 If you're looking at what happened to the
9 U.S. industry -- and it is wrong to say Whirlpool for
10 the full period of investigation is the U.S. industry
11 -- you have to look at what happened to Electrolux.
12 You have to look at what happened to Bosch. You have
13 to look at what happened to Fisher Paykel.

14 If Electrolux does not for whatever reason
15 provide the data, please bear in mind that they are
16 now an importer of subject merchandise, so they matter
17 in two respects. What we don't want to have happen is
18 any form of adverse inference relative to the domestic
19 industry.

20 The adverse inference must be relative to
21 the impact of subject imports, and the inference must
22 be, absent a response, that they left the U.S. market
23 precisely because of the problems they faced in
24 competition with dumped imports from both Samsung and
25 LG.

1 MS. MARTINEZ: Thank you. Do you know what
2 Bosch and Fisher & Paykel produced, what type of
3 washers?

4 MR. BITZER: It's Marc Bitzer. I can try to
5 answer that. First of all, I expect it is also in
6 very respective findings.

7 Bosch actually produced a front-load washing
8 machine in New Bern. That's where they also produced
9 their dishwashers. It is a front-load platform, which
10 in similar ways is used in Europe and also China, very
11 successfully competes even against the Chinese
12 competition.

13 From what I recall, they started this
14 production around 2008, but I'm not exactly -- or
15 2007, and they left market and the factory last year.

16 MS. MARTINEZ: And that was high-efficiency?

17 MR. BITZER: That was front-load washing
18 machines.

19 MS. MARTINEZ: Okay.

20 MR. BITZER: Bosch, from my best knowledge,
21 has not been producing top-loaders.

22 Fisher Paykel has typically produced in the
23 past a top-load washing machine from what I recall
24 -- please correct me -- in Ohio, and they stopped that
25 production I think in 2008 or 2009.

1 MR. TUBMAN: That's correct.

2 MR. GREENWALD: But to your point, Bosch
3 would be a high-efficiency front-load washer.

4 MS. MARTINEZ: Okay. Thank you. Now, do
5 you believe that official import statistics accurately
6 represent U.S. imports and that's what we should use
7 in our analysis?

8 MR. LEVY: The U.S. import statistics are
9 not a perfect fit. We have identified one category
10 which overlaps substantially with the scope of the
11 investigations, and that's profiled in the scope
12 language and in the petitions, but it does encompass
13 some nonsubject merchandise.

14 Similarly, there are going to be other
15 tariff subheadings that could encompass subject
16 merchandise and so we would urge you to rely primarily
17 on questionnaires for a full and complete
18 understanding of import trends during the period of
19 investigation.

20 However, I would say that relying on the
21 primary subheading profiled in the petitions, that is
22 the best representation of imports. If you're going
23 to look in one place, that would be it.

24 MS. MARTINEZ: So questionnaire data is
25 preferable, you would say, for the --

1 MR. GREENWALD: I think the answer to that
2 is clearly it depends on whether or not there's any
3 major exporter now that is missing from your database,
4 but because of product definition issues, because of
5 the inclusion of nonsubject and various tariff
6 subheadings, I think our view would be the
7 questionnaire response data, to the extent it is
8 there, is the best source of what's going on.

9 And then you have a question of what happens
10 if a major exporter doesn't supply you any information
11 or the importer doesn't respond to your questionnaire.
12 That's an issue.

13 MS. MARTINEZ: Thank you. Now looking at
14 the import trends, I notice that the imports from
15 Mexico and Korea decrease in the first three quarters
16 of 2011 when compared to the three quarters in 2010.
17 Do you have an explanation for this?

18 MR. GREENWALD: Look first to Whirlpool.
19 When you look at imports from Mexico in particular,
20 the first question you should ask is to what extent is
21 that the flip side of repatriation, and one of the
22 things I think you will find interesting is that much
23 of the apparent drop is in fact simply Whirlpool
24 relocating production to the United States.

25 Again, a point that it's a variant on this

1 question, but something I hope you'll bear in mind.
2 Dr. Bitzer said in his testimony that the rise in U.S.
3 production of front-load high-efficiency washers is
4 less than the drop in Whirlpool's own imports, so
5 what's happened actually, one of the reasons for the
6 disappointing performance so far of this repatriated
7 U.S. production, has been that has not stemmed the net
8 loss of Whirlpool as a company's share of the market.

9 MS. MARTINEZ: The repatriation is from
10 Germany, correct?

11 MR. BITZER: This is Marc Bitzer. It's
12 twofold. It's Germany -- that's where we started the
13 repatriation -- but we also started repatriating last
14 year from Mexico, and we're going to complete that
15 throughout this year.

16 MS. MARTINEZ: And in terms of Korea, you
17 don't have an idea as to why there are less imports?

18 MR. GREENWALD: Well, there what you have to
19 look at is the shift, the increase of exports from
20 Mexico by Samsung, which located and started up its
21 Mexican production during the period of investigation.
22 So again, the net drop is not nearly what it looks
23 like from the import stats.

24 MS. MARTINEZ: Okay. All right. Thank you.
25 And also again the import trends. Imports have

1 increased in each annual year of the period, but from
2 what I got from your presentation is that they didn't
3 come into the high-efficiency segment until late in
4 the period. So if you could just elaborate on that?

5 MR. BITZER: And it's Marc Bitzer. Let me
6 correct. In the entire period you saw it already in
7 front-load high-efficiency. In top-load
8 high-efficiency you saw it at the end of the
9 investigating periods.

10 MS. MARTINEZ: Okay.

11 MR. GREENWALD: When you go back and you
12 look at imports from Korea -- and it's also true for
13 Mexico, but Korea in particular -- or if you just
14 focus on the company, that is Samsung and LG, combined
15 imports, the period of investigation increase is
16 astonishing. It starts at a low base, and it grows by
17 several factors.

18 What you see in 2011 is as the success of
19 the high-efficiency top-load segment increases it's
20 taking sales away from both high-efficiency front-load
21 and conventional top-load. Both Samsung and LG are
22 late entrants. You'll see this in the data. Are late
23 entrants into that market.

24 But the astonishing thing is the minute they
25 come in, and they come in first with a competitor of

1 Whirlpool's larger high-efficiency top-load washer,
2 what they call the Oasis platform. The economics of
3 that production in the United States simply goes from
4 good to bad over a period of less than a year. The
5 impact that these two companies have had once they
6 enter a market is astonishing.

7 And let me again close this point by
8 stressing the importance of Black Friday 2011 data.
9 You've collected data for November 2011. The question
10 you want to be asking yourself is are Samsung and LG
11 doing now in this top-load high-efficiency segment
12 exactly what they did in the front-load
13 high-efficiency segment, and I think the answers are
14 evident from the data you've collected.

15 MS. MARTINEZ: Thank you. Now, I know that
16 our attorney, Mr. von Schrittz, will touch upon this
17 in more detail, but if you could just comment on how
18 do you respond to the Respondents' statement regarding
19 three like products?

20 MR. LEVY: We'll address the like product
21 issue fully in our postconference brief. Obviously
22 the starting point for any like product analysis has
23 to be the scope itself, so here we're talking about
24 large residential washers, and the like product should
25 presumptively be coextensive with the scope.

1 According to the statute, the Commission
2 needs to examine whether there are clear dividing
3 lines among possible like products and to disregard
4 obviously minor variations. There are a number of
5 factors that matter, and I'll just speak to a few of
6 them briefly this morning.

7 End uses. Whether you're talking about a
8 high-efficiency front-load or a high-efficiency
9 top-load or a conventional top-load washer, they can
10 all wash large loads of clothing for households.

11 In terms of physical and performance
12 characteristics, there are obviously different
13 physical configurations. There are differences about
14 where you load the clothing. But, as Mr. Bitzer has
15 testified, front-load washers can have a horizontal or
16 a tilted axis. Top-load washers can have a vertical
17 or sometimes even a horizontal axis.

18 Front-load washers are all HE. Top-load
19 washers can be high-efficiency or they can be
20 conventional, but even conventional top-load washers
21 can be E-Star certified, as Dr. Bitzer testified.

22 Manufacturing facilities. These units are
23 all made in the same plants under the same roof with
24 the same employees, and they share common fabrication,
25 painting, testing shops, so from a manufacturing

1 facility standpoint that bespeaks the existence of one
2 like product.

3 Producer and customer perceptions. Again,
4 as Dr. Bitzer illustrated with an exhibit, and I think
5 it was Exhibit -- well, I don't remember the number,
6 but it was an LG ad saying your choice as between a
7 front-load and a top-load washer. So consumers switch
8 between these products based on total perceived value,
9 both features and price, the combination.

10 And on the price issue, if you look at
11 Exhibit 4 you can actually see an overlap, and I'm
12 talking about retail prices for purposes of this
13 morning's discussion. An overlap, a substantial
14 overlap in prices across the different configurations
15 -- high-efficiency front-load, high-efficiency
16 top-load, conventional top-load -- depending again on
17 the associated feature content of the machine.

18 So again, we will brief this fully in our
19 brief, but I don't think there's any serious issue
20 that under the statute and the relevant criteria
21 considered by the Commission that large residential
22 washers comprise a single like product.

23 MR. BITZER: It's Marc Bitzer. Let me also
24 try to give an answer maybe not in legal terms -- I'll
25 leave that to the others -- but just from pure

1 commercial terms.

2 There have been two questions raised. One
3 is top-load conventional versus top-load
4 high-efficiency and front-load versus top-load. So to
5 echo what Jack was just saying, between top-load
6 conventional and top-load high-efficiency, first of
7 all you need to understand we're making a line here, a
8 dotted line across what is an industry norm.

9 The industry norm on high-efficiencies is
10 basically it's a water consumption and energy
11 consumption. But it's a moving norm. It's like the
12 DOE sets the E-Star every couple of years. Same as on
13 HE. So it's a norm along a continuum, and depending
14 on where you are you can call yourself E-Star or HE.
15 It is not a structural difference. It's a performance
16 along a certain norm.

17 To further illustrate that point, let me
18 talk about one of actually the most important
19 top-loader platforms. We in 2010 introduced a brand
20 new top-loader platform which we call VMW. You don't
21 need to remember that. We're not very creative about
22 these terms. We just call it VMW. That replaced a
23 platform which we had for 30 years in the business,
24 the so-called Leap platform where we produced 90
25 million units, nine zero.

1 That VMW platform is actually we sell both
2 HE, E-Star and conventional, which just tells you from
3 a technical perspective you can easily have a product
4 which covers all these segments, which again confirms
5 a point. It's a continuum. It's not a structural
6 difference which is somewhere given through physics.
7 It's just a performance difference along a norm.

8 Now, in general terms between front- and
9 top-loads, and again we've seen it over and over.
10 Consumers switch from top to front, and they switch
11 from front to top. We have promoted in-store and
12 several of our competitors also with your choice. We
13 like to have the product even displayed next to each
14 other, like many competitors, so that consumers can
15 make an independent choice between a front- and
16 top-load washer.

17 Even from a technical perspective, as Jack
18 as eluded, the lines are more and more blurring. You
19 have horizontal axis which are tilted, actually
20 sometimes tilted up to 60 degrees. As mentioned
21 before, you have top-load washers with horizontal
22 axis, so you have very blurring lines.

23 Essentially the product is very simple. You
24 have a big drum. You have a wash system, what we call
25 it. You have a drive system, and you have a cabinet.

1 That's why we also assemble them in the same factory.
2 There's some very, very close similarities between
3 these different product configurations.

4 MR. LEVY: I would also add, just by way of
5 clarification, if I were on your side of the table I'd
6 be wondering what does HE really mean?

7 And just to be clear, as Whirlpool
8 understood it and I think frankly as consumers and
9 producers generally understand it, HE denotes
10 obviously high-efficiency, but it is a norm
11 established by the Consortium for Energy Efficiency,
12 the CEE board of directors, so this is an industry
13 norm that has changed over time and indeed has changed
14 over the period of investigation.

15 And by the way, it's a norm that takes into
16 account very complex metrics for both energy
17 utilization and water consumption, so you'd have to
18 have an X and a Y axis and graph them both against one
19 another to understand whether a particular unit would
20 meet a CEE norm at a particular point in time. But
21 from a marketing perspective, being able to represent
22 something as HE matters.

23 That's to be distinguished from Energy Star,
24 which is a Department of Energy standard reflected in
25 U.S. Government regulations. Obviously E-Star

1 products are energy efficient, although they can be to
2 a lesser degree obviously, and what Respondents I
3 think this morning referred to as conventional washers
4 are, as Dr. Bitzer illuminated, many of them in fact
5 are E-Star qualified.

6 So there is a level of energy efficiency as
7 recognized by the U.S. Government inherent in
8 "conventional" top-load washers, the point being here
9 that it is a continuum. The lines are very blurry.
10 There are no clear dividing lines.

11 MS. MARTINEZ: All right. Thank you. I
12 just have a couple more questions.

13 Regarding the production of other products
14 on the same equipment and machinery and using the same
15 workers, how common is that in the industry?

16 MR. BITZER: I can take it. It's Marc
17 Bitzer. It's actually very common. I can only refer
18 to our factories, but under the same roof in Clyde,
19 Ohio, we produce the top- and front-load.

20 And again that comes from if you go through
21 our factory you basically have a big, metal sheet.
22 You basically form from pure metal sheets the
23 cabinets. That cross is very similar between a top
24 and a front. It's just a different U-shape. You have
25 basically a drum basket production, a so-called drum

1 line. They're also very similar in terms of
2 processes.

3 Now, the actual equipment may be different,
4 so it's technically different lines, but the
5 fundamental process is not very different. You
6 typically have a huge paint shop where you basically
7 take a cabinet in. That process is almost identical.
8 And then you have the actual assembly where we call
9 the marriage of the wash unit with the cabinet where
10 it all comes together.

11 So the fundamental processes are very
12 similar. The actual lines by definition are different
13 because it's just different tools used. We have
14 similar in our factories globally -- the same setup,
15 for example, in Prague, Czechoslovakia. We have
16 top-load and front together. We used to have in
17 Germany also the top- and front-load together.

18 It just confirms very similar processes. I
19 can't speak for the other manufacturers, but it's at
20 least in our company.

21 MS. MARTINEZ: Are dryers produced on the
22 same line?

23 MR. BITZER: No. Dryers are produced --
24 again, Marc Bitzer, and I speak for our own company.
25 Dryers are produced in a completely different factory,

1 so our dryers are produced in Marion, Ohio.

2 The same will be true in our global
3 operations. Our dryer production in Europe is a
4 complete different place than our washer production.
5 It's different processes. You don't have a wash unit.
6 It's a different process.

7 MS. MARTINEZ: Okay. Thank you very much.
8 Lastly, how has the economic recession affected the
9 industry, if at all?

10 MR. BITZER: It's Marc Bitzer. For once I
11 would put that on to Casey so Casey can also speak.
12 Casey Tubman.

13 MR. TUBMAN: Excuse me. Let me make sure I
14 answer the question correctly. In terms of the impact
15 to the industry, obviously consumers are still buying
16 washers and dryers even in a recession I'll call it.

17 Typically consumers are out buying units
18 when theirs breaks down. It's a replacement market.
19 We looked at some of the data, and it appears about
20 5 percent of the industry is for new home sales, and
21 therefore 95 percent are just replacing what's in
22 their home.

23 Some wait until it actually breaks down, in
24 which case they're in the market for about four to
25 seven days purchasing. Others know it's starting to

1 go, and they're in the market for anywhere from four
2 to six weeks so it's a little bit longer, but again it
3 is mostly a replacement market that they're going
4 after.

5 MS. MARTINEZ: Thank you. Those are all my
6 questions for now.

7 MS. DeFILIPPO: Thank you, Ms. Martinez.
8 We'll start with Mr. Petronzio until we go into break
9 for the vote.

10 MR. PETRONZIO: Good morning. Ed Petronzio
11 from Investigations. I want to thank you all for
12 being here. If we could start out first by so between
13 the three, the three product lines, in terms of cost
14 of production is one more expensive to produce than
15 another?

16 I mean, I see, as you said, there's a huge
17 range between the prices and given that range that
18 they all kind of equal out depending on the features,
19 but I'm seeing front-load. Is front-load more
20 expensive than say a top-load?

21 MR. BITZER: And it's Marc Bitzer. In
22 general terms, front-loaders are a little bit more
23 expensive to produce than top-loads. That's just very
24 -- because typically of the horizontal nature of the
25 axis or tilted you have more moving weight which needs

1 to be counterbalanced and corrected. There's just
2 more weight circulating. That typically makes it a
3 little bit more expensive. Production cost
4 differences are I would say the low double digit
5 percentage.

6 Between conventional and high-efficiency
7 it's more a reflection -- it's basically along the
8 continuum of how many features and performance
9 features you add in. So typically a top-load HE,
10 first of all it's larger capacity, which just bears
11 more material, but then in order to get to the energy
12 and water efficiency you sometimes have different
13 motors or wash systems, which are more expensive, or
14 you have just more electronics, which is again more a
15 reflection of feature though.

16 So it's more a continuum in terms of how you
17 add features, how much capacity you add, which is then
18 more reflective of production costs, but there's no
19 structural cost difference as such.

20 MR. PETRONZIO: Okay. Thank you. Again
21 getting back to the efficiency issue, so if I
22 understand this correctly the E-Star is a lower
23 barrier than the CEE stamp of approval basically.

24 So does the product actually have CEE on it?
25 I mean, we've seen the Energy Star. Is it something

1 that it has to pass Consortium standards to get that
2 stamp on it?

3 MR. BITZER: The E-Star as defined by the
4 DOE has a slightly lower standard than the HE in the
5 case of washers. Even though it's along the same, if
6 you would see a chart, and we'll have to provide that
7 chart, it's along the same matrix of KPIs, if you want
8 to say so. It's basically a matrix with E-Star
9 slightly below HE.

10 And again, E-Star we can easily achieve with
11 conventional top-loads so they are energy efficient,
12 but HE is even a higher standard.

13 MR. PETRONZIO: Okay. So the CEE is kind of
14 taking the -- I mean, they're basing a lot of their
15 standards on what DOE is saying? What's the
16 relationship between the Consortium and the Department
17 of Energy standards?

18 MR. BITZER: Yes. The original standards,
19 and again maybe, Norbert, please correct me if I'm
20 wrong. The original standards have basically been
21 developed by the industry in its recommendation for
22 DOE, AHAM and everything else. That's how it's
23 originally been developed and then adopted by the
24 respective agencies.

25 Again with DOE, at one point they'll raise

1 the level for E-Star. That's the philosophy of
2 raising it every couple of years, and I would also
3 expect that's happened already in HE. That standard
4 will be also raised at one point.

5 MR. PETRONZIO: Okay.

6 MR. TUBMAN: This is Casey. I just want to
7 add one thing is that you asked about does E-Star meet
8 a CEE level. There are tiers within CEE, so the
9 Consortium has a Tier 1, a Tier 2, a Tier 3.

10 Typically Tier 1 is equivalent to Energy
11 Star, so they try to line -- I don't know that they
12 try to line them up, but what we've seen is they line
13 them up. When they come out they've been lined up to
14 Tier 1. So Energy Star would be considered an
15 efficient appliance under that level of Tier 1.

16 MR. PETRONZIO: And a Tier 2? When do we
17 get into high-efficiency? Tier 2?

18 MR. TUBMAN: Tier 2 is a little bit better.
19 It's an industry norm, so there's not really a hard
20 and fast definition of this is high-efficiency. So
21 that's why I want to make sure E-Star is considered
22 efficient.

23 Sometimes when you hear people talk they'll
24 say high-efficiency. It's hard to say where exactly
25 that line starts. Typically we look for for sure a

1 CEE Tier 3 would be considered high-efficiency. Tier
2 2 is typically talked about as high-efficiency, and
3 then Tier 1 would be typically called just E-Star
4 because that's what it lines up with.

5 MR. PETRONZIO: Okay. Thanks. That's
6 helpful.

7 Mr. Bitzer, you talked a bit about the role
8 of fixed costs and having to maintain the high level
9 of capacity utilization ideally. Obviously you'd want
10 to maintain the highest utilization possible, but what
11 would you say in your estimate to make a good return,
12 a level of capacity utilization that you would find
13 sustainable or --

14 MR. BITZER: Again, it's Marc Bitzer. When
15 you look at the product mix then you've got to look at
16 the entire lifetime of that product mix, and typically
17 economics are very simply driven by how many units you
18 sell at what price -- that is one part of the equation
19 -- and then basically at what cost.

20 So if you sell less units you basically
21 generate less margin, but you just basically with the
22 same less units you have to cover much more fixed
23 costs than with the higher quantity. That fixed cost
24 component is significant.

25 Again, you've got to bear in mind typically

1 if every platform you capitalize around \$100, \$150
2 million, so now you can do the math. If you sell a
3 couple hundred thousand units less the remaining units
4 have to take a significant higher proportion of what
5 we call depreciation.

6 Typically what we aim for, but again it
7 differs, you aim to run a factory at a minimum of 70
8 to 80 percent capacity utilization. If you don't then
9 you start descaling the factory, and that is a very
10 ugly picture.

11 MR. PETRONZIO: Okay. Thank you. Okay. In
12 terms of the repatriation from Germany and Mexico,
13 what is the current status of those factories? Are
14 they producing the same product line? What was the
15 decision or the timeline for the plan?

16 MR. BITZER: Again, it's Marc Bitzer. To
17 step back, we have been producing -- let me first
18 start with the Germany situation. We have been
19 producing front-loaders in Germany since that's what
20 we call the big U.S. size front-load washers, the 27
21 inch, producing since 2000 or 2001 -- correct me. 2001
22 -- which again was introduced as both a front-load
23 washer both in Europe and U.S -- it was a very similar
24 product -- and have steadily increased that production
25 since.

1 In 2008 we just made an assessment, A,
2 because the market was growing. What is the long-term
3 destination of the factory, I mean, or where should we
4 produce because back then if you have every year
5 several hundred washers in containers across the
6 Atlantic it's very expensive.

7 So we looked at where should we produce it.
8 We made an assessment between Mexico and U.S., which
9 is ultimately you look at labor costs, logistic costs,
10 because again you're talking about shipping a 200 or
11 300 pound product. It's a very expensive logistic
12 cost. We ultimately decided in favor of Clyde, Ohio,
13 because that's where we had the roots of our washer
14 factories, and we wanted to preserve the jobs there.

15 Today if you right now would look at the
16 factory there's significantly low volume because any
17 such transition and repatriation is a gradual process.
18 So we started ramping down one factory, ramping up
19 our Clyde, Ohio, factory, and we expect that complete
20 repatriation to be complete pretty much by summer of
21 this year from Germany.

22 The Mexico one we started slightly later
23 initially more to augment the Germany production, and
24 that's basically how it originally started, but also
25 here we made the strategic decision to kind of

1 basically concentrate all front-load production for
2 the U.S. in Clyde, Ohio, and not have different
3 production sites.

4 The logistic costs in that case were almost
5 the same as the labor arbitrage. That's why we said
6 we will repatriate it.

7 MR. PETRONZIO: Okay. Thank you.

8 MR. BITZER: Again, if you would look at the
9 return of business case which we presented to our
10 board in 2008 it's not a good picture because you
11 simply don't -- I mean, you don't have the prices nor
12 the volumes right now.

13 MS. DeFILIPPO: We're going to do one more
14 question.

15 MR. PETRONZIO: Okay. Here's a quick one.
16 So in terms of the export data, Mr. Greenwald, you
17 were saying in terms of the major exporters and as far
18 as our data set, would you say obviously that LG and
19 Samsung represent a huge part of the market?

20 Are you saying that would you consider those
21 obviously big exporters? Are we missing any big
22 exporters, or are there any other Korean producers
23 currently in our data set that you feel are missing?

24 MR. GREENWALD: Dr. Bitzer's testimony
25 mentioned they are exporting. I don't know the

1 volumes. I think they're much smaller. Korea is
2 essentially Samsung and LG, and much of this case is
3 frankly about Samsung and LG because they are the
4 problem, but Daewoo is in Korea, and then in Mexico,
5 you do have an issue of significance with whether or
6 not you get a full questionnaire response from
7 Electrolux.

8 MR. PETRONZIO: Thank you.

9 MS. DeFILIPPO: All right. We will go in
10 recess until 11:15 so the Commissioners can do the
11 vote in Furfuryl Alcohol.

12 I appreciate your patience in taking this
13 vote. You're welcome to stay in the room. It is a
14 public vote. But we will resume at 11:15 in case you
15 do step out.

16 (Whereupon, a short recess was taken.)

17 MS. DEFILIPPO: Welcome, everyone, and thank
18 you again for your patience while we voted on furfuryl
19 alcohol. We will resume where we left off. Mr.
20 Petronzio, do you have more questions or are you --

21 MR. PETRONZIO: Actually, I'm all set.

22 MS. DEFILIPPO: Okay.

23 MR. PETRONZIO: Thank you all for your time.

24 MS. DEFILIPPO: Thank you. We will now turn
25 to our attorney, Mr. von Schrittz.

1 MR. VON SCHRILTZ: Thank you, Cathy.
2 Welcome, everyone. Have a number of questions. Like
3 to begin with like product as that would appear to be
4 a live issue here. Now, you've already addressed the
5 like product factors but I do have a question. Now,
6 when it comes to the fungibility of the HE models, you
7 point to some advertisements that say your choice and
8 you note that the top load and the front load HE
9 models were often displayed side by side in the
10 retailers but would consumers ever cross-shop
11 conventional top load large residential washers with
12 HE top load and front load large residential washers?

13 MR. BITZER: It's Marc Bitzer. Yes, they
14 do. We are more than happy to in post filings give
15 you the consumer surveys. So what we typically do in
16 our company, every year we ask a sample of consumers
17 what do you have today, what do you intend to buy, and
18 we also ask what did you have previously? You see
19 quite a bit of move in particular between HE top load
20 and the HE front load, but also between HE top loads
21 and top load conventional. Even more, that it's more
22 and more people are moving just up into the HE
23 segment. So we have surveys we can provide you with.

24 MR. VON SCHRILTZ: Would consumers ever move
25 the other direction? In other words, they might

1 cross-shop a conventional and an HE model and decide
2 to go with the conventional?

3 MR. BITZER: Yeah, of course you will find
4 consumers, but in generally, the move has more been
5 from conventional into top load HE. What we've also
6 seen over past couple of years is initially there was
7 a move more from conventional top into front loaders
8 and now we see a little bit of move back from front
9 loaders to conventional top load. Again, that's on an
10 aggregate basis. Every consumer will have different
11 movement.

12 MR. GREENWALD: Let me, just to add
13 something that I hope isn't missed in all of this, it
14 all depends on relative pricing. If you offer a large
15 conventional top loader for \$1 and your price on the
16 high efficiency is \$1,000, my guess is you're going to
17 sell an awful lot of the conventional top loaders and
18 not too many of the high efficiency. Price matters,
19 and so when you look at consumer choices what you have
20 to think about is at what pricing?

21 MR. VON SCHRILTZ: Thank you. Now, the
22 channels of distribution for the three types of large
23 residential washers we're talking about are the same
24 for all three?

25 MR. BITZER: They are by and large the same.

1 I mean the only small difference you would find in
2 what we call the contract channel may be more
3 conventional top load, but these are marginal
4 differences. In principle, you would see the same
5 distribution, or, in other words, I don't think you
6 will find a retailer who would only assert front, or
7 only assert conventional top. Typically, I sold all
8 of them.

9 MR. VON SCHRILTZ: So most retailers stock
10 all three types of large residential --

11 MR. BITZER: Yes. I would almost dare to
12 say all retailers.

13 MR. VON SCHRILTZ: Now, you emphasize that
14 the major difference between the HE models and the
15 conventional models are the efficiency in terms of
16 water and electricity consumption. Now, are there
17 some additional features that HE models have that
18 conventional models don't have?

19 MR. BITZER: Again, it's Marc Bitzer. I
20 mean typically when you go up the price points, beyond
21 the energy efficiency, you also add other features.
22 So, first of all, most important is capacity. HE top
23 loads typically tend to be sold of larger capacity
24 than conventional, but then you have other more, I
25 would call decorative elements. Like, for example,

1 you would have a glass lid, you would have a dampener
2 on the lid close. So you typically add other features
3 just to also justify a higher price point.

4 MR. VON SCHRILTZ: Thank you. Could you
5 talk a little bit about how competition from subject
6 imports has affected the floor space that retailers
7 have allocated to your large residential washers?

8 MR. TUBMAN: I guess starting from the
9 initial part of the investigation period it has gone
10 down for us and gone up for importers. I mean, simply
11 stated, as they bring more products into the U.S.,
12 they gain floor space.

13 MR. VON SCHRILTZ: Could you supply some
14 information on that in your postconference --

15 MR. TUBMAN: We could. We keep a balance of
16 floor document over time and we can show that.

17 MR. VON SCHRILTZ: Excellent. Thank you.

18 MR. LEVY: This is Jack Levy. Just to
19 elaborate on that, the floor space issue really has
20 two dimensions. One is obviously when you lose floor
21 space you're naturally going to lose sales volume. If
22 the consumer doesn't see it on the floor, it's much
23 less likely to sell. The other dynamic is one where
24 retailers use a low priced offerings from subject
25 imports as a hammer to get domestic suppliers, like

1 Whirlpool, to lower its price, essentially saying you
2 will lower your net invoice price to me for a
3 particular washer, else you will lose this floor spot.
4 So the floor spot issue has two dimensions. One, a
5 lost sales dimension, the other, essentially it's a
6 driver of lost revenue in particular cases.

7 MR. BITZER: So again it's Marc Bitzer. To
8 elaborate that point a little bit more, first of all,
9 when we talk about floor space at retail, you always
10 talk about it's constrained space. So most retailers,
11 to entire washer category -- LRWs, if you also look at
12 dryers, they would typically have anywhere between 30
13 SKUs to up to 80, 90 SKUs. They will not expand the
14 floor space. It's very rare to expand floor space.
15 So, yes, it is a fight for who gets the first floor
16 space. Without flooring, you don't sell.

17 So, for example, to illustrate the point
18 that Jack was saying, when we launched this new front
19 loader after having repatriated from Germany we
20 initially had a price point in mind and then I think
21 even in the filing documents we give some testimony,
22 or give some evidence of this one, and we were clearly
23 told you will not get the floor space, in fact, you
24 will lose floor space at that price. We have a
25 competitive product at that price and if you don't

1 lower it to that price, you will not get the floor
2 spot. So that's a very typical discussion that you
3 would have a trade partner. If you don't get to Y on
4 price, you will not get the floor spot.

5 MR. VON SCHRILTZ: Thank you. That's very
6 helpful. Now, you mentioned that LG and Samsung both
7 introduced a top load HE large residential washers in
8 2010. Now, when did they enter the market for the
9 front load HE large residential washers?

10 MR. BITZER: First of all, just to clarify,
11 on the HE top load, but again, you probably may want
12 to ask the other side also for that, on that brand
13 business, LG, in 2010 and some later, Harper LG
14 supplies some products under the GE brand before that
15 time. It was the GE Harmony. So that was on the top
16 load. On the front load it's, but again, I don't want
17 to say anything wrong, I think it was around 2005,
18 2006.

19 MR. VON SCHRILTZ: Okay. Thank you. Yes.
20 I'm wondering, you mentioned that in your view subject
21 import competition has placed Whirlpool in a cost
22 price squeeze. Now, what are the factors that have
23 contributed to increasing costs? I mean given the
24 economy has sort of been in the doldrums, you would
25 expect a lot of costs to go down. What's been

1 happening?

2 MR. BITZER: Again, it's Marc Bitzer. Just
3 to clarify what we said, subject imports put pressure
4 on consumer and retail prices, the invoice prices, so
5 that, of course, drives down the overall margin. What
6 I was referring to as cost price squeeze is that
7 behavior is even more irrational taking into account
8 the price pressure you get from your input materials.
9 So that is, you know, typically in environments where
10 you over last decade basically, you've seen a
11 continuing trend of rising commodity prices.

12 Now, there's some ups and downs, but the
13 general trend has been going up both in steel, resins,
14 et cetera. We had over entire periods, but also, in
15 particular, in 2011, there have been significant
16 increases on your raw materials. Again, for us the
17 biggest one is steel and resins, which is basically
18 all denominated. So in that environment and not being
19 able to pass on material costs, it's even a double
20 whammy because your consumer price go down and your
21 import or input cost, they go up.

22 MR. VON SCHRILTZ: So the main raw material
23 costs that have increased over the period of
24 investigation have been steel and resins for you?

25 MR. BITZER: Again, it's Marc Bitzer. We

1 can give you a detailed breakdown of typical input
2 costs on a washing machine, but as you can imagine,
3 the biggest for washing machine is steel. There's a
4 fairly significant amount of steel coming in. Steel
5 has gone through ups and downs, and even though some
6 people are now referring to the steel prices going
7 down, they're still significantly higher than in 2010.
8 There was just in 2009 a little blip after the
9 initial break out of the crisis.

10 The other big component is oil which
11 indirectly finds its way in all kind of resins which
12 is not directly related, but it's a very strong
13 driver. As you all know, oil prices have, despite
14 global recession, have not gone down significantly.
15 They dipped in 2009 \$50 to \$60, and they're now back
16 above about \$100. That is a key driver. Then you
17 have other components and other raw materials which
18 also find its way, including all things like
19 significant amount of cardboard, which has also, has
20 been only known one way but up.

21 MR. VON SCHRILTZ: Thank you.

22 MR. BITZER: I'm referring to cardboard as
23 packaging, not as input for washer. No.

24 MR. VON SCHRILTZ: Now, you mentioned that
25 the Commission's quarterly pricing data might obscure

1 the impact of special promotions on market prices.
2 Now, I think we collected data on prices in November
3 of 2011, but speaking more generally, what do you
4 mean? How would quarterly pricing data obscure the
5 impact of special promotions on market prices?

6 MR. BITZER: I mean I can take it. Marc
7 Bitzer again. You know, in general terms, when you --
8 promotions drive significant volume up and down, but
9 as we indicated earlier, you basically, what you pull
10 forward is consumer demand, which is still essentially
11 around the replacement window. The consumer either
12 has an immediate need to replace a product or knows,
13 okay, I would have to pay \$20 to repair it, should I
14 buy or not?

15 So typically what happens in promotions, if
16 you take a Black Friday, you either, you have a little
17 bit pent up demand because consumers are just waiting
18 on that Black Friday because they know we have to
19 replace, but you're talking about the weeks of demands
20 now in the entire quarter where it's almost leveled
21 out. That's the counterintuitive nature of some of
22 these promotions. People buy quickly up, but an
23 entire quarter, actually, demand pretty much
24 stabilizes. Therefore, if you look at average price
25 data and average volume data for quarter, you may miss

1 these big moves which you have around promotional
2 windows.

3 MR. LEVY: Jack Levy. Kind of like to add
4 to that on the issue of quarterly pricing. I think
5 there are sort of two areas that will make reliance on
6 the quarterly pricing data a particular challenge for
7 the Commission in this investigation. The same issues
8 arise, frankly, in the bottom out refrigerator
9 investigation. One has to do with the valuation
10 issues themselves, the latter has to do with sort of
11 the products in the basket of a particular product
12 definition.

13 With regard to the prices themselves, you
14 have structured a questionnaire that allows you to
15 identify discretely gross invoice prices to the trade
16 partner and then separately certain back end discounts
17 to arrive at net net pricing on a FOB basis. In
18 particular there, you break up the back end between
19 things that are directly attributable to particular
20 SKUs being sold at a particular point in time, and
21 then things that are indirectly attributable such that
22 allocations need to be made over a broader base of
23 products or a broader period of time.

24 I think that is all exactly right. I would
25 simply caution you to look at the reported data with a

1 very cold eye and understand that there is a
2 tremendous risk of distortion, if not manipulation, in
3 the data. This has been a major issue in the Commerce
4 Department's investigation of dumping, so much so that
5 it had to reach adverse factual inferences for one
6 Respondent in the preliminary investigation. So I
7 would urge you to be, to scrutinize those data with
8 great care and understand what's going on because the
9 magnitude of back end adjustments can vary greatly
10 between SKUs and over time.

11 If a Respondent were to report things on a
12 peanut butter spread basis when a more direct
13 allocation could be made, it would mask underselling
14 in a big way. So that's the issue of valuation for
15 your attention. With regard to the product categories
16 themselves, as Dr. Bitzer has testified, large
17 residential washers are highly differentiated products
18 with all sorts of features up and down a product line
19 up. Each of these features, in principle, command a
20 different price.

21 So the product categories that your
22 questionnaires delineate are the relevant starting
23 point, but I think here, also, you've properly
24 separated between a Category A and a Category B and
25 instructed Respondents to provide back up detail of

1 what SKUs are in the basket. So this may be one of
2 those investigations where it becomes important to
3 sort of look behind the curtain and understand what
4 SKUs are in the average and what's going on with
5 product mix that might explain relative differences in
6 price, because product mix can be another source of
7 distortion in making quarterly price comparisons as
8 between subject imports and the domestic like product.

9 MR. VON SCHRILTZ: Thank you. That's very
10 helpful. I think you mentioned that this past Black
11 Friday Whirlpool, in fact, I think you showed us an
12 exhibit indicating that Whirlpool didn't discount any
13 of its large residential washers over \$150 per unit.
14 You also mentioned that Whirlpool really didn't
15 discount its large residential washers aggressively
16 during this past Black Friday while LG and Samsung
17 did, according to you, aggressively discount their
18 models, and, as a result, your exhibit indicated that
19 there was a huge spike in sales of those discounted
20 models. Now, why didn't Whirlpool aggressively
21 discount its large residential washers during this
22 last Black Friday?

23 MR. BITZER: We would like to make some
24 money. That's a simple answer. No, but to expand a
25 little bit more, the exhibit what you saw before

1 refers to front loaders, just perfectly clear. So
2 probably on top load HE, we would have to do the same
3 analysis, you would find some discount. I don't know.
4 We'd have to do the same analysis. It's front
5 loaders and front loads we did not do any heavily deep
6 discounted products. The simple reason of this one is
7 the economics in the front loads business.

8 Even post repatriation and post any start up
9 costs or anything else are so negative, it just
10 doesn't make sense for the fronts. The other point is
11 very simply also is, it comes a little back to our
12 earlier point, this is largely replacement markets.
13 There's only so many consumers you can pull into that
14 window. It's not that you just make a spontaneous
15 impulse purchase, honey, I bought a second washer.
16 You just don't do it. So the economics, the return
17 that you have on putting someone in the market and
18 then having a much higher unit sales just doesn't
19 justify it.

20 MR. TUBMAN: Just one point of
21 clarification. The way the data is looked at, it's
22 month over month, so to be clear, we had sales on our
23 front load washers, but they weren't as deeply
24 discounted month over month.

25 MR. VON SCHRILTZ: So the discount is just

1 comparing the prices in October with the prices in
2 November.

3 MR. TUBMAN: Correct.

4 MR. VON SCHRILTZ: Okay. Thank you. Now, I
5 think you answered one of my questions earlier. I
6 think I heard you say, Mr. Bitzer, that when you're
7 choosing between producing your front load HE large
8 residential washers in Mexico versus Ohio, that
9 Whirlpool determined that the labor cost advantage of
10 producing in Mexico was wiped out by the logistical
11 cost disadvantage of producing in Mexico.

12 MR. BITZER: Again, it's Marc Bitzer. By
13 and large. I mean technically speaking, back then if
14 you go down to the last cent, you probably still would
15 have produced Mexico, but then again, it's not always
16 about the last cent, so we made the decision in favor
17 of Clyde. It's true that the logistic cost almost
18 outweighed the labor cost arbitrage.

19 MR. VON SCHRILTZ: And your Mexican plant is
20 still producing large residential washers. Where will
21 they be sold?

22 MR. BITZER: The Mexican plant is still
23 producing LRWs. First of all, there's a fairly, not a
24 small, domestic home market, and then there's quite a
25 bit of exports into Central America.

1 MR. LEVY: And also Canada.

2 MR. BITZER: Yes, and Canada. Sorry.

3 MR. VON SCHRILTZ: Will you also be serving
4 the Canadian market from the Ohio plant?

5 MR. BITZER: The Canadian market has been
6 served from our Ohio factory for about 60 years now.

7 MR. VON SCHRILTZ: Thank you. Now, I've
8 also heard, I believe I heard you mention that you
9 haven't really reduced your workforce a whole lot in
10 large residential washers over the period of
11 investigation. Why is that? I mean you testified
12 that your large residential washer business is not
13 doing well. Why wouldn't you have reduced your U.S.
14 workforce in response?

15 MR. BITZER: First of all -- again, it's
16 Marc Bitzer -- if you would go back further in time,
17 you would see that the workforce is quite a bit
18 smaller when, you know, in its peak. The factories
19 today not producing the capacity, not even remotely,
20 on these levels which I mentioned before. The fact
21 that you didn't see a huge reduction workforce is
22 again simply reflection of repatriating products into
23 Ohio. So basically, the equivalent of what we used to
24 have in Schorndorf, which was like 600 or 700 people,
25 you would find that, but to a lesser extent back in

1 Ohio because we never got the volume back.

2 MR. VON SCHRILTZ: So you're saying that
3 absent the repatriation of these front load HE models
4 to Ohio, there probably would have been employment
5 reduction.

6 MR. BITZER: You would have seen more for
7 employment reduction.

8 MR. VON SCHRILTZ: I have no further
9 questions at this time. Thank you.

10 MS. DEFILIPPO: Thank you, Karl. Mr. Deese,
11 questions, please, for this panel?

12 MR. DEESE: Hi. I'm Bill Deese from the
13 Office of Economics. I just have a few questions
14 about prices. You've already explained how the
15 minimum advertised price works fairly well, so I just
16 have a couple of things to clarify. Could you explain
17 in a little more detail what it means to, and maybe
18 give some examples, to offer a retailer allowances for
19 promotion and offer them machines on a buy in basis?
20 Could you explain what those terms mean?

21 MR. TUBMAN: Sure. Sure. It's Casey Tubman
22 again. First of all, as far as an allowance, so we
23 work from an MSRP, obviously, the suggested retail
24 price. We have a MAP, which is minimum advertised
25 price, again, to protect our brand integrity and the

1 value of it in the marketplace. That said, retailers
2 alone can determine their selling price. So while we
3 may incent them to sell at a certain price, we use
4 allowances to do that. You might hear that word,
5 allowances, or TPI, trade partner investment, money.

6 The way it works is we would structure it to
7 say -- say it was a \$999 product and we were going to
8 go to \$899 with it, so it's \$100. Say they were
9 making 30 points of margin on that at \$999. When they
10 bring it down to \$899, they're going to make less
11 dollars and also less points of margin. We would help
12 make some of that up. Typically, it's not to the full
13 extent of the dollars, it's typically to the extent
14 that we try to keep them near whole on their margin
15 percentage, but at the same time, then, we would pay
16 that allowance to cover that difference.

17 MR. DEESE: So that you're in effect
18 lowering the invoice price to them.

19 MR. TUBMAN: The invoice price stays the
20 same but it is paid separately as an allowance, so,
21 but, in effect, that net, yes, it brings it down.

22 MR. DEESE: Okay.

23 MR. TUBMAN: Does that help? Okay.

24 MR. DEESE: Yes, that helps.

25 MR. BITZER: Again, it's Marc Bitzer. But

1 that can take numerous forms. So you would find
2 retailers where you would see it actually an invoice
3 price, you would find retailers where we would make an
4 RSA in which there's a shop floor allowance, you would
5 retailers where this is paid on sell through and not
6 sell in. So I think the way how the support of margin
7 would show up is, I would argue, would find 100
8 different ways.

9 MR. DEESE: So what happens then in the case
10 say a retailer buys a large number of machines from
11 you. What if one of the models doesn't sell? Is the
12 retailer stuck with them, or does he move them out
13 back to you?

14 MR. TUBMAN: Typically, we have two types.
15 As Marc mentioned, there's the buy in and there's also
16 sell through allowances. We try to operate the
17 majority of our business on sell through promotions,
18 so as they sell, we then would reimburse them for the
19 allowance money on that sale. For a small portion of
20 our business, we do it on a buy in, so they can buy an
21 amount. If they don't sell through them, they've
22 boughten them at a lower cost and are able to continue
23 to sell them and make, at the lower price and try to
24 sell through them quickly.

25 Otherwise, they can sell them, again, at

1 full price and make a higher margin in their pocket
2 and stretch it out over time. Typically, we only do
3 that for the very small, I'll call them mom and pop
4 type stores, which can't have large buy ins. They
5 don't have anywhere to store them. Our larger ones
6 that have warehouses of their own we would do on a
7 sell through basis.

8 MR. BITZER: The other point which I want to
9 clarify -- again, it's Marc Bitzer -- between our
10 context may be slightly different than in Respondent's
11 context, given that we have our factories in U.S., our
12 supply chain is fairly short, which also means our
13 retailer, there's -- with the huge, we load you versus
14 huge buy in, you're stuck on a huge amount of
15 inventory. That's the benefit of having production in
16 U.S. You basically have a very, very short supply
17 chain. You pretty much ship what you have sold the
18 last week. That's the fact what we do. So we don't
19 have the issue of, okay, here's a boat load coming,
20 you sell in program, and now, how do we get rid of
21 inventory?

22 MR. DEESE: Okay. I have one more question.
23 You talked about floor space and pressure to reduce
24 price in order to maintain floor space at different
25 retailers. I get the picture that most people buying

1 washing machines actually go to retailers and look at
2 them, but I've also heard that if you buy them say
3 over the internet, you have a choice of a greater
4 number of models. Could you comment on the importance
5 or the unimportance of sales over the internet?

6 MR. BITZER: Again, it's Marc Bitzer. The
7 U.S. data for online sales in appliances in general is
8 7.8 percent of the total market, or 7.9 percent. I
9 think I would say in the case of washing machines, or
10 LRWs, it should be pretty much the same. We can
11 probably reconstruct it. So the actual amount of
12 transactions is somewhat limited. As a side note,
13 these transactions would be typical brick and mortar,
14 i.e., a Home Depot online or Sears, it will be pure
15 players, like an Amazon, even though that's very
16 small, or manufacturer direct. So it's compromise.

17 So the actual online portion is somewhat
18 smaller. What is true, and that's what I guess what
19 you're alluding to, is that the online or the internet
20 has replaced newspapers as the number one information
21 source, so typically what you would find is that 60
22 percent of consumers prior to entering a store have
23 visited internet.

24 MR. DEESE: So do you market any washing
25 machines directly through the internet instead of

1 going through a retailer?

2 MR. BITZER: Again, it's Marc Bitzer. The
3 only thing which we market directly is VIP online to
4 our employees. We have a friends and family program
5 and we have a small outlet store where we basically
6 sell discontinued product online, but not company
7 direct. That would create somewhat of some
8 discussions with some trade partners.

9 MR. TUBMAN: You did ask a question about
10 selection as far as online versus in the store. I
11 just want to make sure we answer that. Typically, in
12 the store, they are able to order all the selection.
13 It's not that it would be limited. So if you came in
14 as a consumer and saw one on the floor but wanted one
15 that had a glass lid, per se, on it, you would then
16 just special order that product and they would have it
17 shipped it. So from a selection standpoint, it
18 wouldn't be different.

19 MR. DEESE: Okay. Thank you very much. I
20 have no further questions.

21 MS. DEFILIPPO: Thank you. Mr. Yinug, do
22 you have any questions for the panel, from you for
23 this panel.

24 MR. YINUG: Thank you for your questions,
25 especially on product features and product production

1 process. I just want to ask a couple more follow-up
2 questions in those areas, and perhaps a couple others.
3 On Exhibit 7 of your presentation you list a number of
4 I guess performance features. I just want to clarify.
5 The difference between the high efficiency machines
6 and the conventional is strictly water consumption and
7 energy consumption. Can the performance features that
8 are listed for these and other machines, the range of
9 those features, can they be included in all three
10 types?

11 MR. BITZER: Again, it's Marc. If you refer
12 to Exhibit 7 so that I can go through that list and
13 Norbert can also chime in. Color, yes, you can apply
14 to anything. However, what you would typically see is
15 that on the low end conventional you would see few
16 silver or chrome-plated washers, but you can apply it.
17 It's basically, as I said before, it's a
18 manufacturing process. You basically put the cabinet
19 through a big paint shop. So that's irrespective of
20 platform.

21 Capacity, again, there is no structural
22 reason why one and not -- what typically happens is
23 that HE top loaders tend to have a higher capacity
24 than conventional. As I mentioned before, we have
25 also hybrid in between where we can use a platform

1 which we largely have on conventional which has an HE
2 but for smaller capacity. So, again, it's more, it's
3 your choice. VRT is a Samsung-specific vibration
4 reduction. We have similar technologies. Again, you
5 can apply to multiple platforms.

6 By the way, irrespective of front or top
7 loader. Typically the reduction technology is direct
8 drive drive systems or to fairly complicated
9 counterbalancing algorithms which you can apply on
10 both front and top loaders. Steam, you have it on
11 both between front and top. Energy efficiency, again,
12 I mentioned before that's a continuum and you can have
13 it on both.

14 MR. YINUG: Okay. So there's no real
15 product features besides the energy consumption and
16 water consumption that would distinguish a
17 conventional from a high efficiency?

18 MR. GREENWALD: I think the answer is no.

19 MR. YINUG: Okay.

20 MR. BITZER: I think what you may hear is
21 that one is typically sold with an impeller and the
22 other one is an agitator. That's to achieve to --

23 MR. YINUG: Okay. Now, from the point of
24 view of your consumers, hypothetically, if they didn't
25 consider, if price wasn't a consideration, and this is

1 all completely hypothetical, if price wasn't a
2 consideration, can you provide some insight on what
3 product features listed here or others that are
4 available in the washing machines that they typically
5 view as important to them and less important to them,
6 so, to sort of distinguish between important features
7 when they shop and less important features?

8 MR. TUBMAN: It's Casey Tubman. When the
9 consumer comes in, a lot of the times you'll find out
10 whether they're a, I'll call it a full family with
11 multiple children so they're looking at capacity, or
12 they don't need capacity if there's maybe only two of
13 them at home. So capacity is one of the features that
14 they look at. The energy and water consumption of it,
15 that's a comparison. They're using the energy tag to
16 do that, visit E-Star. Does it have a tier rating?
17 Does it have a tier rebate?

18 One thing that hasn't been mentioned today
19 is there are sometimes utility rebates for products
20 that have different energy standards tied to them so
21 that will come into play. Then you might hear someone
22 ask about a noise piece on washers sometimes. That's
23 a fourth thing that will come into play. You have
24 aesthetics that come into play, glass lids. I mean a
25 lot of times consumers coming in now, they haven't

1 been in the market for 10 years. We have to educate
2 them, the sales associate needs to educate them on
3 what's available.

4 They come in thinking I'm buying what I had
5 10 years ago and 10 years ago, I mean most people were
6 buying an agitator washer. Now they're coming in and
7 they're seeing much bigger capacities, they're seeing
8 stainless steel tubs, they're seeing no agitator in
9 the washers. So other features come into play at that
10 point in time, and typically, they have to be educated
11 on those, and then you'll find out what's important to
12 that consumer that's coming in.

13 MR. YINUG: Okay. So it can vary based on
14 the customer.

15 MR. BITZER: The only thing which I want to
16 add is what you would also hear many consumers just
17 simply ask for reliability. What is typically
18 referred to were *Consumer Reports*, also have long-term
19 reliability, which, as a side note, fundamentally
20 different from J.D. Powers which is just the first
21 year satisfaction. So typical consumer asks what
22 lasts longest, which is a multiyear reliability study
23 based on consumer unit reports, and that's, on this
24 line you would find us faring very, very well.

25 MR. YINUG: Okay. A question on the

1 production process. You mentioned in your
2 presentation the production process. I think in your
3 petition you broke down materials into three general
4 categories: bulk, cut, shaped, painted pieces and
5 then component systems. In terms of the value of the
6 typical washer, can you sort of provide a breakdown
7 how much each component is part of the value of the
8 actual washer?

9 MR. LEVY: I think we'd be happy to address
10 that but given the proprietary nature, we'll do so in
11 a postconference briefing.

12 MR. YINUG: Okay. Also, the development of
13 new product features or advances in existing features,
14 how much typically do you devote to trying to either
15 increase innovation in current features or create new
16 features? I've heard often the term smart feature in
17 describing certain new models of washers. Do you
18 consider product development a major factor in what
19 you do to maintain competitiveness?

20 MR. SCHMIDT: Yeah. Absolutely. This is
21 Norb Schmidt. I think I'm on. We invest
22 significantly every year. You heard Marc talk about
23 our commitment to invest over \$1 billion in
24 innovation, in bringing innovation to market in major
25 home appliances. In fact, just recently \$175 million

1 investment in Clyde alone to bring innovation in
2 washers. If you just look at this year, and again,
3 maybe given the proprietary nature of some of it, we
4 can provide that information today to the group, but
5 we invest significant money to bring new innovation,
6 new features that win with consumers in the market.

7 MR. BITZER: It's Marc Bitzer again. Just
8 in what's somewhat proprietary, we have more than
9 1,000 engineers doing nothing else than washer
10 technology development just in U.S. So it is a fairly
11 significant amount of people working on this one.
12 That is typically along how do you get to the next
13 level of energy/water consumption? It is typically
14 about the basics of how do you improve washers? I
15 mean just cleaning, basically washing. You would have
16 engineers working on how do we find a result that you
17 can multicolor, all in one load without color
18 dilution. So it goes back to the fundamental basics
19 very often.

20 MR. YINUG: Okay. Thanks. Well, you also
21 mentioned -- this is a different focus -- you
22 mentioned certain firms that have closed recently
23 during the period of investigation. I think you
24 mentioned Electrolux. Can you provide any other
25 events or of closings or transfers during the period,

1 or, also, we'd also be interested knowing about the
2 major events in the industry, including curtailments
3 in production, acquisitions, expansions, renewed labor
4 contracts, et cetera, major events in the industry,
5 and happy to provide it in a postconference brief.

6 MR. BITZER: Again, it's Marc Bitzer. I
7 mean a general industry world that was referring to is
8 the Bosch closure by front load factory in New Bern,
9 Carolina. Electrolux. They had a production at Sioux
10 City, Iowa, which been moved to Juarez, Mexico.
11 Fisher Paykel had a production in Ohio which I think
12 they moved to Thailand. So that's, these are the
13 major events of factory moved as such. In terms of
14 repatriation, from my knowledge, we are the only one
15 who moved production back, which in that case was
16 front loads from both Germany and Mexico.

17 There have been press announcements and
18 press releases that GE plans to move production back,
19 but so far it's not yet in the marketplace. GE is
20 today sourcing product, front loads, from Little Swan
21 in China, and top loaders, high efficiency top loaders
22 from LG, and conventional were produced themselves.
23 Beyond this one, I'm not aware of a material made
24 acquisition which would have changed the picture
25 completely. There has not been kind of labor contract

1 changes you talk about. It's, you know, typically one
2 or two percent increases on an annual basis on the
3 labor cost, but it's tiny in the broader context of
4 product cost.

5 MR. LEVY: Correct me if I'm mistaken, but I
6 do believe that GE also produces some high efficiency
7 top loaders in the U.S. Is that right? Okay. That's
8 correct.

9 MR. YINUG: Okay. I thank you. That's it.

10 MS. DEFILIPPO: Thank you. Mr. McClure,
11 questions from you?

12 MR. MCCLURE: Jim McClure. Nice to see all
13 of you again. I've been trying to decide which is the
14 most apt analogy, whether it's deja vu all over again
15 or Groundhog Day. When in doubt, I always go with
16 Yogi. Staff has asked most of my questions, and in
17 the course of your very useful responses, you've
18 addressed many of my thoughts. One quick thing. You
19 mentioned that Bosch had applied for and been approved
20 for trade adjustment assistance. What about
21 Electrolux and Fisher Paykel?

22 MR. LEVY: I think the answer in both cases
23 is yes. We will provide you in our postconference
24 submission copies of the relevant documentation from
25 the U.S. government.

1 MR. MCCLURE: Yes, they've applied, or yes
2 that they've applied and been certified?

3 MR. LEVY: I believe the latter, although
4 I'm not an expert on trade adjustment assistance, but
5 I think that the analysis that applies is different to
6 some degree when you're closing a plant because of
7 imports on the one hand and you're making an internal
8 global corporate business decision to relocate, and so
9 it's sort of, you know, you're doing it to yourself on
10 some level when you move a plant to Iowa to Juarez,
11 Mexico, whereas if it's in the case of Bosch, there's
12 only one way to look at it.

13 So I think that the language used by the
14 Department of Labor in the case of Bosch was clear
15 that imports contributed importantly. In the case of
16 Electrolux and Fisher Paykel, we'll provide you with
17 those materials, I think the language recited by the
18 Department of Labor in approving trade adjustment
19 assistance is different.

20 MR. MCCLURE: Okay. Thank you. That's all
21 I had.

22 MS. DEFILIPPO: Thank you, Mr. McClure.
23 Most of my questions have been answered. I've learned
24 a lot, particularly that probably the noise that comes
25 from my basement that I have affectionately referred

1 to as the washing machine dance is probably not a good
2 thing, so I may be in the market sooner rather than
3 later. A couple of sort of clean up questions that
4 come along after some of the ones that people had
5 asked earlier.

6 I think Mr. Deese was asking some about the
7 discounts. You talked about, or there was talk about
8 discounts being tied to specific SKU, and then some
9 that weren't. Are there discounts -- if they're not
10 tied to a specific SKU, are they still tied to washing
11 machines or are there discounts that you give that
12 spread across different products: washers, dryers,
13 refrigerators, other appliances?

14 MR. TUBMAN: They would typically be tied to
15 washers. There are, however, across retail trade
16 partners what you call volume rebate incentives which
17 would encapsulate more than just the laundry business.

18 MS. DEFILIPPO: Okay.

19 MR. LEVY: And if I could amplify on that.

20 MS. DEFILIPPO: Sure.

21 MR. LEVY: If the question is not just about
22 Whirlpool but perhaps Respondents, what we would
23 expect to see, based on Whirlpool intelligence, is
24 that you will have some incentives that are tied to
25 SKUs, others that are tied to large residential

1 washers, others that are tied to appliances generally,
2 and others that encompass brown goods, like flat panel
3 displays sold at a given retailer.

4 MR. GREENWALD: In the refrigerator case
5 there was a very serious problem, if you recall, about
6 the way in which Respondents reported their discounts.
7 From what we have seen, and without going into any
8 detail, those same sorts of problems have come up in
9 this case.

10 MS. DEFILIPPO: If you want to be specific
11 in your brief and elaborate on that, please do so we
12 can ensure where you're looking at it. We talked a
13 little bit about features and I don't know if this was
14 asked this way. This was an issue that's coming to
15 mind from the refrigerators case. In terms of sort of
16 the universe of features, are there any significant
17 features or any features that are specifically offered
18 by either you or the subject imports?

19 I think there were some different features
20 in the refrigerator case that were available in
21 subject imports and not domestic or vice versa, but
22 are there any features that are just something that
23 you offer or just something that the subject imports
24 offer?

25 MR. BITZER: I can give a shot. It's Marc

1 Bitzer again. First of all, we will be happy to
2 replace your front load washer, but then we don't want
3 to inference --

4 MS. DEFILIPPO: Mine's a conventional top
5 load.

6 MR. BITZER: So on the feature question, I
7 would argue most features can be replicated by
8 everybody else. Now, you will probably hear different
9 arguments. So, for example, I would expect when
10 something says VRT, vibration reduction is unique.
11 You can achieve reduction of vibration basic through
12 direct drive drive systems, and then the algorithms,
13 in particular in front load, how they counterbalance
14 is recalculate every time it spins around.

15 Some of the basic technologies you can
16 achieve in multiple different ways. There have been
17 unique color codes which again can be over time
18 replicated everywhere else. So if you would say,
19 well, that specific can be cherry or whatever color,
20 yes, but by and large, those features can be
21 replicated.

22 MS. DEFILIPPO: Okay. Thank you. In terms
23 of the different sort of the continuum we've talked
24 about, the conventional top load, high efficiency
25 front load, high efficiency top load, I think I

1 understand that sort of the conventional was the
2 first, but then you went to the high efficiency front
3 load and then to the high efficiency top load. It
4 seems, I'm wondering why we didn't go top load, high
5 efficiency. I mean is there any reason why top load
6 came later?

7 MR. BITZER: First of all, step back in
8 time. Conventional top load has been around for
9 basically 100 years. Front load were introduced in
10 1937 --

11 MS. DEFILIPPO: Really?

12 MR. BITZER: -- by Bendix. We start
13 producing our first front load in '40s and '50s both
14 in Europe and U.S. So they've been around for a very,
15 very, very long time. Most people would argue the
16 front load segment has been reinvented by the Maytag
17 Neptune, but the product itself has been around for
18 many decades. Basically, when you, what you back then
19 saw on the market was, on one hand, this front load
20 appeal, which also came with a pretty nice and new
21 design, and the conventional top loads. Then we, kind
22 of looking at this market development, they said,
23 okay, there must be space in between, which is the
24 high efficiency top load which basically gives you the
25 efficiency of a front loader and also the more modern

1 designs. That's basically how it evolved.

2 MS. DEFILIPPO: Okay. Thank you. That's
3 helpful. Is brand loyalty a significant factor in
4 this market?

5 MR. TUBMAN: I'll answer it. This is Casey.
6 Yes, it is to a certain extent. At the same time,
7 when price comes into play, for the most part, people
8 can be swayed between brands.

9 MS. DEFILIPPO: The last question I had was
10 we talked a lot about the deeply discounted SKUs and
11 how Black Friday can, you know, there's a large volume
12 being sold around that time and that that can distort
13 some of the data. It seems like there's been an
14 increasing number of discount days: Columbus Day,
15 President's Day. Do you agree with that? I mean over
16 the last -- I'm now very attuned to looking in the ads
17 these days, but it seems like there have been more of
18 these discount days. Would you see any similar
19 pattern in other months around a Columbus Day or
20 around a President's Day?

21 MR. BITZER: It's Marc Bitzer. Yes. You're
22 right. There have been quite a bit of proliferation
23 of these days. I mean there's Columbus Day, there's
24 Fourth of July, there's Earth Day, which we call
25 scorch the Earth day because of our promotions. I

1 mean there's been an extreme variety of promotional
2 days. The most extreme on a full year base is still
3 the Black Friday which morphed from a Black Friday
4 into a black week into a black month. So it's an
5 extended promotional period, basically, right now.

6 The economic reason for this one is
7 questionable because in a market where you have a huge
8 replacement demands there's just so many consumers on
9 whom we can pull forward. The discretionary purchase
10 is very little and that's why it's highly questionable
11 if these spikes make sense from an economic
12 perspective.

13 MR. GREENWALD: But let me sort of close our
14 response with the lesson that these data allow for
15 your, for the threshold question of is the market
16 responsive to price? What Black Friday offers you and
17 what none of the other holiday promotions do is
18 essentially a full month for comparison. Both Samsung
19 and LG began their Black Friday promotions this year
20 very early on, around Veteran's Day, I think. So you
21 had a test of relative impact on pricing, on purchase
22 decisions, simply comparing October data and the NPD
23 pricing in that to November data. We know what we
24 did, and you can tell by the NPD pricing which models,
25 which SKUs, were reduced by \$150 or more. The results

1 were simply staggering. It is impossible to look at
2 these data and come away saying price discounting
3 doesn't matter in this business.

4 MS. DEFILIPPO: Okay. I don't know if
5 anyone asked for that, but to the extent you have this
6 data for the other two types of washers, if you could
7 include that in your postconference brief, that would
8 be interesting. With that, I am done with my
9 questions. I'll look up and down the table, see if
10 anyone has any additional ones.

11 MR. VON SCHRILTZ: I have one.

12 MS. DEFILIPPO: All right.

13 MR. VON SCHRILTZ: Hi. Karl von Schrilzt.
14 I do have an additional question. I went back and
15 looked at the Respondents' opening statement and there
16 was something that I thought I would ask you to
17 address. Yes. I believe that Respondents claimed
18 that Whirlpool began heavily discounting its top load
19 HE large residential washers in 2009, before LG and
20 Samsung had introduced their competing top load HE
21 models. What's your view of that?

22 MR. BITZER: It's Marc Bitzer, and Casey can
23 also add. I would object to that view. Actually, our
24 top load high efficiency business was so successful it
25 actually up until summer 2010, and I don't want to get

1 in too much proprietary, was one of our most
2 profitable businesses. Actually, as late as of summer
3 2010, we actually even had to expand capacity on that
4 specific line. So the notion that we lowered the
5 price at that period is just, I mean it didn't make
6 sense. I mean why would you lower your price in your
7 most profitable business? You have capacity
8 constraints but you have to expand capacity. Casey?

9 MR. TUBMAN: I think that's exactly right.

10 MR. VON SCHRILTZ: Thank you.

11 MS. DEFILIPPO: Thank you. With that, I
12 believe we are done with our questions. Again, I
13 thank you all very much for coming and presenting both
14 your direct testimony and being very patient with us
15 while we asked a number of questions but it's been
16 very helpful in our understanding of the product. It
17 is a little after 12:00. We'll take a 15 minute break
18 just because we've had one and I know people are
19 probably trying to get back home after, before a
20 weekend. So we'll come back 12:18. Thank you.

21 (Whereupon, a short recess was taken.)

22 MS. DEFILIPPO: Welcome back, everyone, and
23 welcome to the panel here that is the group of
24 Respondents speaking in opposition to imposition of
25 antidumping and countervailing duties. Welcome, Mr.

1 Cunningham. Are you taking the lead on this panel?

2 MR. CUNNINGHAM: I am, indeed, Ms.

3 DeFilippo.

4 MS. DEFILIPPO: Excellent.

5 MR. CUNNINGHAM: It's good to see you all
6 again including the imuno -- at my far left of Mr.
7 McClure who assumes he saw me today express great
8 surprise that I was still alive. I'm Dick Cunningham.
9 I'm counsel for LG Electronics in this proceeding.
10 I'm going to say some harsh things today, harsher than
11 I intended to actually about some of the data
12 presented by Petitioners, but I want to begin by
13 saying some nice things.

14 Now, what I mean here is nice things about
15 the staff. Staff here does a great job and always
16 does a good job with the questionnaires, but in this
17 case you have done a particularly good job in two
18 absolutely critical areas of the questionnaire. The
19 first is, as you have heard in the testimony today,
20 there are no imports of conventional washers. There
21 are only imports of HE washers.

22 The staff has done an immensely useful thing
23 by dividing the financial data in your requests and
24 other data requests among the three categories of HE
25 front load, HE top load and conventional top load.

1 That will be of great assistance, and I will show you
2 today how it is really important in analyzing the
3 injury issue in this case, and I emphasize the injury
4 issue because you don't get a whole lot of preliminary
5 determinations in which the clearest issue is that the
6 domestic industry is not suffering injury.

7 Most preliminary injury cases we wallow
8 about in the intricacies of causation and try to
9 determine whether harm the domestic industry is
10 obviously suffering is in fact caused by imports or by
11 something else, and certainly there is a causation
12 issue that you can look at here, particularly
13 underselling again, but the clearest most dispositive
14 issue in this case is the domestic industry simply is
15 not injured, and I'm going to explain that to you.

16 The second thing that you've done in the
17 questionnaire that's immensely helpful is that you've
18 expanded the pricing requests beyond what was done in
19 the Refrigerator case to go to indirect discounts as
20 well as direct discounts. You have heard today, and
21 you will hear more today, that there are all sorts of
22 ways in which discounts are granted by manufacturers
23 to retailers. I think Mr. Bitzer said hundreds of
24 ways.

25 What you have also heard, and will hear more

1 about is that the practice of Whirlpool and its
2 companies is to emphasize much more heavily the
3 indirect discounts whereas the two companies you see
4 here focus more on the direct discounts. Therefore,
5 getting both is critically important to your analysis
6 of the relative pricing, and particularly
7 underselling, in this case.

8 Now, before going forward, let me say, as I
9 announced, I'm going to say some kind of harsh things.
10 I know in a public hearing you are dealing as an
11 arguer with data that you're reluctant to deal with it
12 on the confidential APO data, so you present other
13 public data, and that's fine, except in my view, you
14 have an obligation not to present public data that you
15 know is inconsistent with the data that you, yourself,
16 have presented to the Commission in confidence, and
17 which shows different, more favorable trends, more-
18 favorable-to-your-case trends, than the data that you
19 have submitted to the Commission in your confidential
20 questionnaire responses and in your petition.

21 I'm going to talk about a couple of those
22 things because I got a little angry today. At any
23 rate, let me say at the outset that I have
24 distributed, and I think everybody has a copy of a
25 statement of mine that I'm going to walk through that

1 has blanks in it. The blanks are confidential data.
2 I will describe it without tip-toeing over the APO
3 line, but there is a confidential version of this
4 which we will be serving as soon as possible after the
5 hearing on the staff and on all parties.

6 Let me go to that statement now, if I may,
7 and I let me start with what I think is the
8 fundamental and clearest point in this case, which is
9 that the domestic industry is not materially injured.
10 At the outset, one thing that we and Whirlpool agree
11 on is this case is basically about Whirlpool.
12 Whirlpool is the domestic industry. There is a very
13 high percentage of domestic large residential washer
14 production represented by Whirlpool. The confidential
15 version of my statement has the data taken from
16 Whirlpool's and the questionnaire data.

17 We and Whirlpool agree that the issue of
18 material injury is whether Whirlpool is injured here,
19 but more specifically I'm sure there are some other
20 companies that during the period did some production
21 in the United States. General Electric still does
22 some production, but I think we would all agree that
23 if you were to find that Whirlpool is not materially
24 injured, you can't find that the domestic industry is
25 materially injured.

1 What's eminently clear here is that
2 Whirlpool is not injured in either of the ways, volume
3 or price, that the effective imports can be felt in
4 the domestic producer's operating results. Now let me
5 look first at Whirlpool's volume, and here I would
6 direct your attention to Table 13 from page 162 of the
7 petition. In my statement, there is a big blank page
8 at the end which contains that table that has all of
9 the description of what it says, but none of the
10 numbers.

11 That statement traces Whirlpool's production
12 through the period of investigation. The first line
13 of it does that, and let me quote Whirlpool, what they
14 say about that, "Whirlpool's domestic production rose
15 from 2008 to 2010, and did not fall significantly in
16 the first nine months of 2011." Now, I would suggest
17 to you that that's important, but not as important as
18 the second and third lines of the table, which are
19 Whirlpool's U.S. commercial sales in both units and
20 value.

21 If imports had a volume effect on Whirlpool,
22 it would be reflected in Whirlpool's sales volume, and
23 where you see a domestic industry that sales volume
24 and sales value are continuing to rise throughout the
25 period, I submit to you that the Commission in cases

1 like that has said even if imports volume has
2 increased faster, and imports volume has taken greater
3 market share, you do not have an injured domestic
4 industry if its sales results are continuing to
5 improve despite the fact that imports may be doing
6 even better. I suggest to you that that's what you
7 have in this case.

8 Look at, in particular, I would suggest, at
9 the most recent nine month's data in the right column
10 on the second and third lines. That is the last nine
11 months of the period of investigation. I don't think
12 you can see a domestic industry that's injured when
13 you read that figure in conjunction with the figures
14 in the earlier months in the earlier years. Okay.
15 But of course, the domestic producer or industry can
16 also feel injury from imports' prices. It can force
17 down their prices.

18 The important factor in this I would suggest
19 to you is not to look at trends in the market and
20 pricing and things like that. The key thing in terms
21 of whether an industry or a company is injured in
22 terms of its prices is the trend of its realized
23 prices. If its realized prices are doing well, it is
24 not suffering price injury.

25 Now, I've got a line here taken from the

1 petition Exhibit 2, the last page of that petition,
2 which shows Whirlpool's realized prices on its large
3 residential washer sales throughout the period of
4 investigation. I urge you to look at that and
5 determine for yourselves whether there is any pricing
6 impact adverse to Whirlpool in this case, so whatever
7 was the trend of import prices, or even whether they
8 were underselling, they simply did not result in a
9 trend in Whirlpool's prices that you could find to be
10 injurious. It's absolutely inconsistent with a claim
11 of material injury.

12 Now, this is consistent with what you will
13 hear from Mr. Klett and what your pricing data shows
14 about underselling. A feature of this case, we argue,
15 and we believe that the facts in both the
16 questionnaire responses and in the public data will
17 show, is that there is a no significant underselling
18 in this case by imports, so in summary, Whirlpool's
19 production, unit volume of sales, realized prices and
20 value of sales all show trends that completely refute
21 any claim of material injury.

22 Now, I want to pause here for just a second
23 because I want to get to the first of my complaints on
24 some of the stuff the Petitioner has submitted, and
25 I'd like you to look at Petitioner's Exhibit 6 here,

1 which purports to show demand in the marketplace,
2 purports to show a generally declining overall demand.
3 I would direct you to look at Petitioner's Exhibit 3.
4 This data in the hearing Exhibit 6 is based on AHAM,
5 that is Association of Home Appliance Manufacturers
6 public data.

7 Petitioner has submitted contrary data to
8 you which shows a different trend, a trend that is
9 less favorable to its case than this data. I do not
10 think it is cricket for Petitioner to put this data in
11 the hearing when it is contrary to the data that it
12 has submitted to the Commission in its own petition
13 and which is based on actual data. Okay. Let me go
14 now to parse the injury issue just a little bit
15 further.

16 Whatever you decide to do about the light
17 product definition in this case, and we'll get to that
18 at some point, I'm sure, one fact jumps out from the
19 data. Neither LG nor Samsung have sold any
20 conventional washers in the U.S. market, only HE
21 washers, High-Efficiency washers. Now, that being the
22 case, one would assume that Whirlpool's operations on
23 HE washers would be suffering if subject imports are
24 injurious, and its operations on conventional washers
25 would be doing fine or at least relatively better. In

1 fact, just the opposite is the case.

2 Now, I've set a forth a table here, one of
3 those great big blank tables from Whirlpool's
4 questionnaire response, pages 9, 10 and 11, which sets
5 forth for HE washers combining the two HE tables, the
6 front load and the top load, and conventional washers,
7 the trend in Whirlpool's quantity of sales and the
8 value of sales. I urge you to look at that very
9 carefully.

10 The strong message of that table is if there
11 is a sector in which Petitioner is suffering material
12 injury, it is not in the sales of HE washers, where
13 imports are in issue, but rather in the sales of
14 conventional washers, where imports are no issue
15 whatsoever. Now, I can hear chortling behind me here
16 from Mr. Greenwald. Mr. Greenwald is saying to
17 himself Mr. Cunningham's up there, he's talking about
18 sales and prices and volume. He's not talking about
19 profits, and we're complaining that our profits are
20 suppressed and all of that.

21 Well, first of all, it takes a bit of a leap
22 to say if our prices are doing fine, and our volume is
23 doing fine in the two areas where imports can impact
24 us, well, somehow imports are impacting our profits.
25 Well, the reason we're not talking about profits here

1 is that's really complex to talk about in a public
2 forum because it relates very specifically to
3 information that's confidential, but let me suggest
4 two things to you.

5 First, I urge you to review Whirlpool's
6 questionnaire response and compare the profit trends
7 on the two HE categories with the profit trend on
8 conventional. Remember, import competition in HE, no
9 import competition in conventional. Second, as to
10 their profit argument, Whirlpool has a problem owing
11 to what we've seen in the trends of their volume
12 sales, prices and revenues, and so they come up with
13 something to say well, we've got big increases in
14 costs, so even though our prices may appear like they
15 have a decent trend, we're not able to recover our
16 cost increases, and they've talked about raw material
17 increases of everything from steel to cardboard.

18 Let me ask you to look hard at their
19 questionnaire response. If the problem was increases
20 in raw material costs, you would see it reflected in
21 the line for gross profit and loss because all of the
22 raw material costs are above that line, and I would
23 urge you to look at that for the two HE categories and
24 look at the trends there and tell me if you see that
25 kind of cost-price squeeze in the areas where there's

1 import competition.

2 Suppose you saw a different trend, different
3 from the gross profit and loss line in the operating
4 income or loss line? Okay. What would that mean?

5 Basically, that would mean the SG&A had a trend that
6 affected the difference between those two. I would
7 suggest to you if something like is what you want to
8 look at, there's something you need to look at.

9 Whirlpool has been repatriating, particularly on front
10 load washers, Whirlpool has been repatriating
11 production from Germany and Mexico.

12 Those repatriations have costs. I suggest
13 to you that those costs have nothing to do with the
14 impact of imports on the business, but if it is those
15 costs that produce the difference between the
16 operating income line and the gross profit and loss
17 line, I suggest that you don't find an import-caused
18 injury. Okay. Let me come back to the last point I
19 want to make, and I'm really kind of peeved about this
20 in two massive ways.

21 You've heard a lot today about 2011 Black
22 Friday promotional discounting. That's in the fourth
23 quarter of 2011. This is a case brought to you by a
24 sophisticated company with sophisticated lawyers who
25 knows how POIs are set up by this Agency. They

1 brought this case three days before the end of the
2 year. If they wanted the fourth quarter to be in
3 there, all they do is had to wait three days and file
4 the case.

5 Now, maybe you guys told them we want you to
6 bring it immediately. If that's so, I retract my
7 concern, but if it's their judgment to bring the case
8 in a way that sets up a POI that ends on the end of
9 the third quarter, I have trouble with them coming in
10 here and saying as both Mr. Bitzer and Mr. Greenwald
11 said that one of the most important things you want to
12 look at is something outside the POI that we set up
13 for you. Okay. But that's not my biggest problem
14 with their Black Friday thing.

15 My biggest problem is this chart here,
16 Exhibit 13, Black Friday Front Load Sales Volume,
17 which supposedly shows that they never, almost never -
18 - I take that back. They never did any discounting of
19 more than \$150. Now, you probe them a little bit on
20 that, and they say wait a minute, that's only front
21 loads. Well, first of all, what that ought to tell
22 you is take a hard look at what their discounts were
23 on top load, and we're going to get to that in just a
24 moment here, but this is where I have my biggest gripe
25 with what's been presented here.

1 I would ask the Commission staff to look
2 carefully at Exhibit H of the January 9 submission by
3 Whirlpool, responses to supplement question on
4 amendments. That is a table, confidential, from one
5 of the major retailers, and it sets forth the 2011
6 Black Friday discounting by the manufacturers that
7 sold to that retailer. One of the Whirlpool companies
8 is prominent in that table.

9 I urge you to look at the front load
10 discounts in that Black Friday from the Whirlpool
11 company and find me any product, any product, on which
12 their discounting was \$150 or less. If you do, please
13 call me because maybe my reading skills have gone bad.
14 That's just dirty pool. It's just not telling you
15 the truth. now, let me come back to something because
16 my last suggestion to you as to how you ought to think
17 about the discounting on promotional periods like
18 Black Friday.

19 These are promotional periods where it's
20 become customary in the industry for all of the
21 manufacturers in cooperation with all of the major
22 retailers, pretty much all the retailers, to engage in
23 promotional campaigns. Manufacturers, usually based
24 on discussion that they've had with retailers, pick
25 models that they want to be featuring as their

1 discounts. Nobody discounts all their models, so you
2 will have one manufacturer heavily discounting one
3 model, another manufacturer discounting another model.

4 The question it seems to me in those is not
5 so much whether there is underselling in each of those
6 models by the manufacturer who's doing the discounting
7 because the other manufacturers just picked a
8 different model to discount. What you ought to be
9 thinking about is who or being more or less aggressive
10 in their discounting, look at the various models and
11 find that out.

12 I've set up a table for you here, which of
13 course again I can't talk about any in this hearing,
14 which shows from that same exhibit, from Whirlpool's
15 exhibit, and it's Attachment H to their January 9
16 submission, and it shows a couple of models in front
17 loading where LG gave quite substantial discounts and
18 shows how much volume it got. It shows a couple of
19 models in top loading where Whirlpool gave, I would
20 suggest to you, essentially the same level of
21 discounts and got comparable volume.

22 I would suggest to you the conclusions there
23 that you should draw is both of these companies are
24 engaging in the same practice to the same degree.
25 This is not underselling. This is not one company's

1 predatory effort to seize market share from another.
2 It's each company choosing a model, figuring where it
3 would get the most bang for the discount buck, making
4 big discounts there, and they generally are not the
5 same directly competitive models, and you need to
6 analyze it in a little different way, but when you do,
7 you're going to see Whirlpool is as aggressive in this
8 last Black Friday even if you look at it, damn it,
9 which you shouldn't as LG and Samsung.

10 The lesson here is clear. Both of these
11 companies by these comparable discounts are gaining
12 significant volume, and just the fact they've chosen
13 different models doesn't mean that one's more
14 aggressive or one's underselling its competitors.
15 That concludes my opening statement. Let me turn it
16 now over to Mr. Connelly.

17 MR. CONNELLY: Thank you, Dick. Samsung's
18 presentation is going to be given by Kevin Dexter, but
19 also here to answer your questions are Kurt Jovais,
20 Dean Brindle, Dan Witte and Soon Choi of Samsung
21 Electronics America, and also Jarrod Goldfeder from
22 Akin Gump, so with that, we'll turn it over to Kevin.

23 MR. DEXTER: Good afternoon. Thanks for
24 having us this afternoon. Again, my name is Kevin
25 Dexter, and I'm the Senior Vice President for the Home

1 Appliance Division of Samsung Electronics America. In
2 this capacity, I have overall responsibility for sales
3 and marketing for Samsung Home Appliances in the U.S.
4 Before joining Samsung, I was with Electrolux for 15
5 years. As a result, I'm extremely familiar with the
6 dynamics of the domestic washers' market and the
7 nature of competition in that market.

8 Today, my testimony will focus on four
9 subjects. First, the reasons why there are three like
10 products in this investigation, conventional washers,
11 high-efficiency or HE top load washers and HE front
12 load washers. The most obvious distinction among
13 these three categories is their very different
14 physical characteristics. Conventional washers have
15 agitators.

16 HE top load and HE front load are further
17 distinguished by their method of loading the wash and
18 their performance. These three categories have very
19 different price points and customer perceptions. In
20 addition, the production processes are different, and
21 they're almost always produced on separate production
22 lines. They may have the same channels of
23 distribution, but they are merchandised differently
24 because most customers consider the three types to be
25 very different products.

1 The second top I want to discuss is the
2 nature and evolution of the U.S. market and Samsung's
3 participation in it. The third topic is the factors
4 that influence a customer to buy a specific brand of
5 washer, and in particular, a Samsung washer versus a
6 Whirlpool washer, and finally, the prices charged in
7 the discount programs that Whirlpool and Samsung used,
8 including Whirlpool's pricing strategy that is so
9 aggressive that it has adversely affected the pricing
10 of Samsung's HE front load and top load models.

11 Conventional versus high efficiency, on this
12 subject of the like-produce definition, I want to
13 first discuss the differences between conventional and
14 high efficiency washers. Conventional top load
15 washers have agitators that force the load back and
16 forth. These are the washers that most Americans grew
17 up with and may still have in their basement.

18 These conventional washers have smaller
19 capacity than comparable high-efficiency washers since
20 the agitator takes up space. They use much more water
21 and more energy than HE washers. They're not Energy
22 Star rated in most instances and therefore do not
23 qualify for federal, state or local rebates or
24 benefits. They tend to be harder on fabrics than HE
25 washers, especially since the agitator tends to twist

1 and tangle the wash load with much higher mechanical
2 forces, and they spin clothes slower, which means that
3 the clothes come out wetter, and the drying cycle
4 takes longer, consuming more energy.

5 A typical high-efficiency top loader can
6 remove 20 to 30 percent more water than a conventional
7 washer. HE top load and front load models are about
8 40 percent more expensive than conventional washers,
9 and finally, according to consumer reports, the
10 washing performance of conventional models "if often
11 mediocre or worse." Samsung has never exported
12 conventional washers to the United States, and we have
13 no intention of doing so. Therefore, there is no
14 possibility that we cause material injury or are
15 threatening injury to Whirlpool's production and sales
16 of conventional washers.

17 There are also very significant distinctions
18 between HE top load and HE front load washers. First,
19 there are very obvious physical distinctions,
20 including how the wash is loaded, that drive consumer
21 preference. Second, HE top load washers typically use
22 more water and energy. Third, HE front load washers
23 clean more effectively and are more gentle on fabrics.
24 Fourth, HE front load and HE top load washers are
25 usually produced on different production lines.

1 Fifth, typically HE top load washers require a smaller
2 installation footprint.

3 Sixth, front load washers can be stacked
4 with dryers, but top loaders cannot. Seventh, there
5 are well-known customer perceptions as well as
6 litigation relative to mold, mildew and odor issues
7 that have arisen from certain front load models, and
8 finally, the prices of HE front load washers are
9 currently 20 percent higher on average than HE top
10 load washers for models with comparable capacity and
11 features.

12 Turning to the U.S. market and how Samsung
13 views the U.S. market, conventional top load
14 technology has remained mostly unchanged since the 40s
15 when agitators were first introduced. As consumers
16 search for better solutions, front-load washers were
17 introduced in the mid-1990s delivering improved
18 performance and lower water and energy usage, yet
19 these washers had limited features. In the late
20 1990s, new front-load models were introduced with more
21 features. Front-load prices exceeded \$1,000 at retail
22 as consumers were willing to pay more for an
23 innovative product than the conventional top load.

24 The front-load market experienced double
25 digit annual growth in the early 2000s. In the mid-

1 to late 2000s, Samsung and LG entered the front-load
2 market with more innovative feature sets. These
3 features included vibration reduction technology and
4 steam as well as improved styling and design,
5 including colors and chrome accents. Samsung and LG
6 also provided significant improvements in quality and
7 durability. These advantages allowed us to charge
8 higher prices than our competitors while still gaining
9 market share.

10 Whirlpool introduced its Oasis platform into
11 the HE top load market and 2006, and it experienced
12 significant market growth. Long before either Samsung
13 or LG entered the HE top load market, Whirlpool began
14 aggressively discounting its own HE top load products
15 in order to drive growth for its top load models at
16 the expense of its own front load sales. From 2008 to
17 2009, with no competition from subject imports,
18 Whirlpool decreased pricing at retail from \$770 to
19 \$600 or by 22 percent on its HE top-load models. This
20 price move was designed to position HE top load
21 significantly below the HE front load.

22 From 2009 to 2010, Whirlpool reduced its
23 average selling price at retail for HE top load by
24 another 10 percent. We did not begin selling HE top-
25 load models here until May 2011, and the only HE top-

1 load model that we sold was an extra-large capacity,
2 4.7 cubic foot unit. Capacity is one of the top three
3 purchase factors for consumers, and the fact that we
4 don't sell medium and large capacity top-load washers
5 serves to greatly reduce the amount of competition
6 with other brands in the HE top-load segment.

7 Samsung held only a small share of the HE
8 top-load market in 2011. In our view, given our minor
9 market presence, there is no possibility that the
10 prices of Samsung's HE top-load models could have
11 injured Whirlpool. One important factor the
12 Commission needs to keep in mind as it considers the
13 relationship between HE top-load and HE front-load
14 pricing is that the competition between these two like
15 products is attenuated.

16 There is an overlap between the prices of HE
17 top-load and HE front-load models, as you've heard
18 today, but many consumers won't even consider a front-
19 load model, especially given Whirlpool's aggressive
20 pricing on top-load models. Our own analysis shows
21 that 70 percent of HE top-load buyers will only
22 consider another top-load model. On the other hand,
23 the smaller group of front-load consumers that prefer
24 to buy another front-load model also do so about 70-
25 percent of the time.

1 Thus, about 25 to 30 percent of consumers
2 are willing to consider both HE front-load and top-
3 load models at the same time, and Whirlpool is now
4 converting more of those open-minded consumers to HE
5 top-load models because of its own aggressive pricing
6 strategy. Thus, Whirlpool's claim that Samsung's
7 front-load prices have suppressed its own HE top-load
8 prices ought to be viewed with a great deal of
9 skepticism.

10 Turning to the consumer, I'd like to discuss
11 the reasons why Samsung has been successful in the
12 U.S. HE market. We have extensive data in the form of
13 both public and proprietary studies that tell us what
14 Samsung does well and what we need to improve on.
15 Among the best-known public studies are those
16 published by JD Power. That organization rated
17 Samsung washers No. 1 in customer satisfaction in
18 2011. This is the third straight year in which we've
19 achieved this rating.

20 In contrast, among the 17 brands surveyed,
21 the Whirlpool, Maytag, Amana, Roper and Admiral brands
22 all finished below the industry average on an overall
23 customer satisfaction. Nevertheless, Whirlpool claims
24 that its models are highly rated by Consumer Reports,
25 but that same publication listed six Whirlpool and

1 Maytag models as "wash day washouts" due to their poor
2 performance. No Samsung or LG model qualified for
3 this dubious distinction.

4 Equally important, one study found that
5 price was the main purchase reason for a relatively
6 small percentage of Samsung brand buyers. On the
7 other hand, buyers of Whirlpool's brands identified
8 price as their main purchase reason much more
9 frequently. The percentage of buyers who bought
10 during an in-store promotion was very high for all
11 brands, but it was Whirlpool that offered by far the
12 highest discounts for its Duet line of front loaders.

13 Finally, over 50 percent of consumers buy
14 new washers because their old ones broke. The fact
15 that over 50 percent of consumers need to purchase a
16 new washer to replace an old one means that price
17 becomes much less of a factor since purchase decisions
18 are made in a very compressed time period. In fact, a
19 recent study shows that many consumers decide on the
20 brand they intend to buy before they even go to a
21 store. Online research now has a critical influence
22 on this purchase decision, and Samsung has the highest
23 online research rate of any brand.

24 One study found that retail sales persons
25 were about four times more likely to recommend a

1 Whirlpool model on the basis of its price than they
2 were a Samsung model. Conversely, those same sales
3 persons were almost three times more likely to
4 recommend a Samsung model for its features over a
5 Whirlpool model. On the basis of reviews and awards,
6 there was simply no comparison. Sales persons
7 overwhelmingly mentioned Samsung's awards, but rarely
8 mentioned that Whirlpool had won anything or gotten
9 favorable reviews.

10 Samsung also conducted its own proprietary
11 studies of why consumers buy our washers and not those
12 of our competitors. For example, when we introduced
13 a large-capacity front-load washer in late 2010, we
14 found that it was the feature set, not the price, that
15 convinced customers to buy the Samsung brand.
16 Finally, I want to address Whirlpool's claim that
17 Samsung's prices and discounts have cause it to incur
18 injury on all three like products.

19 As you consider the impact of subject import
20 prices on the domestic industry, we urge you to bear
21 in mind that price is not one of the main drivers of
22 many consumer purchase decisions for all the reasons
23 that I have discussed, but equally important, to the
24 extent that the relative prices of competing models do
25 have an effect on a consumer's purchase decision, it

1 is Whirlpool's aggressive pricing of all of its models
2 that have been the real problem here. Their pricing
3 has required Samsung to lower the prices on its front-
4 load models, not the other way around as Whirlpool
5 claims.

6 We can document Whirlpool's pricing
7 practices using representative examples from
8 Whirlpool's holiday promotional activities. In our
9 handout, we have provided four Whirlpool promotions
10 for the 2009 Black Friday period. In each of those
11 promotions, the retailer offered a 38- to 45-percent
12 discount off the minimum advertised price on the
13 front-load models. These discounts could not have
14 been offered without substantial discounts to the
15 retailers from Whirlpool.

16 Similarly, for Black Friday 2010, our
17 handout contains Whirlpool promotions for both top-
18 load and front-load models showing discounts ranging
19 from 33 to 50 percent off minimum advertised price,
20 and for Black Friday 2011, our handout once again
21 shows Whirlpool promotions for both top-load and
22 front-load models that show discounts up to 50 percent
23 off MAP. Whirlpool of course claims that it is
24 Samsung's pricing activity, not its own, that should
25 be faulted.

1 As you consider Whirlpool's claim and
2 analyze the record, we urge you to keep in mind the
3 following: First, where front-load models do compete
4 head to head, it is Whirlpool that has been the
5 aggressive price leader. Whirlpool has emphasized the
6 importance of its Alpha line of front-load models
7 which it brought back from Germany in 2011, but one of
8 these models, the 94HEX, which is a 4.3 cubic-foot
9 model, was introduced at a price point \$400 lower than
10 what existed at the time, which put pressure on us to
11 reduce our own front-load prices.

12 Second, it is essential that when comparing
13 prices the Commission consider comparable models.
14 Whirlpool's petition in several instances has compared
15 a lower-capacity Samsung produce to a higher-capacity
16 Whirlpool product. I refer specifically to its
17 comparison on page 172 of the petition of the 3.7
18 cubic-foot Samsung Model WF350 to the just-mentioned
19 94HEX. Other comparisons are equally inappropriate
20 for reasons we will explain in our brief.

21 The third consideration, which is absolutely
22 critical, is that the quarterly pricing comparisons
23 must be made after deducting all direct and indirect
24 discounts, not just direct discounts. Samsung,
25 Whirlpool and LG use very different discount and

1 rebate strategies. Samsung relies to a greater extent
2 on direct discounts, which we frequently offer on a
3 product-specific basis, while Whirlpool relies heavily
4 on indirect discounts.

5 One very important discount is Whirlpool's
6 laundry volume rebate or VR. At the end of each year,
7 and sometimes at the end of each quarter, retailers
8 have a huge incentive to aggressively price Whirlpool
9 models so that they can earn the VR rebate, which we
10 believe is very significant, and in fact in excess of
11 10 percent in many cases. Ignoring or de-emphasizing
12 the affect of indirect discounts by failing to discuss
13 or reflect their effect in your report would make
14 irrelevant the fundamental elements of the home
15 appliance pricing, in which manufacturers attempt to
16 offer the most attractive combination of direct and
17 indirect rebates.

18 In conclusion, Whirlpool has
19 mischaracterized what is happening in the U.S. washer
20 market. Whirlpool, not Samsung, is the aggressive
21 price leader. Samsung does not need to dump the
22 washers in order to compete here. As independent
23 studies consistently show, consumers love our washers
24 because of their performance, quality, features,
25 design, fit, fill and finish.

1 Price is rarely why they choose our products
2 over Whirlpool's, and the number of instances in which
3 price is the deciding factor is limited. We hope that
4 your analysis will fully reflect all of the points
5 that we have made today and that we will expand upon
6 in our post-conference brief. Thank you. That
7 concludes my remarks.

8 MR. CUNNINGHAM: Now we'll have John
9 Herring, President of Sales for Home Appliances,
10 National Accounts. With him is Mr. Kim, Product
11 Manager for Laundry. Following his testimony, and Mr.
12 Kim is here primarily to answer questions, we will
13 have Daniel Klett from Capital Trade give you an
14 economic analysis of this case. John?

15 MR. HERRING: Good afternoon. My name is
16 John Herring. I work for LG Electronics. I'm the
17 Vice President of Sales for National Accounts for our
18 Home Appliance Division. I've been with LG almost six
19 years. Earlier in my career, I spent just over 12
20 years at Maytag, so collectively I've spent almost 18
21 years in the appliance business. Today, during our
22 time together, I want to focus on some key points.

23 One, LG is a leader in bringing product
24 innovation to the appliance market, specifically the
25 washer market. LG is a leader in bringing style and

1 design characteristics into the product as well. LG
2 is a leader in product quality and reliability, and
3 consumers are validating this through their purchase
4 decision and their reviews based upon those
5 characteristics, and the last thing, LG is generating
6 higher average selling prices, not lower average
7 selling prices in the washer marketplace.

8 First, LG is a leader in bringing innovation
9 to market. We've been creating consumer excitement
10 and incremental demand in the industry based upon the
11 innovation we brought to market. I'd like to point
12 you to Slide 1 of 5 called washer Innovation History.
13 This chart is an overview of LG, Samsung and
14 Whirlpool and different innovations and first to
15 markets. I'm not going to go through each one of
16 them, but just give you a sampling of innovation that
17 LG has brought to market. In 2003, LG brought direct-
18 drive technology to market in our front-load washer.
19 It's more reliable, quieter and smoother operation.

20 A few years later, in 2006, LG
21 revolutionized the washer industry by introducing
22 steam into the washer platform. That technology was
23 launched at a premium price point, actually \$1,599 in
24 our midnight blue color. Third, in the following
25 year, in 2007, we continued to bring innovation to

1 market by bringing in an allergy friendly cycle to
2 market that's certified by the AAFA, again meeting
3 consumers needs and driving consumers to purchase at
4 higher average selling prices versus lower average
5 selling prices.

6 In many of these cases, Whirlpool actually
7 followed LG in bringing these types of innovations to
8 market. The second item I want to talk about is LG
9 being a leader in style and design, also on this same
10 chart. For the most part, appliances were white for a
11 long period of time. LG brought color into the washer
12 marketplace in 2004 by introducing a black color. The
13 following period, in 2006, LG launched a midnight blue
14 color at \$1,599 into the marketplace in early 2006.

15 A few months after that, we introduced the
16 wild cherry red steam color at \$1,399 later in 2006.
17 These were game changers in the industry. No one had
18 taken the risk to introduce product with these kind of
19 bold colors. Retailers stepped up and assorted those
20 products, and consumers not only selected them, they
21 selected them in large volumes and success, so they
22 really energized the washer market and changed the
23 complexion of it from that point forward.

24 In fact, as I mentioned before on the
25 innovation, a lot of the manufacturers followed LG in

1 introducing colors. In fact, I'll point you actually
2 to Whirlpool's page. It's a little flattering
3 actually that they're showing a washer in a color that
4 we actually launched in the marketplace, not only
5 that, the design of the door also is a following of LG
6 in terms of the product design characteristics that we
7 brought to market.

8 Fit, feel and finish are important
9 characteristics that consumers look at when purchasing
10 appliances. LG has done a phenomenal job at those
11 aspects, things like electronic controls, digital
12 displays and door construction design just to name a
13 few. Third point I want to re-emphasize is LG is a
14 leader in product quality. I point you to Slide 2 of
15 5. You've heard earlier some references to Consumer
16 Reports. This is a rating that's published in their
17 magazine that talks about the reliability of washers,
18 outlining fewer repairs versus more repairs.

19 On the upper right-hand side is the index
20 that they use over a survey over a broad period of
21 time. This shows between 2006 and 2010. During that
22 timeframe, LG "was the most reliable front-loader
23 brand, clearly the leader in reliability in the
24 marketplace with respect to front-load laundry. A
25 brief mention, Samsung is not listed in this chart

1 because of the timing in which they entered the
2 marketplace, which was later.

3 The next thing to consider, I think
4 importantly, is what do consumers say about our
5 products. I'll point you to Slide 3 of 5. There's a
6 consumer survey done through Stevenson, also known as
7 TraQline, where they asked a question why did you
8 purchase a particular brand of product. We've shown
9 here in the far-right column LG brand results. In the
10 center is Whirlpool representations and the
11 characteristics to the left side.

12 Features desired, 47 percent of the
13 respondents said that LG was purchased based upon the
14 features offered versus 35 percent with Whirlpool.
15 The item that I talked about earlier around innovation
16 and steam and direct drive, even things like capacity
17 would fall into that category, which would lead you to
18 believe that LG is bringing more innovation and
19 features to the market that are driving consumers to
20 purchase LG at a higher rate than Whirlpool for that
21 reason.

22 The second item on there is competitive
23 price. Obviously, a lot of discussion around pricing.
24 Pricing is important to consumers when purchasing it.
25 Two points to point out on this area. One, consumers

1 purchase Whirlpool brand products at a higher rate
2 based on price versus LG, but I would say probably
3 even more significantly is over 50 percent of the
4 people did not purchase based upon price. There were
5 other characteristics that were more important, such
6 as features desired and the other items I'm going to
7 walk into.

8 The third item on there is appearance, which
9 is talking about the fit, feel and finish and style
10 and design characteristics I mentioned earlier.
11 Consumers purchased LG twice as frequently as
12 Whirlpool based upon those characteristics. Clearly,
13 the touch points the consumers interact with on the
14 product are important in their purchase decision. The
15 last item on there is around the quality of the
16 product.

17 Again, LG demonstrated as a leader in terms
18 of what consumers viewed during their purchase
19 process. Thirty-three percent purchased LG based upon
20 quality, which could be perceived quality or what they
21 understood to be quality based upon other ways of
22 doing research, again at a higher rate than Whirlpool,
23 so these support the items that I mentioned earlier
24 around innovation, style and design and quality as
25 being important drivers of why consumers are

1 purchasing LG products versus Whirlpool products.

2 Slide 4 of 5 is another point of reference,
3 and that's what consumers say. Obviously, we're all
4 aware that more and more consumers are going online
5 and giving feedback to the marketplace and the
6 manufacturers based upon their purchases. Online
7 reviews were collected from the top five appliance
8 retailers, Sears, Lowes, Home Depot, Best Buy and HH
9 Gregg.

10 We aggregated that information to look at
11 their ratings. Consumers rate them on a one- to five-
12 star basis. This point out that after consumers
13 purchased the product, they were highly satisfied with
14 LG, more so than any other brand, and certainly more
15 so than Whirlpool and Maytag based upon their
16 experience. That held true for both front load and
17 top load. Obviously, a lot of characteristics go into
18 that, their actual satisfaction going back to the
19 features, the benefits, the appearance, the quality,
20 all of those items.

21 The last point I want to reference is all of
22 these items are contributing to LG driving higher
23 average selling prices, not lower. Slide 5 of 5 is
24 referencing the average selling price. Again, through
25 this research of data of Stevenson and TraQline, this

1 is for the period of investigation, which is early
2 2008 through Q3 of 2011. The top line on the chart is
3 showing LG's performance and average selling price.
4 The bottom line is Whirlpool brands. Consistently, LG
5 has demonstrated higher average selling prices versus
6 Whirlpool.

7 In summary, LG has been a leader in the
8 industry by bringing innovation to market. Examples
9 such as steam and direct drive technology that are
10 eventually imitated and followed by other brands. LG
11 is a leader in bringing style and design, the fit,
12 feel and finish. Wild cherry is just an example of
13 really revolutionizing what the industry has
14 experienced with LG bringing to market and creating
15 incremental demand. Third is LG is a quality
16 producer. Consumers have validated Consumer Reports
17 as well as through their purchase decisions that LG is
18 a more reliable brand than Whirlpool brand products.

19 Fourth is consumers are validating this
20 through their purchase decision, through their online
21 research and through their purchase surveys that
22 demonstrate all of those key characteristics, and the
23 last is LG continues to generate higher average
24 selling prices by introducing technology and
25 innovation and design characteristics at the premium

1 end of the spectrum where retailers are actually
2 adding floor space for more expensive products for LG,
3 not less expensive. That concludes my remarks and
4 testimony. Thank you.

5 MR. CUNNINGHAM: Now for an economic
6 perspective, we'll just turn to Daniel Klett from
7 Capital Trade.

8 MR. KLETT: Good afternoon. My name is
9 Daniel Klett. I'm an Economist with Capital Trade,
10 Inc. testifying on behalf of LG and Samsung. My
11 testimony will focus on the stark segmentation in the
12 market regarding the types of washers Whirlpool sells
13 as to compared to where imports from Korea and Mexico
14 are concentrated and factors related to the price,
15 including shows (phonetic) and comparisons. My
16 analysis is largely based on NPD data. I recognize
17 that NPD does not include sales by Home Depot, but I
18 believe my general findings are still valid.

19 NPD includes information for other market
20 participants as well, but my focus will be on
21 Whirlpool, including all Whirlpool-owned brands, and
22 LG and Samsung, which are the focus of Whirlpool's
23 complaint. Slide 1 shows that Whirlpool has
24 significant volume for conventional top-load washers,
25 and I just want to know that NPD actually classifies

1 Not-Energy-Star and Energy-Star rated, but as Mr.
2 Dexter testified, Not-Energy-Star rated is, in most
3 instances, conventional, so at least for purposes of
4 this analysis, those are the terms I'm using.

5 LG and Samsung are completely absent from
6 this market and have no intent on entering this
7 market. Conventional top-load washers are lower
8 priced than high-efficiency washers, so any injury
9 that Whirlpool may be experiencing here cannot be
10 attributed to price competition from Samsung or LG,
11 which sell exclusively high-efficiency washers in the
12 united states.

13 Whirlpool sales on conventional top-load
14 washers fell by 53 percent from 2008 to 2010 and fell
15 by another 33 percent in the first nine months of
16 2011. Now, you might wonder why Respondent would put
17 forth a slide like this which shows industry indicia
18 going south. Anyway, let me explain why. Slide 2
19 shows that Whirlpool dominates top-load E-Star washers
20 with no competition from LG or Samsung until 2010.

21 The data will necessarily show that
22 Whirlpool lost market share. However, one cannot
23 necessarily conclude that this reflects injury.
24 Whirlpool's sales increased by a factor of five from
25 2008 to 2010 and increased by another 22 percent in

1 the first nine months of 2011, and this is when the
2 United States was experiencing a severe economic
3 recession. Any loss of market share cannot be seen as
4 injurious given these trends and circumstances.
5 Contrast that with Slide 1, which is conventional
6 where, as explained before, there is no import
7 competition, and you see declining trends.

8 Second, as shown in Slide 3, LG and Samsung
9 imports were almost exclusively in top-load Energy
10 Star washers with capacities greater than 4.5 cubic
11 feet. However, Whirlpool's sales were concentrated in
12 smaller capacity models, which accounted for 78
13 percent of its sales in 2010 and 2011. In all
14 instances, the average price for Samsung and LG top-
15 load E-Star washers was higher than that charged for
16 Whirlpool brands, so neither can any loss of market
17 share by Whirlpool be attributed to price, and there
18 is no basis from this data to support causation or
19 threat.

20 To summarize, as shown in Slide 4, 87
21 percent of Whirlpool's total top-load washer volume
22 during 2008 through 2011 were either conventional top-
23 load washers or smaller-capacity E-Star top-load
24 washers where imports for Korea have a minimal
25 presence. In the remaining 13 percent, which is

1 comprised of the largest-capacity top-load HE washers,
2 Samsung and LG have always been higher priced.

3 I want to now turn specifically to front-
4 load washers, which accounted for 28 percent of
5 Whirlpool's sales during 2008 to 2011. Whirlpool's
6 front-load washers include both U.S.-produced and
7 imported. As you can see from Slide 5, Whirlpool
8 washers as well as LG and Samsung experienced
9 increases in unit sales from 2008 to 2010. In the
10 first nine months of 2011, Whirlpool continued to
11 experience an increase in its front-load sales while
12 LG and Samsung experienced declines.

13 Average prices have declined for everyone --
14 \$140 or higher in 2008, \$700 in 2011. However, prices
15 for Energy-star rated washers have declined across the
16 board, not just for front load, but also for top load
17 where imports from Korea had not been present until
18 just recently. This reflects a progression from E-
19 Star rated washers being a smaller part of the overall
20 market in 2008 to today where E-Star washer sales
21 exceed conventional washer sales.

22 I understand that there may be some product
23 mix issues with the broad AUV comparisons I've
24 presented so far, so here's some more precise
25 comparisons. Slide 6 shows averages prices for NPD

1 data for top-load E-Star white washers by capacity.
2 From 2008 through 2011, the average price declined for
3 the largest-capacity washers, where LG and Samsung are
4 now in the market, was 22 percent. The average price
5 decline for the 4.0 to 4.4 capacity models, where
6 Samsung and LG are not present, was 32 percent, and
7 for the 3.5 to 3.9 cubic-foot capacity models, the
8 price decline was 22 percent.

9 Prices declined as much or more for those
10 sizes where Samsung and LG are not, or in very limited
11 extent, in the market as compared to those sizes where
12 Samsung and LG were present. Slide 7 shows average
13 prices for front-load washers by capacity. I have
14 focused on the two largest sized because these
15 accounted for 95 percent of Whirlpool's sales of
16 front-load washers in 2010 and 2011. In addition, for
17 earlier years, Whirlpool brands likely reflect imports
18 and not U.S. production, which is why I focus on these
19 last two periods.

20 As show, in all comparisons, LG and Samsung
21 were higher priced on average over these periods. I
22 recognize that the Commission normally relies on its
23 own questionnaire data, which was collected for sales
24 to retailers rather than at retail to consumers, which
25 is what the NPD price data collect. However, I still

1 believe that the NPD price comparisons are relevant as
2 purchases by consumers and their evaluation of
3 relative prices, and non-price factors ultimately
4 affect retailer's decisions on their purchases.

5 Petitioner also relied heavily on NPD data
6 in the petition. In any case, I will be reviewing the
7 questionnaire data that has been submitted so far and
8 believe that it also will likely be consistent with
9 the NPD data with respect to price relationships.
10 Finally, as in the Refrigerator investigation,
11 Whirlpool continues to argue that underselling can
12 exist when actual prices for imports are higher
13 because of differences in "perceived value for money."

14 Conceptually, Whirlpool is asking the
15 Commission to ignore the success of imports due to
16 non-price factors when they oversell U.S. production.
17 You heard testimony earlier from both LG and Samsung
18 witnesses on the non-price reasons why they have been
19 successful including innovations, features and
20 reliability.

21 Practically, the approach advocated by
22 Whirlpool would require the Commission to monetize any
23 non-price factors and may lead to observed price
24 differences, would unfairly penalize suppliers that
25 are successful on the basis of non-price reasons and

1 in fact was rejected by the Commission in the
2 preliminary phase of the Refrigerator investigation.
3 Thank you.

4 MR. CUNNINGHAM: I'd just like to add one
5 footnote to Mr. Klett's testimony. I criticized the
6 Petitioners for using public data in a certain way.
7 Mr. Klett uses public data, but not in that way. Mr.
8 Klett's data, both as to Whirlpool volume and as to
9 the absence of underselling is consistent and
10 confirmatory of the data that is available in the
11 confidential record. Petitioner's problem is theirs
12 is not.

13 MR. CONNELLY: I think we're done.

14 MS. DEFILIPPO: Thank you, Mr. Cunningham
15 and Mr. Connelly, and thank you to the panel of
16 witnesses today for all of your testimony and
17 information. It has been extremely helpful. It's
18 always nice to have two well-attended sides in a
19 preliminary conference, so I greatly appreciate that.
20 We will start our staff questions with Ms. Martinez.

21 MS. MARTINEZ: Good afternoon. Thank you
22 all for being here. I'm going to start off with sort
23 of the same questions that I started with the
24 Petitioner. What is your view on using official
25 import statistics for the analysis versus

1 questionnaire data.

2 MR. CONNELLY: We're in favor of it. I'm
3 sorry. I got it exactly the wrong way. We want you
4 to use the questionnaire data.

5 MS. MARTINEZ: Okay. Now, are there any
6 U.S. importers missing from the data set that you deem
7 important?

8 MR. CONNELLY: You've got Samsung and the LG
9 importer's response. This case is about Samsung and
10 LG by Whirlpool's own statement. We think the data
11 are more than adequate, more than sufficient to
12 produce you with a picture of what's going on in this
13 market.

14 MR. CUNNINGHAM: I guess I would say if we
15 were here making an argument saying that the effect of
16 the imports by LG and Samsung were all on some other
17 exporter as to some other imports, then it would be
18 really important for you to have those other imports,
19 but that's not our argument.

20 If we were saying to you hey, it's some
21 other imports that are really undercutting everybody
22 in the marketplace, it would be important for you to
23 have that data, and I think Electrolux, I think, is
24 the only one that you're not going to have, then I
25 think that would be important. I don't think those

1 are issues in the case, and so I don't think you need
2 to get it. I hope you do get it. It's always better
3 to have complete data, but I don't think you need to
4 worry about it much.

5 MS. MARTINEZ: Thank you. Now, I know you
6 went over this a lot in your testimony regarding the
7 like product, but if you could just comment a little
8 bit more because I'm a bit confused between the
9 conventional and high efficiency because it seems that
10 the high-efficiency front load and top load are talked
11 about almost interchangeably a lot of the times. If
12 you could just go over the nuances for me.

13 MR. CONNELLY: You want us to just address
14 the HE top load versus HE front load?

15 MS. MARTINEZ: Yes.

16 MR. CONNELLY: I assume you got the
17 distinction between conventional and HE?

18 MS. MARTINEZ: Yes. Whatever is helpful.
19 However you'd like --

20 MR. DEXTER: I'm actually going to turn that
21 over to Mr. Brindle who will be able to speak.

22 MR. BRINDLE: Dean Brindle, yes. I think
23 it's important to make a distinction between
24 conventional and HE top load first. A lot of
25 consumers understand the inherent performance

1 differences between a conventional and an HE top
2 loader, so they look for performance as a
3 characteristic in that product, but also the agitator
4 they understand imparts a lot of damage to their
5 clothes, so in most cases, they'll make the
6 distinction regarding the agitator and the energy
7 performance between conventional and HE top load.

8 The distinction between HE top and load and
9 front load is much more different because even the
10 best HE top loader is not close to the best HE front
11 loader in performance, so when we look at the overall
12 characteristics in the market, the consumer looks at
13 front load as the highest performing and possibly the
14 most innovative based on feature sets, but the energy
15 differences, performance differences, drive preference
16 between front load and top load and also top load
17 versus front load in the way that they're loaded and
18 they're used.

19 If a top loader is perceived as easier to
20 use, that can simply drive preference for the
21 consumer.

22 MR. CUNNINGHAM: Can I ask John to make a
23 quick comment on this LG advertisement that was made
24 so much of, the Your Choice advertisement that was
25 made so much of by the Petitioners?

1 MR. HERRING: John Herring, LG Electronics.
2 Yes, one of the exhibits shown was LG top load versus
3 LG front load, and your choice. Your choice meaning
4 LG offers options of high efficiency under both
5 platforms, and we know that the consumer has
6 preferences for each platform, and so we satisfy those
7 needs under whichever platform you desire.

8 MR. CONNELLY: I want to make another point
9 about that very same exhibit. Whirlpool finds it very
10 convenient to talk about the Refrigerators case when
11 the argument and the facts or the analysis seem to
12 support it, but notice that they didn't talk about the
13 Refrigerators case at all with respect to the like-
14 product definition. We can show you side-by-side ads
15 from Whirlpool of side-by-side refrigerators versus
16 French door refrigerators.

17 The Commission had no trouble finding when
18 the consumer was offered a choice of side-by-side or
19 French door in the very same promotional ad that they
20 were separate like products. That's exactly the same
21 conclusion that the Commission ought to reach with
22 respect to front load and top load.

23 MS. MARTINEZ: Thank you. That was very
24 helpful. I have no more questions at this time.

25 MS. DEFILIPPO: Thank you, Ms. Martinez.

1 Mr. Petronzio?

2 MR. PETRONZIO: Ed Petronzio,
3 Investigations, was there a strategic reason why
4 Samsung and LG did not choose to get into the
5 conventional market and just went with the high-
6 efficiency front load and top load? Was there a
7 reason why?

8 MR. DEXTER: Yes, I think again as you heard
9 earlier today, and somebody asked a question on why we
10 didn't go from conventional in the industry straight
11 into high-efficiency top loader and then on to front
12 loader, and I think a lot of it has to do with, as you
13 also heard earlier, there were things going on across
14 the globe where front load was the technology that had
15 been introduced early in the U.S. and across the globe
16 was much more prevalent, and it's off of those
17 platforms that we leveraged and thought of our new
18 innovation and first entered the market.

19 Then, when we had developments in technology
20 and the advancement of high-efficiency top loaders,
21 then we chose to enter at that time as well.

22 MR. PETRONZIO: Okay.

23 MR. HERRING: John Herring, LG Electronics.
24 Our strategy is all around product leadership and
25 building a premium brand, and so if you look at our

1 past, not just in washers, but across our entire
2 portfolio, we introduce at the high end of the
3 marketplace. We're trying to drive innovation and
4 higher average selling prices. We don't typically
5 come in and offer the lowest price.

6 MR. CUNNINGHAM: And let me sort of put a
7 point on that. Put yourself in the shoes of a
8 manufacturer that wants to enter a new market. In
9 that market, there is an area of the market which is
10 not only completely dominated by one entrenched U.S.
11 manufacturer, but is an area of the market where it's
12 a very price-sensitive market. It's not a features-
13 sensitive market. You're not going to see that market
14 as anywhere near as attractive just from a standpoint
15 of making money as a market where you can go into and
16 try to sell on the basis of features at relatively
17 high prices and do what each of these companies did,
18 which you will see from all of the data on the record,
19 is they entered the market at prices higher than the
20 incumbent U.S. firms, and particularly higher than
21 Whirlpool. They did that because the HE business was
22 an areas that led itself to that whereas they would
23 have had to come in and cut prices to establish a
24 position in the conventional market. It just didn't
25 make a lot of sense for them.

1 MR. PETRONZIO: Do either Samsung or LG
2 product the conventional washers for the home market
3 or for export markets outside the U.S., or is it just
4 in a completely high-efficiency production line?

5 MR. DEXTER: High efficiency for Samsung.

6 MR. DEXTER: We're consulting. We'll be
7 with you in a minute.

8 MR. CONNELLY: Let us amend our answer.

9 MR. PETRONZIO: Okay.

10 MR. DEXTER: Correction. In India, we have
11 conventional.

12 MR. PETRONZIO: Okay. Okay.

13 MR. CUNNINGHAM: And I think the same is for
14 Korea. They don't make any conventional washers in
15 Korea.

16 MR. PETRONZIO: Okay. Okay. Well, if
17 there's anything in the post-conference brief you want
18 to include as far as that. Mr. Cunningham, you talked
19 a bit about Whirlpool's decision to repatriate
20 production from Mexico and Germany back to Ohio, and
21 you said that should be a major factor that we should
22 consider, the cost in that decision. Could you
23 provide maybe some examples of what the Commission
24 should examine or ask Petitioners to get a better
25 sense of that business decision and what led to it?

1 MR. CUNNINGHAM: Yes. Let us give you a
2 submission on that. Let me just say first that the
3 way the Petitioners want to look at it strikes me as
4 totally inconsistent with the statute. The statute
5 protects American workers and American production
6 facilities. The idea that production, it has
7 increased in the United States because it's decreased
8 somewhere else in the world constitutes in some way
9 some element of intrigue strikes me as bizarre and
10 inapplicable to this statute.

11 Now, the question then becomes well, how
12 should you look at it? Well, the answer is it costs
13 money to do this, and we'll put together a little
14 paper on it for you. I am not the greatest cost
15 accounting expert in the world, so unless somebody
16 else wants to say something about it now, I'm not
17 prepared to do it.

18 MR. KLETT: Well, it really relates to the
19 costs of the repatriation and where that is in the
20 financials that were reported just as a general
21 matter, but I think also there was a statement that
22 there was some 2008 study done by Whirlpool on the
23 decision to come back to the U.S. versus Mexico, which
24 may also have some cost information.

25 MR. CONNELLY: Actually, Mr. Bitzer said

1 they made a presentation to the board about the costs
2 and the benefits of moving back to the U.S., and I
3 would suggest that you should ask Whirlpool to provide
4 that presentation so we can evaluate all the factors
5 that were presented to the board.

6 MR. PETRONZIO: Okay. Thank you very much.
7 That concludes my questions.

8 MS. DEFILIPPO: Thank you, Mr. Petronzio.
9 Mr. von Schrilitz?

10 MR. VON SCHRILTZ: Good afternoon. I have a
11 few questions that came to mind during your
12 presentation. Now one of your arguments that I hear
13 is that subject imports of HE large residential
14 washers couldn't injure Whirlpool's production of
15 conventional large residential washers.

16 Obviously, Whirlpool in its affirmative
17 presentation claimed that there was actually a cascade
18 effect, that if you discount HE large residential
19 washers enough, it would perhaps encourage consumers
20 to switch from conventional large residential washers
21 to subject imported HE washers, they argue, perhaps
22 faster than they would ordinarily or perhaps they
23 would have stuck with their conventional washers if
24 the HE washer prices weren't so low, so in this way
25 they argue in fact the discounts on HE washers do have

1 an adverse impact on their sales of conventional
2 washers. How do you response to that?

3 MR. KLETT: This is Dan Klett, Mr. von
4 Schrilzt. First of all, the HE washers as compared to
5 conventional, I think for similar features, are going
6 to be significantly higher priced if you look at the
7 similar capacity, similar other features, so the
8 adverse effect that they're talking about would be
9 associated with the product that is significantly
10 higher priced.

11 I mean, in general, high-efficiency washers
12 are significantly higher priced than the conventional,
13 so just as a general matter, they're arguing that
14 there's adverse effects where people are switching or
15 there's price suppression for conventional due to
16 higher-priced high efficiency, which I don't think is
17 a credible argument to make, and also, they claim that
18 there's a price correlation between the conventional
19 and the high efficiency I believe you would have to
20 show to support their allegation or their claim
21 anyway, and I don't believe in general that's
22 factually the case.

23 MR. DEXTER: I'd just like to add one more
24 thing if I could to the subject of the price
25 discounting and the data that we presented here is

1 that discounting on HE top load, specifically by
2 Whirlpool, had started prior to us entering the
3 marketplace.

4 MR. CONNELLY: And one more point, the so-
5 called Alpha line was repatriated. One of the three
6 models that we understand to be in the Alpha line is
7 the 94HEX. The testimony earlier was that the price
8 point at which Whirlpool introduced the 94HEX was \$400
9 lower than the prevailing price point for a comparable
10 model, so if we're going to point the finger at
11 anybody, it's Whirlpool, and I want to make one
12 related point about promotions.

13 Mr. Bitzer said in response to a question
14 well, you engage in these discounts and these
15 promotional programs, but why didn't you do that in
16 the fourth quarter or in the Black Friday promotional
17 period in 2011, and his answer was, and I'm not sure
18 this is an exact quote, but I think it's close, he
19 said well, we want to make money. Now, does that
20 answer make any sense at all?

21 Think about it. This is a company that
22 aggressively promotes, as the exhibits in our handout
23 show, consistently from 2009 to 2010 and 2011
24 throughout the year, so consider the accuracy or the
25 candor of that statement in light of that fact and

1 also consider it in light of the fact that what he
2 said is not accurate. In fact, they did aggressively
3 promote in Black Friday of 2011, but they aggressively
4 promoted a top-load model, not a front-load model.
5 That's a business choice.

6 That's what this business is about. We all
7 read those ads in the Washington Post or wherever
8 every holiday and we see sometimes it's this model,
9 and sometimes it's that model, but for Mr. Bitzer to
10 stand up here and claim that they decided not to
11 discount because they wanted to make money in the
12 fourth quarter of 2011 in our view simply has no
13 credibility whatsoever.

14 MR. HERRING: Yes. John Herring, LG
15 Electronics. You heard Mr. Bitzer describe the
16 profitability of the HE top-load segment was highly
17 profitable for Whirlpool. Obviously, they would want
18 to encourage a higher mix of product in that area, so
19 promotional discounting is one venue that I don't have
20 the data in front of me, but I'm sure they were
21 promotionally discounting their own HE top-load washer
22 before LG and Samsung were even on the scene.

23 One of the things that we noticed is the
24 information they shared showed declining average
25 selling prices for LG and Samsung, but it didn't show

1 theirs in relation to ours. It's been pointed out
2 earlier promotional discounting is a critical part of
3 being successful in this industry.

4 MR. CUNNINGHAM: There's also a timing
5 factor here that you need to think about. Remember
6 that LG and Samsung don't come into this market until
7 well into this period of investigation. If you will
8 look at Whirlpool's hearing Exhibit 6, the one that
9 roasted so substantially earlier, but I don't happen
10 to have the other figures here with me, you will see
11 that the conventional top-load market is decreasing
12 substantially from 2008 to 2009. It can't have
13 anything to do with LG or Samsung, and again in 2010,
14 they don't come into until well into 2010.

15 You should also look at Mr. Klett's Table
16 No. 3. One would think if there was impact between
17 the HE and the conventional, the most direct impact
18 since conventional is all top load would be HE top
19 load with conventional. Not only do LG and Samsung
20 not come into this market until the end of this period
21 after the decline in conventional is well under way,
22 but the LG and Samsung participation in the top-load
23 HE market is almost exclusively in the 4.5 plus cubic
24 feet, that is the highest-end of the top load, the one
25 that would seem to me to be least likely to affect

1 conditions in the conventional market.

2 MR. VON SCHRILTZ: Thank you for your
3 answers to my question. Let's see. I did have a
4 question about some of the LG slides that were
5 presented, Slides 3 through 5. Now I'm wondering did
6 those slides only include information on HE models or
7 would the Whirlpool data include information on both
8 HE and conventional large residential washers.

9 MR. CUNNINGHAM: For clarification, you're
10 talking about the consumer survey slides?

11 MR. VON SCHRILTZ: Yes, exactly, Slides 3, 4
12 and 5 of Mr. Herring's exhibits.

13 MR. HERRING: John Herring, LG Electronics,
14 so yes, the Stevenson TraQline data is broken down
15 into top load and front load, so within top load, it
16 doesn't delineate between high efficiency and
17 conventional. Does that answer your question on that?

18 MR. VON SCHRILTZ: It does.

19 MR. HERRING: And then on Slide 4 --

20 MR. VON SCHRILTZ: Yes, the top load.

21 MR. HERRING: Which is consumer reviews, and
22 yes, that would include conventional top load, HE top
23 load and front load, all three platforms.

24 MR. VON SCHRILTZ: And then Slide 5?

25 MR. HERRING: Yes

1 MR. VON SCHRILTZ: The comparisons of the
2 prices. Would the Whirlpool data include the
3 conventional top load as well?

4 MR. HERRING: Yes, consistent based upon how
5 the petition was put together was all three platforms.

6 MR. VON SCHRILTZ: Okay. And do you think
7 that the inclusion of conventional top-load data in
8 Slides 3 through 5 would affect what the data seemed
9 to show in any way given that conventional large
10 residential washers are clearly priced much lower than
11 HE models and appeal to consumers who aren't really
12 looking for feature laden models and appearance so
13 much as a low price?

14 MR. HERRING: I would suggest that Slide 3
15 and 4 on the consumer survey data, I don't believe
16 there'd be a tremendous difference if you exclude a
17 conventional. From my experience, when consumers pay
18 more, they expect more, so lower-price-point products
19 don't have the same expectations. With respect to
20 Slide 5 on average selling prices, obviously if you
21 were to pull out conventional washers out of the data,
22 average selling prices would change, but the relative
23 point that LG continues to have higher average selling
24 prices consistently would remain unchanged.

25 MR. VON SCHRILTZ: And I wanted to ask you a

1 follow up question about Slide 5. It looks like
2 Whirlpool's average price is up over the period here
3 whereas LG's price came down pretty significantly.
4 How do you explain those different trends?

5 MR. HERRING: A couple of key points.
6 Excuse me. John Herring with LG Electronics. One of
7 the key points is the mix of product in a platform, so
8 as an example, LG has a very significant portion of
9 our total washer business is in front load. As
10 mentioned earlier from the Petitioner as well that
11 front load is a more premium end of the spectrum or
12 more premium priced, so our average selling prices
13 because we competed dominantly in just front load are
14 higher.

15 As we entered the market into HE top load,
16 price points continue to go down because we're
17 expanding into lower-price-point product. The other
18 characteristic on ours would be we introduce lower
19 price, less feature-laden, lower capacity, less
20 innovation-type of platforms where you've taken cost
21 out to appeal to a different price segment, so over
22 time, as you grow, you start to expand your product
23 offering.

24 On the Whirlpool slide, I would suggest that
25 as they had more success in growing in the HE top-load

1 segment that their average selling prices reflect an
2 increase in relation to going from conventional to
3 more HE top load because it had a positive impact on
4 average selling prices.

5 MR. VON SCHRILTZ: Thank you.

6 MR. CUNNINGHAM: Could I just observe that
7 the bottom line for Whirlpool there could be viewed as
8 a proxy for and is certainly consistent with one of
9 the lines that I have blocked out in my thing because
10 it's drawn from Whirlpool's own data, but this also
11 shows, and I think is particularly relevant in terms
12 of injury to Whirlpool, it also shows an increase in
13 what is Whirlpool's realized prices.

14 The fact that it may have a mix issue, you
15 could say well, that makes it not quite as good for
16 evaluating market price trends, but in terms of
17 evaluating injury to Whirlpool, the question is was
18 Whirlpool's realized selling price increasing, and as
19 this shows, it was.

20 MR. VON SCHRILTZ: Thank you. Thank you for
21 your answer. Excuse me. All right. I'll go back to
22 that. Now, Mr. Cunningham, I think it was your
23 argument that some of the information on the record
24 that undermines the Petitioner's case is evidence that
25 their realized prices on their large residential

1 washers went up over the period of investigation.
2 Now, not reviewing anything in this APO, is that their
3 realized price on all large residential washers
4 covered by the scope, or would that statement hold
5 true for realized prices with respect to all three
6 segments of the large residential washer market?

7 MR. CUNNINGHAM: I don't have it broken out
8 by segment.

9 MR. VON SCHRILTZ: Okay.

10 MR. CUNNINGHAM: That is overall for all
11 prices just as this line is for all Whirlpool's sales.

12 MR. VON SCHRILTZ: Okay. But then wouldn't
13 that suffer from this product mix issue that Mr.
14 Herring alluded to, and in fact you alluded to it as
15 well, that Whirlpool seems to have to a certain extent
16 cannibalized its own sales of conventional washers by
17 pushing higher-priced top-load HE washers.

18 MR. CUNNINGHAM: Right. Yes.

19 MR. VON SCHRILTZ: So to the extent that it
20 did that, that would make sort of its average realized
21 price seem to go up when in fact what's really
22 happening is the product mix is changing?

23 MR. CUNNINGHAM: But it is getting its
24 revenue per washer going up. That's the point for
25 income to the company, and you need to look at that in

1 conjunction with, as usual, I've buried it. The line
2 on --

3 MR. VON SCHRILTZ: Your mic isn't on.

4 MR. CUNNINGHAM: If you also look at that in
5 conjunction with the Table 13 on page 162 of the
6 petition, the U.S. commercial sales value, and what
7 this shows is the trend of that is what you would
8 expect given the trend in volume and the trend in
9 overall realized prices. Therefore, what this shows
10 is that the revenue that Whirlpool is getting in its
11 business has a trend that's inconsistent with injury,
12 and then you ask the question okay, if the revenue
13 from sales, which is normally what imports impact.

14 They either impact your revenue by cutting
15 your prices or impact your revenue by reducing your
16 volume. If that shows a trend inconsistent with
17 injury, then the question you have to ask is well, is
18 there something happening on the cost side that means
19 their revenue is not keeping pace with costs, and I
20 talked about that with you again.

21 Again, I'm limited in what I'm going to say.
22 We'll address this in more detail in the brief. I'm
23 trying to walk a line here. The conclusion from that
24 is also inconsistent with injury caused by imports
25 reducing the cost price delta, and to the extent that

1 there are issues there, you would need to do analysis
2 not of the type of costs that they have been talking
3 about, which are operating costs, but SG&A costs, and
4 I submit to you once you get down that road, you're
5 getting pretty far away from the idea that imports
6 have done something.

7 If your whole argument is imports are
8 hurting us because they're not enabling us to keep
9 pace with our SG&A rising costs, it's a pretty flimsy
10 injury case, and here it may well be an issue relating
11 to the costs incurred by their own decision for this
12 repatriation.

13 MR. VON SCHRILTZ: Thank you. Thank you for
14 your answer. I have no further questions at this
15 time.

16 MS. DEFILIPPO: Thank you. Mr. Deese,
17 questions from you for this panel?

18 MR. DEESE: I have one. Mr. Herring, you
19 were talking earlier that Whirlpool offers more
20 indirect discounts than say LG or likely Samsung, and
21 I think you gave an example of that. I can't remember
22 exactly what it was, but you had some examples of the
23 indirect discount by Whirlpool. I think earlier
24 Whirlpool had said that because Samsung and LG are
25 more multi-product companies that Samsung and LG offer

1 indirect discounts that are on total sales of
2 essentially all items so clearly a huge range of types
3 of discounts.

4 I'm saying in your post-conference brief,
5 could you sort of lay out a typology of what kind of
6 discounts you offer, and you might also state what
7 kind of discounts you think the other party offers.

8 MR. CUNNINGHAM: Actually, I was the one who
9 made that remark. I don't think he's in a position to
10 know precisely what the other company's types of
11 discounts are. There is a conclusion to be drawn from
12 how the figures shake out in this case, and
13 particularly to compare it with the type of analysis
14 that we've done in the Refrigerator case, but I'm
15 getting too complicated now. We will certainly do
16 that. I can assure you that our list of discount
17 categories will be shorter than the hundreds that Mr.
18 Bitzer promised to put into his list.

19 MR. DEESE: Okay. Thank you. I have not
20 further questions.

21 MS. DEFILIPPO: Thank you, Bill. Mr. Yinug,
22 questions for you?

23 MR. YINUG: Thank you for your presentation.
24 I have a few questions. I think it was, Mr. Dexter,
25 in your presentation, you mentioned the distinction

1 between how different product lines within a plant can
2 actually produce different types of high-efficiency
3 top-load or front-load or conventional washers, I
4 guess. How easy from a practical standpoint is it to
5 switch a line from say high-end top-load production to
6 high-end front-load production. For example, if your
7 market has changed drastically, and there's high
8 demand for one, is it something that can be done
9 quickly or how it's done?

10 MR. DEXTER: Yes. Thank you, again. I'm
11 going to say that it's not something that's very
12 easily done, and I think you've heard comments today
13 where you talk about what happens under one roof, but
14 once you get underneath that roof, there's some very
15 distinctive things that have to happen, and again, I'm
16 going to ask Dean Brindle, our Director of Laundry,
17 who has extensive knowledge of manufacturing to add a
18 little more color commentary to that.

19 MR. BRINDLE: Sure. Dean Brindle again. I
20 think it would be very unusual to see a manufacturer
21 produce front load and top load on the same line based
22 on inherent physical differences of the platforms,
23 based on the access to the units versus top versus
24 front doors, drive systems, wash technologies, drum
25 systems as well. It's not likely that those would be

1 assembled on the same manufacturing line -- the type
2 of washers being produced.

3 MR. DEXTER: That is common, yes.

4 MR. YINUG: Okay.

5 MR. CONNELLY: Can I just add one more point
6 to that?

7 MR. YINUG: Okay.

8 MR. CONNELLY: Whirlpool's use of the word
9 "under the same roof," that term was very deliberate.
10 But, I think that is not the Commission's criterion
11 when it looks at common manufacturing facilities. I
12 think, I'm not certain, but I think they look at
13 separate production lines, not whether different lines
14 are all under the same roof.

15 MR. YINUG: Thank you.

16 MR. BRINDLE: One clarification just to be
17 clear, as well. While it may be common, it's not our
18 practice to produce in the same facility.

19 MR. YINUG: Okay. A question about the
20 various markets that you serve besides the U.S., just
21 sort of take it a bit broader. Obviously, you export
22 to the U.S. Are there any other markets in the world
23 that you export your high efficiency front load and
24 top load washers to, from either Korea or Mexico?

25 MR. CONNELLY: Oh, boy. I don't think we

1 actually have an answer right here, but we'll get it
2 for you in post-conference brief.

3 MR. YINUG: Okay. And if you could also
4 just provide the share, I guess, that is imported --
5 or is exported from either Korea or Mexico to the U.S.
6 vis-a-vis the rest of your world market, that would be
7 helpful.

8 MR. CONNELLY: Sure.

9 MR. CUNNINGHAM: And we'll do the same for
10 LG.

11 MR. YINUG: Thank you. A question about one
12 of the, I guess, features or reasons why people buy
13 washers and I think this may be a question mainly more
14 for the production folks. Brand loyalty was mentioned
15 as a major factor for, I guess, why consumers purchase
16 certain products. As I understand it, also, this is a
17 highly replaceable feature or something that people
18 often buy when they already have one. I think 95
19 percent of purchases are purchases for replacing an
20 old machine. Would it be a normal practice or would
21 it be an affective practice for producers to, even if
22 they're selling at a higher price, to drop their price
23 a certain time for a long weekend, which seems to be a
24 common practice, to get a sale of someone who normally
25 -- who has already a different brand, with the

1 assumption being that if brand loyalty is high, that
2 that 15 years or five years down the road when that
3 person is going to purchase another brand, that they
4 will most likely purchase the brand they already have,
5 if that makes sense?

6 Basically, if I -- okay, well, maybe to
7 simplify. If you took this chart on, I guess, slide
8 5.5 from the LG presentation, this is under -- by
9 quarter and I guess by quarter, most of LG -- well,
10 all of LG's average selling prices has always been
11 higher than Whirlpool's. If you took that and reduced
12 it, the time frames, to look at, say, weekly average
13 selling prices, would there ever be an instance, you
14 think, where the average selling price of LG would
15 drop below that of Whirlpool for particular weeks?

16 MR. HERRING: John Herring, LG. I think
17 your question is around brand loyalty, right?

18 MR. YINUG: Brand loyalty and whether you
19 get brand loyalty -- whether you would expect the
20 consumer to buy another replacement brand from that
21 same brand and how to get the product initially.

22 MR. HERRING: Certainly brand loyalty is a
23 function of a variety of different components. A
24 brand that's been established as long as Whirlpool
25 has, has very high brand loyalty because of the

1 awareness and the user base is significant and there's
2 a lot of people that have Whirlpool products in their
3 home.

4 When you're a new entrant in the market,
5 such as LG or Samsung, there is no user base of your
6 brand. It's very challenging to bring your brand
7 loyalty up. But as I pointed out actually in slide
8 three, that, yes, price is an important characteristic
9 but, over 50 percent of the time, people bought LG
10 brand for non-price factors, all the items that I
11 outlined: cosmetics, fit, feel, and finish, product
12 quality, reliability, innovation -- all of those
13 different components. So, certainly, price is a
14 factor, but there's a variety of items that impact
15 that.

16 I think the other thing that really impacts
17 brand loyalty is customer satisfaction. And as I
18 pointed out on slide four, the consumer reviews are
19 extremely high. So the people that get it, get LG
20 products or purchase LG products, they go on line,
21 they're passionate about it, they do good reviews, and
22 what happens is you get a recommendation rate, which
23 is consumers recommending your brand to others. We
24 have extremely -- we didn't share this today. We can
25 also provide it to you. We have one of the highest

1 recommendation rates in the industry. So, that's what
2 builds brand loyalty over time. It's not just price.
3 MR. DEXTER: Again from Samsung's point of
4 view, if I could just add a little to that and what
5 you heard there, but you heard earlier in the day
6 about the distribution of home appliances into the
7 marketplace. You know, it goes through the
8 traditional retailers that we've talked about. You've
9 got Sears, Lowe's, Home Depot, HHGregg you heard
10 about. And one of the thing in addition to what Mr.
11 Herring is talking about, consumer recommendation
12 rate, and I mentioned in my earlier comments is also
13 what happens at the trade. So, in other words, you
14 know, as that consumer comes into the marketplace for
15 the first time in 10 years, for example, or they're
16 sick of that vibration down in the basement and they
17 want to do something about it, they go talk to the
18 retail sales person, who has a large influence, just
19 like most of us when we purchase product, and my point
20 is, is that those recommendations are not driven
21 solely on price. Price can be a factor but those
22 retail salespersons are also doing quality, customer
23 satisfaction that they have, knowing that they can
24 stand behind it and recommend it. So, there's a lot
25 of those other factors that are going into that

1 recommendation that are not related to price.

2 MR. YINUG: Okay.

3 MR. CONNELLY: I want to add just a related
4 point on that. We're going to give you a number of
5 studies of consumer buying habits, preferences, with
6 our brief. The problem is sorting them out because
7 there are so many of them.

8 Now, think about the world's largest home
9 appliance manufacturer, Whirlpool. It has got to be
10 the case in the consumer electronics business and in
11 the home appliance business that they study the heck
12 out of this market. We study the heck out of this
13 market. Remember, we're trying to influence consumer
14 behavior. We want to know what consumers want, what
15 they don't want, what's important, what's not
16 important, so does Whirlpool. We all do the same
17 thing. And ask yourself, they come in here, price
18 matters. That's their statement. Price matters,
19 price, price, price. Where are their studies that
20 show just how much price matters? There are none.

21 Let's see them submit all of their
22 information about how much price really matters in all
23 the studies they've done. We'll submit our studies.

24 MR. CUNNINGHAM: I think there's one aspect
25 to your question that we haven't addressed. As I sort

1 of understood it, I think what you were getting at in
2 part was do you have a phenomenon here where a
3 manufacturer wants to get people to buy its product,
4 do that, let's say, by temporary low pricing at a
5 promotional thing, and then have them like the product
6 and build brand loyalty and then that can have a
7 lasting effect and that sort of thing. It sounded
8 like you were getting that. I think probably all
9 manufacturers try to do that.

10 I think the thing about the weekly pricing,
11 though, is -- in these promotional periods, you have
12 different manufacturers discounting different models
13 and it's hard to do some comparisons. I do think you
14 ought -- I would commend to your attention a thorough
15 study of that exhibit -- I always forget -- Exhibit H
16 of the January 9 Whirlpool submission, in which one
17 retailer lays out all of its suppliers, 2011 Black
18 Friday discounts. You should ask yourself, who ended
19 up being the lowest price in, let's say, front load,
20 who had the lowest price model out there. You should
21 ask yourself who is doing what level of discounting in
22 general and whether one was doing it more in one
23 product and one in the other. And I don't think --
24 it's going to be very difficult for you to do kind of
25 a statistical analysis because of the phenomenon that

1 people discount different models and even different
2 products. One manufacturer may concentrate its
3 discounts on top load. The other may concentrate its
4 discounts on front load.

5 But, I think this one you'll find, contrary
6 to what was testified today, that there's very
7 aggressive discounting by the Whirlpool company, by
8 the brand -- one of the Whirlpool brands in that area,
9 in that time period to that retailer.

10 MR. CONNELLY: I just got to add one more
11 thing. I think there's a temptation and maybe almost
12 a practice of the Commission when opposing parties
13 come in, in a preliminary conference, and they say,
14 it's their fault. No, it's their fault, all right.
15 There's a temptation on the part of the Commission to
16 say or predilection to say, well, we can't really sort
17 it out, all right. We're going to have to wait to the
18 final phase to sort it out because, really, we don't
19 have enough time to make a decision and on the one
20 hand, Whirlpool says this, and on the other hand,
21 Samsung and LG say the opposite.

22 Now, I suggest to you that really what your
23 report needs to consider is whether what we're really
24 talking about here is simply the way this market
25 works. Some people aggressively discount top loads.

1 Some people aggressively discount front loads. Some
2 choose Black Friday, some choose the 4th of July.
3 This is how the industry works. It's an ebb and flow.
4 So, it is fruitless, I think, generally, to try and
5 say, well, they started it or they started it, so
6 we're going to sort it out at the end. A fair and
7 balanced analysis of what's going on would see there
8 are promotions by everybody. It happens all the time.
9 That's just the way the industry works. Competition
10 does not equal causation.

11 MR. CUNNINGHAM: And that's why I would say,
12 you have one rock you can anchor yourself here to and
13 that's the data on injury. You find Whirlpool is
14 doing fine on price. You find Whirlpool is doing fine
15 on volume of sales. You find Whirlpool is doing fine
16 on value of sales. You find Whirlpool is doing fine
17 in the areas where it is competing with the imports
18 and not so fine on the areas where it's not. I think
19 you've got something that you can make a decision on
20 that doesn't get you into the whose fault is this and
21 that sort of thing. I think you got a pretty clear
22 decision here.

23 MR. YINUG: Anyone else?

24 (No response.)

25 MR. YINUG: Just a quick practical follow-up

1 question. Is it all a common occurrence for producers
2 to do the equivalent of test driving washers (i.e.,
3 giving a washer for a consumer to use) and, therefore,
4 as a way to get them more information about whether a
5 washer meets their standards or its high quality?
6 Because, there's a lot of information out there, but
7 it's not gained firsthand. Maybe it's not a common
8 practice, but it occurs to me that --

9 MR. HERRING: This is John Herring with LG.
10 We don't --

11 MR. YINUG: Okay.

12 MR. HERRING: -- engage in that type of
13 practice of giving away free products.

14 MR. YINUG: No, it would just be -- it would
15 be --

16 MR. HERRING: We do some of the testing and
17 sampling with maybe our own employee base around that
18 to get feedback.

19 MR. YINUG: Okay.

20 MR. DEXTER: Yeah. Similar to what you
21 heard from Mr. Herring, it's not something that we do
22 with free units into the marketplace.

23 MR. CONNELLY: There may not be free units,
24 but there are certainly studies of what consumers
25 think when models are introduced. There are studies,

1 because, obviously, things can be changed. Things can
2 be improved. As even Mr. Bitzer says, they got a
3 thousand engineers who are working to try and figure
4 out what to do next. Well, part of figuring out what
5 to do next involves finding out what consumers think.
6 So, we do that.

7 MR. YINUG: All right. Just one last
8 question around innovation. You mentioned, I think,
9 Mr. Herring, in your presentation, how some of the
10 innovations that LG has, I guess, come out with, that
11 Whirlpool has come out with afterwards, or something
12 similar. To what extent is it possible for firms who
13 innovate to patent or protect their innovation? It
14 occurs to me that why not -- I mean, if you want to
15 really make a, you know -- you know, if you really
16 want to get consumers, you should have that innovation
17 and not allow your competitors to get it. Is that
18 something that is done or can be done, to distinguish
19 yourself from your competitors?

20 MR. HERRING: John Herring with LG. We
21 certainly do everything we can to protect innovation
22 and technology we're bringing to market. Some items
23 are patentable and some aren't. Color is tough to do.
24 Things with those design characteristics. But, we do
25 what we can to protect the innovation that we've

1 brought forth.

2 MR. CUNNINGHAM: I just want to apologize to
3 staff. We totally forget to bring our patent lawyers
4 with us to this proceeding.

5 (Laughter.)

6 MR. DEXTER: Yeah. As a practice, again,
7 from Samsung, same thing. You know, we do everything
8 in our power to patent great ideas that are going to
9 resonate with consumers out there. And then there's
10 things that we find in the competitive space out
11 there, as Mr. Herring mentioned, that are harder to
12 patent but, we actively are engaged in patenting, as
13 well.

14 MR. YINUG: One last question. I guess it's
15 mainly for the Samsung, Mr. Dexter. Obviously,
16 Samsung is a big company that works in other areas:
17 electronics, you know, computers. To what extent has
18 some of your innovation been -- have you been able to
19 leverage innovation in those areas within Samsung to
20 your washing machine line of products?

21 MR. DEXTER: Yeah. I think, again, you
22 know, as you describe, a big company and we're looking
23 for the -- we're looking for anything that makes a
24 consumer's life better, easier, more productive in
25 their daily life. So, as we look across our portfolio

1 of products, when you mention great new ideas, we're
2 going to -- we're absolutely going to see if we can
3 find ways to bring that same consumer experience in
4 the home appliance market.

5 MR. YINUG: Thank you.

6 MS. DEFILIPPO: Thank you. Mr. McClure, any
7 questions from you?

8 MR. MCCLURE: Jim McClure. No questions.
9 Obviously, Mr. Cunningham is alive and well. But, I
10 would point out that I've known Mr. Connelly even
11 longer. Anyway, thank you, gentlemen, for your
12 presentation, for the time in coming here. Also, if I
13 didn't thank Petitioner earlier, you know, thank you,
14 because I know it's especially tough on a Friday.
15 Everybody wants to get home and with that, I'll shut
16 up, so you can get home.

17 MS. DEFILIPPO: Thank you, Mr. McClure. I
18 just have a couple of quick follow-up things and
19 actually one comes on the last question in terms of
20 innovation, leveraging. Recognizing that both your
21 companies do do large product lines across a lot of
22 different products and we talked -- sort of meshing
23 back to the discussion on brand loyalty, do you think
24 that brand loyalty from other products helps LG or
25 Samsung when they were entering the market for this

1 product? Okay, I have a Samsung TV and I really like
2 that and do you think that helped you guys, in terms
3 of getting into the market with a new washer product?

4 MR. HERRING: John Herring --

5 MS. DEFILIPPO: Off-brand loyalty I'll call
6 it.

7 MR. HERRING: John Herring with LG. Yes,
8 there's certainly some effect of consumers who
9 purchase an LG product, whether it be a LG phone, LG
10 TV, when they enter the marketplace to come search for
11 a refrigerator or washer and dryer. So, familiarity
12 with the brand and other purchase and hopefully a
13 positive experience would encourage them to go forward
14 with that. We'd like it to happen a lot more than it
15 does.

16 MR. DEXTER: Yeah. I think from Samsung's
17 point of view, same thing. Certainly, as we have
18 success across product categories and, as I described
19 earlier, making consumers lives easier, delighting
20 consumers, we want that to transfer across all of our
21 products. I will, however, say that, you know, maybe
22 the converse of that, as Samsung has entered the
23 market and LG, as well, that, you know, we weren't a
24 known brand in the home appliances and what's enabled
25 us to do that is this innovation and quality and fill

1 and finish and all the things that we described, that
2 when we get into the consideration and the purchase,
3 that we're then chosen versus our relative new entrant
4 into the marketplace.

5 MS. DEFILIPPO: Thank you. That's helpful.
6 And we have talked a lot about features and you all
7 have highlighted your efforts to try to be one of the,
8 you know, top tier, high-feature items and I asked
9 this question this morning and you may have answered
10 it and I apologize if it got by me. Across the
11 spectrum of features, are there any that are offered
12 exclusively by your companies that the domestics don't
13 or vice versa or is there a fairly overlapping nest of
14 features between domestic and subject imports?

15 MR. DEXTER: Yeah. From my perspective,
16 again, and maybe the chart that Mr. Herring showed us,
17 his first chart, slide 105 showed that, you know,
18 there tends to be an introduction of features and then
19 you'll find that those features follow into the total
20 marketplace afterwards. I think there are some areas
21 where we're definitely -- well, I don't think, I know
22 that both LG and Samsung have been out in front and
23 leading on many of these innovative features and many
24 times -- you know, the question earlier, we're able to
25 leverage things that we do in some of our other

1 businesses because, again, we know what resonates with
2 the consumer and making their lives better and more
3 enjoyable.

4 MR. HERRING: John Herring with LG.
5 Certainly, we do everything we can to protect the
6 innovation. As Mr. Dexter pointed out, eventually,
7 other competitors will try to replicate or imitate,
8 maybe rename it, re-badge it, you know, slice it a
9 different way to try to meet the same consumer need.
10 But, it's just part of the speed in which this
11 marketplace continues to evolve and why you need to
12 continue to drive incremental resources and innovation
13 to continue to stay ahead and sustain a product
14 leadership position.

15 MS. DEFILIPPO: Thank you. One last
16 question. I always find retail products interesting
17 and probably could go on all afternoon, but I won't
18 because I'm sure people are getting tired. But on
19 sort of the issue of, say, we'll use Black Friday as
20 an example of a day where clearly the retailers are
21 having deep discounts and a lot of advertising around
22 the product. And to the extent that this may get into
23 anything confidential, obviously, feel free to put it
24 into a post-conference brief. In working with the
25 retailers on what products are going to be offered and

1 which products are going to be discounted on, say,
2 Black Friday, are the retailers trying to balance sort
3 of on their floor space or in their advertising a
4 product mix? So, are they trying to balance features
5 and price? Or -- and I guess what I'm trying to get
6 at is, if I were to pick up, you know, the newspaper
7 for Black Friday, would I see a Samsung product or an
8 LG product or a Whirlpool product that had similar
9 features that were being discounted or are they trying
10 to sort of make a package of, well, if I want this
11 feature, the LG one is on sale but if I want that
12 feature, the Samsung one is on sale? And I guess, how
13 is that negotiation working with the retailer? Are
14 they telling you what sort of product they want to
15 place on that day or are you sort of saying this is
16 the one we want to put forward?

17 MR. HERRING: John Herring with LG.
18 Certainly, we look to get insights from the
19 marketplace and the retailer in determining what will
20 be successful for us. From a retailer perspective, if
21 you pick up the paper, they want to have an offering
22 in conventional top or they want to have an offering
23 in high efficiency top or they want to have an
24 offering in front load, because they know there's
25 different consumer segments. So, they want to have

1 offerings across that and, likewise, across different
2 price point segments. There may be opening price
3 point front load versus more premium front load. So,
4 I would tell you the retailer is trying to get a broad
5 offering, so they can win in each one of those
6 sections or each one of those components. And so --
7 also, retailers have strong partnerships with one
8 manufacturer over another, so they're looking to win
9 in the marketplace. Lowe's is trying to beat Home
10 Depot or vice versa. So, there's a lot of factors
11 that go into how the retailer decides what they want.
12 But, in the end, manufacturer determines what their
13 offerings are going to be, just tries to get insights
14 to figure out how to win.

15 MR. DEXTER: And I'd say, you know, to
16 follow that up, again, it's a pretty broad portfolio
17 of products that end up getting offered, some of which
18 are advertised, some of which are, you know, on the
19 floor, floor specials, like you'd imagine. And
20 really, as Mr. Herring said, these retailers are
21 trying to cover all their basis and they're trying to
22 do, you know, maybe kitchen packages for somebody
23 that's really thinking about the holistic kitchen
24 versus the single purchase on a washing machine, for
25 example. So, it covers, as you've heard several times

1 today, a pretty broad spectrum of what goes on. And,
2 you know, we as the manufacturer have a viewpoint on
3 things that we would like to highlight and see offered
4 but -- and, again, as you heard earlier today, in the
5 end, the retailer determines their pricing and their
6 choice of what they're going to market with.

7 MR. CUNNINGHAM: But, you have one thing
8 right -- or you have lots of things right. Sorry, lots
9 of things right. Your question emphasized one
10 particularly right thing -- it's been a long day.
11 Thank you, I apologize for that -- and that is that
12 this is not across the board discounting by a
13 manufacturer. This is picking particular units,
14 several of them, to offer, maybe different ones at
15 different chains and all of that, and, therefore,
16 that's one of the things that makes it difficult to
17 sort of look at Black Friday and get a -- get the kind
18 of overall analysis of pricing of one manufacturer
19 compared to another, that you do in your normal
20 underselling thing. And that's why I tried to walk
21 you through another way to analyze it.

22 MS. DEFILIPPO: Thank you. Actually, I have
23 one more question that came to mind, because we talked
24 some about sort of reputation and reliability being
25 important. And I think one of these slides came from

1 consumer reviews or we had something from Consumer
2 Reports and I haven't looked at a Consumer Report
3 issue in a while, but sometimes they'll do the washer
4 issue or home appliance issue. Do you track or do you
5 see any spike in sales after, you know, a report comes
6 out that talks about washers? I mean, do you see that
7 direct link between, oh, Consumer Report has come out
8 and put LG at the top? Does that -- can you translate
9 that into increased sales?

10 MR. HERRING: John Herring with LG. Yes, on
11 the ratings, themselves, where they specifically
12 outline a model, you would typically see increased in
13 shopping activity and ultimately purchase behavior on
14 that product. We've seen it become less important
15 over time, as consumers are going to the Internet and
16 researching on-line reviews. Consumer Reports is
17 probably not as important from a shopping perspective,
18 in that respect, as it once was.

19 MS. DEFILIPPO: That's a good point.

20 MR. DEXTER: And I think, again, you're
21 seeing, as Mr. Herring just said, you know, the
22 consumer shop inexperience change how they find
23 information. So, to reiterate, you know, once -- you
24 know, what was once very important in a consumer's
25 credible source, like Consumers Reports, may have

1 shifted over time a little bit, but they're still
2 finding many ways to understand what that is before
3 they make the purchase. We talked about J.D. Power,
4 for example. You know, so there's lots of things that
5 go into it that are as accessible as ever in our
6 history and certainly, you can tie the benefit to
7 getting these endorsements to purchases.

8 MS. DEFILIPPO: This is a curiosity
9 question. As a manufacturer, is it then easier for
10 you guys now to have more immediate feedback and use
11 that in your production development process, as
12 opposed to, you know, in the past before the Internet,
13 where you weren't seeing customers getting on line and
14 rating your products? Has that been a helpful
15 development for the manufacturing in putting forth new
16 features, et cetera?

17 MR. HERRING: John Herring with LG.
18 Certainly, using all consumer feedback and insight to
19 improve the development or address, you know,
20 shortcomings or where you can improve the product,
21 absolutely.

22 MR. CUNNINGHAM: And on behalf of my client,
23 we really want to hear from you after you buy your new
24 LG washer.

25 (Laughter.)

1 MR. HERRING: Going to have to leverage that
2 Samsung out of the way to get --

3 MS. DEFILIPPO: I'm going to back to the
4 original one and having my two teenagers start using,
5 if it's still around, the yesterday machine. I don't
6 have any further questions. Does any staff member?

7 (No further questions from staff.)

8 MS. DEFILIPPO: With that, I thank you all
9 very much. It has been very informative and I very
10 much appreciate, also, you taking time from your
11 workday to come here and provide us with information
12 and answer our questions. So, I thank you. We will
13 go to closing statements. It's 2:22. Would you guys
14 be okay with taking until 2:30 to kind of get your
15 thoughts together? We'll reconvene at 2:30 and then
16 head right into both closing statements. Thank you.

17 (Whereupon, a brief recess was taken.)

18 MS. DEFILIPPO: Everybody good? If we can
19 take a seat, we will proceed into our closing
20 statements for the conference. Welcome back, Mr.
21 Greenwald and Mr. Levy. I will let you begin when you
22 are ready.

23 MR. GREENWALD: I'm ready now. It was a
24 fascinating and long morning. What struck me about
25 the Respondents' case was how in a brief two-hour

1 period, they managed to get the law wrong. They
2 managed to get fundamental economics wrong. They
3 managed even to get the dynamics of the market wrong.
4 Let me start with the law. On like product,
5 the point of departure is always the product made
6 domestically that is like or in the absence of like,
7 most similar to the imports under investigation. The
8 imports under investigation are large residential
9 washers. The issue before you is, is there any
10 compelling reason not to have a like product
11 definition that's coterminous and the answer to that
12 question has got to be no. What you heard today from
13 Respondents was that Whirlpool's pricing affects their
14 pricing. The pricing of front load affects the price
15 of top load, vice versa. Some of the distinctions
16 that they want to make you believe exist in terms of
17 distinctions, let's say, on an agitator, and defining
18 a conventional washer versus a high efficiency washer
19 -- in fact, that was one of the things we looked at.
20 What we found was that there are conventional washers
21 with agitators. They talked about them not being in
22 the conventional washer market. That's just not true.
23 It's true that they're not doing conventional washers
24 with agitators in the United States at this point. It
25 is not true that they don't make them in other

1 countries, including, for example, Mexico.

2 The second point on the law. There's an
3 awful lot said about price undercutting, as if that
4 were the litmus test for price effects of subject
5 imports. The statute is disjunctive. It asks whether
6 there's significant price undercutting, significant
7 price suppression, or significant price depression by
8 reason of subject imports. They are very different.
9 And that goes to the point about whether or not the
10 features, which they believe and they say are
11 paramount importance to their success in the market,
12 sell independent of price. That simply is not true.
13 There is not a respectable argument to be made that a
14 highly featured washer by Samsung, by LG, or by
15 anybody else, sells independently of price. You
16 cannot reconcile this non-price factor assertion with
17 the repeated statements lastly by, I think made by Mr.
18 Connelly in sort of a gestured way, that everybody
19 discounts aggressively. That's the market.

20 Well, if that is right and it is true that
21 these guys do discount aggressively, then the notion
22 that there are non-price factors that somehow drives
23 sales regardless of price simply is not true. It may
24 be -- well, in fact, it is true that highly featured
25 washers can sell at a price that is above the price of

1 less featured washers but, the price -- the relative
2 pricing of the two is, in fact, what drives sales.

3 Finally, on the law, I was astonished that
4 Dick Cunningham, who I have known for so many years
5 and respected for most of them, would tell you that
6 the November data, the November 2011 data that you
7 collected in your own questionnaire is somehow outside
8 the period of investigation. Either you got your
9 questionnaire wrong or he got the law wrong and I
10 think the latter.

11 Now, let me turn to the -- where they got
12 the economics wrong. And here, again, I want to go
13 back to Mr. Cunningham or really more precisely to his
14 partner, Tom Trendl. After hearing his notion of
15 injury, please do not let him anywhere near Steptoe &
16 Johnson's management. It is a prescription for
17 disaster. Under this thesis, you could be billing
18 more hours and billing those hours at higher prices
19 and still be losing a fortune and your firm would be
20 in good shape. Let me tell you, that is not how
21 business works. The objective is, in fact, to make
22 money. The notion that there's a price injury or
23 there's a volume injury that is somehow independent of
24 the bottom line of the business is ludicrous.

25 Then let me go on back to this question on

1 economics and features. Another ludicrous proposition
2 that, which Mr. Klett made, is woven throughout
3 Respondents' presentation, is somehow there are non-
4 price factors that -- which their washers sell. To
5 repeat myself, it is true that highly featured, highly
6 regarded washers can command a price premium. It is
7 not true that they sell independent of price.

8 Now to the market dynamics. I was intrigued
9 in the testimony because I kept waiting for somebody
10 on Respondents' side to talk about OEM sales, and
11 there was nothing said. Now, it just so happens that
12 this industry is characterized by fairly significant
13 OEM customers and those customers go about their
14 business in a very different way than, let's say,
15 retailers selling through the Home Depot or Lowe's.
16 We have given you lost sales allegations. Not a word
17 was said about them and, frankly, for good reason.
18 There is nothing that they have to say about that and
19 those sales, again, are enormously significant to the
20 economics of Whirlpool's operations.

21 Finally, let me do something that's a little
22 cheap, but irresistible, and that is to take you to, I
23 think, in this, Mr. Klett's chart. It's page six and
24 it's taking NPD data. And the question before you, it
25 seems to me, is, is there a correlation between

1 subject imports and what happens to market prices.
2 And forget for a moment whether Whirlpool's prices or
3 somebody -- or Samsung's or LG's prices are higher or
4 lower because of this feature and product mix
5 difference and instead ask yourselves the question, is
6 there a visible difference between market segment --
7 let me talk about -- a type of washer that Samsung and
8 LG sell and one that they don't. Is there a visible
9 difference when they enter the market? And I would
10 submit to you, this little chart makes the case we
11 want to make in broad brush.

12 The first two boxes at the top are
13 relatively, again, relatively small capacity washers.
14 And what I want you to look at -- and they're top
15 load. So, what I want you to look at is 2010, in
16 January through September 2011. You see no subject
17 imports of those categories. And I want you to look
18 at what Mr. Klett's pricing data show in both cases.
19 They don't go up during this 2010 to 2011 period -- I
20 mean, they don't go down. Prices actually go up.
21 Now, by contrast, look at the bottom tier, the bottom
22 box, and there, you have larger washers where both
23 Samsung and LG have entered the market and according
24 to these data have done so in a pretty remarkable
25 fashion. Their sales jump from roughly 16,000 to

1 78,000, 79,000, from one point to the other. Now,
2 look at the pricing and what you see there on the
3 Whirlpool side is a fairly dramatic drop in price.
4 So, if you're looking for the sorts of easy temporal
5 coincidence between market entry and impact on
6 Whirlpool pricing, the fact of the matter is
7 Respondent has made the case we want to make.

8 So let me, with that, we'll end it. Thank
9 you.

10 MS. DEFILIPPO: Thank you, very much, Mr.
11 Greenwald and Mr. Levy. And we will now turn to
12 closing statements by Respondents. Mr. Connelly and
13 Mr. Cunningham, please proceed when you are ready.

14 MR. CUNNINGHAM: We are going to play tag
15 team here and I am going to speak for a few minutes
16 and then I'm going to turn it over to my imminent
17 colleague here.

18 MR. CONNELLY: He gets four, that's it.

19 MR. CUNNINGHAM: Yeah, okay. The rebuttal
20 or the response there struck me as singularly odd.
21 The situation you have here is that two Korean
22 companies came into this market, came into the market
23 at higher prices, which this chart that Mr. Greenwald
24 was talking about confirms, and despite the higher
25 prices, gained some significant volume in the

1 marketplace. Nothing like, nothing like Whirlpool's
2 volume, but significant volume. I always wonder when
3 we come in and we make the type of presentation that
4 we made today, which sounded like a marketing pitch
5 for Whirlpool -- for LG and Samsung, about how great
6 our stuff is and how people buy us for our features
7 and all that sort of stuff. And sometimes, you hear
8 that in cases like this and you say, well, they're
9 trying to explain away the impact of imports and say
10 it's not because of price. I suggest to you, here, it
11 has a different function. Here, you have a situation
12 where imports came in at higher prices, were always at
13 higher prices, and what we're trying to tell you is,
14 it makes sense that they came in at higher prices and,
15 nevertheless, gained market share. They came in with
16 very good stuff, with innovations, and the consumers
17 were attracted to it. That is not injury caused by
18 dumped imports.

19 Moreover, Whirlpool sales -- well, you saw
20 in the chart that I can't tell you all about, don't go
21 down. In the areas that we're talking about, where
22 they're head-to-head with Samsung and LG, Whirlpool's
23 realized prices don't go down. Whirlpool's revenues
24 don't go down. What happens here is you have an
25 industry that kept on doing pretty darn well, with the

1 possible exception of something outside of operating
2 data in some quarters, on a certain line of business.
3 And you need to look at that and we'll talk all about
4 that.

5 This is not an injury that shows you injury.
6 It is not an injury that shows you threat. There
7 hasn't been -- the word "threat" hasn't been mentioned
8 today. I was astonished at that. I thought threat is
9 usually the last resort of the desperate petitioner's
10 lawyer. But, it wasn't mentioned today.

11 You did hear belatedly from Mr. Greenwald
12 stuff about lost sales. We didn't mention it. I
13 notice he didn't mention it in his affirmative
14 presentation. We will talk about the lost sales but
15 let me just say, as to the one sale that they've
16 harped on all the time as a lost sale, which is Sears,
17 we have an absolutely devastating documented,
18 documented reputation of their description of what
19 happened to Sears and we will present that to you in
20 the post-hearing brief.

21 What you are left with here is a case of a
22 petitioner that does not come in and show you the type
23 of injury that petitioners normally do. You have a
24 set of imports that came in at higher prices and
25 you're going to find that they stayed at higher

1 prices. And, indeed, if you look at the last chart in
2 Mr. -- in John Herring's presentation, you'll notice
3 that the prices of LG are going up. That's not the
4 kind of case where you find injury. This is not a
5 case you should allow to continue. Allowing this case
6 to continue would have a terrible effect on the
7 marketplace that you don't want to have. I'm not
8 saying you want to say, gee, we were scared of that,
9 so we're not going to go affirmative. What I'm saying
10 to you is there's no reason to go affirmative in this
11 case and I hope you don't.

12 MR. CONNELLY: All right. I'll talk with --
13 I think that was a little more than four minutes.
14 Price: be very skeptical of the NPD data. It's been
15 misused by Whirlpool. Their charts, slide nine and
16 slide 10 -- slide nine is a slide that talks about top
17 load prices -- I'm sorry, front load prices. The
18 reason the price decline is so sharp on slide nine is
19 because our introduction of lower capacity models.
20 Slide 10 is equal infirmities.

21 Let me talk about lost sales. I read what I
22 thought was a very significant lost sale allegation,
23 confirmed by a customer of Samsung's. However, there
24 is a complete rebuttal to that. It is simply
25 insignificant.

1 Features matter, that's their claim. The
2 Commission rejected that in refrigerators. I commend
3 to you the like product analysis in refrigerators. I
4 think we -- I commend to you Whirlpool's brief in
5 refrigerators on a like-product issue. And as far as
6 the law goes, I just recall the shrimp case, where
7 shrimp was shrimp, but the Commission found two kinds
8 of shrimp: frozen shrimp and canned shrimp. And it
9 is frequently the case that the merchandise under
10 investigation is divided into two or more like
11 products. There is nothing unusual about that.

12 So, finally, we're not saying price is
13 irrelevant here. We never made the claim that price
14 is irrelevant. It's just a much more complicated
15 thing than price is everything. You have all these
16 factors and all we're saying is this contrary claim
17 that price is all that counts is just wrong. There is
18 no support for it and Whirlpool knows it. Thank you.

19 MS. DEFILIPPO: Thank you, Mr. Cunningham
20 and Mr. Connelly. On behalf of the Commission and the
21 staff, I would like to the witnesses who came here
22 today, as well as counsel, for helping us gain a
23 better understanding of the product and the conditions
24 of competition in the large residential washer
25 industry. Before concluding, please let me mention a

1 few dates to keep in mind. The deadline for
2 submission of corrections to the transcript and for
3 submission of post-conference briefs is Wednesday,
4 January 25th. If briefs contain business proprietary
5 information, a public version is due on Thursday,
6 January 26th. The Commission has tentatively
7 scheduled its vote on these investigations for Friday,
8 February 10th, and it will report its determinations
9 to the Secretary of the Department of Commerce on
10 Monday, February 13th. Commissioners' opinions will
11 be transmitted to the Department of Commerce on
12 Tuesday, February 21st. Parties are reminded that the
13 Commission's new e-filing procedures became affective
14 on November 7, 2011. Please contact docket services
15 with any questions or concerns.

16 Thank you all for coming. And with that,
17 this conference is adjourned.

18 (Whereupon, at 2:50 p.m., the preliminary
19 conference was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Large Residential Washers from
Korea and Mexico

INVESTIGATION NO.: 701-TA-488, 731-TA-1199-1200

HEARING DATE: January 20, 2012

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 1/20/12

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos E. Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: David w. Jones
Signature of Court Reporter