

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation No.:
LARGE RESIDENTIAL WASHERS FROM CHINA) 731-TA-1306 (FINAL)

Pages: 1 - 275
Place: Washington, D.C.
Date: Wednesday, December 07, 2016



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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation No.:
LARGE RESIDENTIAL WASHERS FROM CHINA) 731-TA-1306 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Wednesday, December 7, 2016

The meeting commenced pursuant to notice at 9:30
a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Irving A.
Williamson, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Irving A. Williamson (presiding)

5 Vice Chairman David S. Johanson

6 Commissioner Dean A. Pinkert

7 Commissioner Meredith M. Broadbent

8 Commissioner Rhonda K. Schmidtlein

9

10

11 Staff:

12 Lisa R. Barton, Secretary to the Commission

13 Sharon Bellamy, Records Management Specialist

14 Nadiya Samon, Student Intern

15 Tyrell Burch, Legal Documents Specialist

16

17 Christopher Cassise, Investigator

18 Dennis Fravel, International Trade Analyst

19 Aimee Larsen, International Economist

20 Karl von Schriltz, Attorney/Advisor

21 Joseph Laroski, Attorney/Advisor

22 Michael Anderson, Supervisory Investigator

23

24

25

1 Congressional Appearances:

2 The Honorable Sherrod Brown, United States Senator, Ohio

3 The Honorable Rob Portman, United States Senator, Ohio

4

5 Opening Remarks:

6 Petitioner (Jack A. Levy, Cassidy Levy Kent (USA) LLP)

7 Respondents (Michael T. Shor, Arnold & Porter LLP)

8

9 In Support of the Imposition of Antidumping Duty Order:

10 Cassidy Levy Kent (USA) LLP

11 Adducci, Mastriani & Schaumberg LLP

12 Washington, DC

13 on behalf of

14 Whirlpool Corporation

15 Jeff Fettig, Chairman and CEO, Whirlpool Corporation

16 Joseph Liotine, President, North America Region,

17 Whirlpool Corporation

18 Sam Abdelnour, Vice President of Sales, North America

19 Region, Whirlpool Corporation

20 Casey Tubman, General Manager for Laundry Products,

21 Whirlpool Corporation

22 Jack A. Levy, Myles S. Getlan and Deanna Tanner Okun -

23 Of Counsel

24

25

1 TRADEWINS LLC

2 Washington, DC

3 on behalf of

4 Haier US Appliance Solutions d/b/a GE Appliances

5 John Magnus - Of Counsel

6

7 In Opposition to the Imposition of Antidumping Duty Order:

8 Arnold & Porter LLP

9 Washington, DC

10 on behalf of

11 Suzhou Samsung Electronics Co., Ltd

12 Suzhou Samsung Electronics Co., Ltd.-Export

13 Samsung Electronics America, Inc.

14 Greg Thompson, Director of Laundry Product Management,

15 Samsung Electronics America, Inc.

16 Daniel Klett, Economist, Capital Trade Inc.

17 Michael T. Shor - Of Counsel

18

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1 Curtis, Mallet-Prevost, Colt & Mosle LLP

2 Washington, DC

3 on behalf of

4 LG Electronics USA, Inc.

5 John Hollen, Vice President of Sales, Home Appliances -

6 OEM, LG Electronics USA

7 John Toohey, Director of Strategy, LG Electronics USA

8 Doug Mittrucker, Director of Key Accounts, LG

9 Electronics USA

10 Sook Hee Roh, Director, Laundry Team, LG Electronics

11 USA

12 Richard Wingate, Vice President, Compliance and General

13 Counsel, LG Electronics USA

14 Daniel Klett, Economist, Capital Trade Inc.

15 Daniel L. Porter and James P. Durling - Of Counsel

16

17 Rebuttal/Closing Remarks:

18 Petitioner (Jack A. Levy, Cassidy Levy Kent (USA) LLP)

19 Respondents (Daniel L. Porter, Curtis, Mallet-Prevost, Colt

20 & Mosle LLP)

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1 P R O C E E D I N G S

2 9:33 a.m.

3 MS. BARTON: Will the room please come to order?

4

5 CHAIRMAN WILLIAMSON: Good morning. On behalf of
6 the U.S. International Trade Commission I welcome you to
7 this hearing on investigations No. 731TA-1306 Final
8 involving large residential washers from China. The purpose
9 of this investigation is to determine whether an industry in
10 the United States is materially injured or threatened
11 material injury or the establishment of an industry in the
12 United States is materially retarded by reason of imports of
13 large residential washers from China.

14 Scheduled setting for the presentation of this
15 Hearing, Notices of Investigation and Transcript order forms
16 are available at the Public Distribution Table.

17 All prepared testimony should be given to the
18 Secretary. Please do not place testimony directly on the
19 public distribution table. All witnesses must be sworn in
20 by the secretary before presenting testimony. I understand
21 that parties are aware of the time allocations. Any
22 questions regarding the time allocations should be directed
23 to the Secretary. Speakers are reminded not to refer in
24 their remarks or answers to questions with business
25 proprietary information.

1 Please speak clearly into the microphone and
2 state your name for the record for the benefit of the court
3 reporter. If you will be submitting documents that contain
4 information which is classified as business confidential,
5 you are requests should comply with Commission Rule 201.6.

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. BARTON: No, Mr. Chairman.

9 CHAIRMAN WILLIAMSON: Very well. Let us begin
10 with our first witness.

11 MS. BARTON: The Honorable Sherrod Brown, United
12 States Senator, Ohio.

13 CHAIRMAN WILLIAMSON: Welcome Senator Brown. You
14 may begin when you're ready.

15 STATEMENT OF THE HONORABLE SHERROD BROWN

16 SENATOR BROWN: Mr. Chairman, thank you. It's
17 good to be back in front of International Trade Commission
18 and thank you for your public service first of all and thank
19 you for your engagement in these issues and thank you as we
20 discussed earlier for visiting Whirlpool, a number of you
21 have and seeing as I have and seeing its facilities and how
22 important it is that people in Washington who make decisions
23 like this visit these manufacturing plants, see the work
24 ethic represented by the 50 workers behind me from Whirlpool
25 and see the technology and the efficiencies and how American

1 manufacturing is alive and well when given the opportunity
2 to compete.

3 The Petitioner, Whirlpool has 10,000 workers in
4 the Ohio communities of Marion and Fenley and Ottawa in
5 Greenville and Clyde. They are a company that takes pride
6 in manufacturing things in America. They employ 22,000
7 workers nationwide who have to take that same pride in
8 making home appliances. Home appliances like washing
9 machines and dishwashers, refrigerators and dryers we all
10 know and recognize because of their high quality and their
11 prominent American flag labels.

12 Whirlpool has 3000 employees at their Clyde
13 facility where they make some of these famous washing
14 machines. As I mentioned 50 of the Clyde workers are here
15 today. Mr. Chairman, I also have some 300 letters from
16 them. I will not submit them as testimony but 3600 letters,
17 360 letters from Whirlpool in Clyde asking the ITC to make
18 the ruling that I hope that you will make. They know that
19 the Commission's decision in this cast could have a big
20 effect on their jobs and on their communities.

21 Understanding in communities of this size often
22 husbands and wives both work at a plant so lost jobs at a
23 plant like that can wipe out entire family incomes, not just
24 the income of one person, sometimes the entire family income
25 making in small town Ohio the success of these plants even

1 more important. My colleague Senator Portman will be here
2 this morning.

3 We stand with the Clyde workers and the Whirlpool
4 workers in the other Ohio communities. We stand with them
5 in their fight against unfair trade practices. I offer this
6 testimony on their behalf. These workers know what good
7 manufacturing jobs do for the local economy. They know how
8 crucial these jobs are to supporting families. Their
9 presence reminds us why enforcing trade laws is so
10 important.

11 We fight for fair trade because we want to make
12 sure our manufacturers and our workers are able to compete
13 on a more level playing field. Today's hearing is only
14 about that, protecting middle class manufacturing jobs,
15 defeating foreign competitors' efforts which far too often
16 result in plant closings. This trade case is an unfortunate
17 sequel to Whirlpool's first washing machine petitions.

18 Petition four years ago, I testified here against
19 unfairly traded washers from Korea and Mexico which were
20 being dumped, subsidized into the U.S. Market. In that case
21 the Commission filed a domestic injury. The industry had in
22 fact had been injured and duties were applied. Those duties
23 helped to stem the tide of Korean and Mexican Imports. They
24 didn't, however, solve the whole problem. That's why we're
25 back at it today.

1 Even before the final determination; Samsung and
2 LG had relocated their factories to China to avoid paying
3 higher duties and promptly resumed dumping subsidized
4 selling into the U.S. Market. Facing unfair competition
5 once again Whirlpool filed another antidumping case and here
6 we are again asking the Commission again to find for a
7 second time the domestic industry is being injured by these
8 unfair trade practices designed to put Whirlpool out of
9 business.

10 There is plenty of evidence that the domestic
11 washer sector is being injured. I am pleased that you're
12 preliminary determination was affirmative. The findings
13 from your preliminary decision are still true. I hope they
14 will inform your final determination. As your decision
15 found the "volume and increase in volume" of washer imports
16 from China are again quoting "significant" and those imports
17 account for a growing share of U.S. consumption. Imports
18 from China have captured market share from the Domestic
19 Industry, your words again and pervasive underselling,
20 again your words, by the foreign correspondents has led to
21 declining prices for U.S. Producers.

22 As a result, the financial performance has
23 deteriorated. Based on these findings, I urge you to vote
24 in favor of the Domestic Industry and made an affirmative
25 final determination. One other issue the Commission must

1 consider that's the critical circumstances in this case.
2 Sometimes foreign competitors as you know will rush to
3 stockpile imports in the U.S. after a trade case has been
4 filed but before duties have been applied. They are doing
5 this to avoid paying antidumping duties.

6 When this happens a finding of critical
7 circumstances can be made which allows duties to be applied
8 retroactively for up to 90 days before the preliminary
9 determination. Applying those duties to the stockpiled
10 inventory helps to ensure these duty-evasion efforts are not
11 successful. In other words, it keeps them from cheating.

12 Critical circumstances exist because Samsung
13 rushed to import a large volume of washers before
14 antidumping duties were applied. Commerce announced
15 preliminary antidumping duties against Samsung and LG on
16 July 20th leading up to that date China washer imports
17 nearly tripled between January and May. But immediately
18 after Commerce's preliminary determination, washers from
19 China were imported in very low numbers, imports from
20 Thailand and Vietnam began to grow quickly.

21 These data reflect the fact that Samsung tried to
22 get as many washers into the U.S. Market before they were
23 slapped with the deserved antidumping tariffs. Now both
24 companies have moved production out of China. Samsung and
25 LG intend to continue this behavior until they get their

1 wish which apparently is to put Whirlpool out of business.
2 That's why the critical circumstances to this determination
3 is so important in addition to what we talked about in the
4 early part of this testimony.

5 Duties collected in the surge of imports before
6 Commerce's determination in July may be the only duties that
7 are collected in this case. When our foreign competitors do
8 whatever it takes to cheat we must do whatever it takes to
9 fight back. That's why I urge you to make an affirmative,
10 critical circumstances finding. If we don't stop this game
11 of whack-a-mole, these companies will succeed increasing
12 their share of the U.S. Market. It will make it impossible
13 for our companies to compete.

14 Whirlpool will continue to struggle against an
15 onslaught of unfairly traded imports and the workers in
16 Clyde will continue to worry whether they will have a job
17 next year. That's just not right. These workers make the
18 best washing machines in the world. Their jobs are the
19 backbone of Clyde, Ohio. Failure to hold our trading
20 partners accountable and to protect these jobs will
21 threaten the U.S. washer industry, the middle class jobs it
22 creates and the communities that depend on them.

23 I mentioned the hundreds of letters from Ohio at
24 the Clyde facility. One of those letters was from a woman
25 named Vicky. I will close with a quote from her letter

1 because I think it sums this up perfectly. Vicky writes
2 "I'm proud that U.S. Manufacturing creates a way of life for
3 my family. I hope that way of life will be just as possible
4 and fulfilling for the young people who are growing up in my
5 community.

6 We at Whirlpool have the skills and knowhow,
7 Vicky writes, to compete with any product made anywhere as
8 long as everyone plays by the rules. Foreign competitors
9 through unlawful actions threaten the U.S. Manufacturing
10 jobs that have made our way of life a positive way."

11 I think Vicky's letter captured what's at stake
12 in your investigation. I urge you to make an affirmative
13 determination in this case, both in injury and critical
14 circumstances and one bit of an anecdote to close with,
15 Clyde, Ohio which some of you have visited this plant. You
16 may also know from the Sherwood Anderson book Winesberg,
17 Ohio which was based on Clyde, Ohio so a little bit of
18 history in literature to throw in for this very
19 distinguished panel. Thank you for listening.

20 CHAIRMAN WILLIAMSON: Thank you very much
21 Senator. Are there any questions, Senator. If not, I want
22 to thank you very much for coming.

23 SENATOR BROWN: Thank you.

24 MR. BARTON: We will now have opening remarks
25 from the Petitioner. Jack A. Levy, Cassidy Levy Kent, USA,

1 LLP.

2 CHAIRMAN WILLIAMSON: Welcome, Mr. Levy. You may
3 begin when you're ready.

4 OPENING REMARKS OF JACK A. LEVY

5 MR. LEVY: Good morning, Mr. Chairman,
6 Commissioners. My name is Jack Levy with the Law firm
7 Cassidy, Levy, Kent and I'm appearing this morning on behalf
8 of Whirlpool Corporation, the Petitioner in this
9 investigation. Let me start by saying that this POI should
10 have been a period of prosperity. Prosperity for Domestic
11 Producers and workers. Why is that? Well, because
12 demand was rising significantly because Domestic Producers
13 invested hundreds of millions of dollars in new products and
14 where therefore poised to deliver washes with outstanding
15 quality. Strong features in innovation and iconic brands.
16 Because raw material inputs, the most significant component
17 of manufacturing costs were declining.

18 And finally, because the Industry had just
19 secured antidumping and countervailing duty orders to remedy
20 the injurious effects of Samsung and LG's imports from Korea
21 and Mexico. Yet despite these tailwinds, the industry found
22 itself again under assault by Samsung and LG's dumped
23 imports this time from China.

24 We are here before you today because Samsung and
25 LG's dumped imports from China have caused material injury

1 to U.S. manufacturers and workers. The evidence of material
2 injury is palpable and comes in the form of accumulated
3 operating losses that render completely uneconomic, the
4 hundreds of millions of dollars in plant investments made
5 during the POI. Make no mistake, Samsung and LG's dumped
6 imports from China are to blame.

7 The prehearing report reveals pervasive
8 underselling. Ninety percent of the time Subject Imports
9 were priced lower than domestic washers at an average margin
10 of underselling of more than 15 percent. The frequency and
11 significance of underselling should be quite familiar to you
12 at this point. The pervasive underselling record before you
13 is actually not unlike what the Commission found in the
14 Korea/Mexico investigation.

15 In their brief, Samsung and LG go on and on about
16 the importance of brand, product features and innovation.
17 And actually, I think we all agree that these are important
18 considerations but the fact remains that as far as the
19 retailers are concerned these things are table stakes. We
20 all have them. We are all comparable. As a result, when
21 manufacturers compete at the wholesale level, competition
22 boils down to price, the net, wholesale price.

23 In a market where manufacturers are competing for
24 flooring based on price, it follows that these dumped prices
25 would result in Samsung and LG capturing market share and

1 that is exactly what happened at the expense of Domestic
2 Producers. These adverse price and adverse volume effects
3 are confirmed in documented lost sales and lost revenues
4 totaling hundreds of millions of dollars. We will highlight
5 several of these examples for you this morning.

6 In the face of such a damning record, what is
7 Respondent's theory of the case? Not to explain the
8 evidence but to toss it aside and ask the Commission to
9 create an entirely new record. For example, they insist
10 that the Commission must just throw out all the pricing data
11 based on over the top allegations that Whirlpool hid the
12 ball or misled the Commission with respect to certain
13 expenses. Allegations that we categorically reject and
14 will address in full this morning. They also rewrite nearly
15 every table prepared by the Staff to reflect their view that
16 a handful of purchasers really matter in this industry.

17 And finally, they talk a lot about the need to
18 collect more data on dryers but let us be clear, not a
19 single party in this investigation is arguing that dryers
20 are part of the Domestic-like product. So frankly I am at a
21 loss to understand why Respondents keep harping on this
22 dryer issue. At the end of the day, Respondents can offer
23 no precedent or any principle basis for rewriting the Staff
24 Report to suit their agenda.

25 We submit that based on the evidence before you

1 only one conclusion can be reached. Subject Imports
2 materially injured the U.S. Washer Industry. And as we will
3 discuss this morning, Samsung's massive stockpile will
4 continue to injure Domestic Producers unless you also issue
5 an affirmative Critical Circumstances Determination. We
6 look forward to presenting our case to you this morning.
7 Thank you for your attention.

8 CHAIRMAN WILLIAMSON: Thank you.

9 MS. BARTON: We will now have opening remarks
10 from Respondents Michael T. Shor, Arnold and Porter, LLP.

11 CHAIRMAN WILLIAMSON: Welcome Mr. Shor, you may
12 begin when you are ready.

13 OPENING REMARKS OF MICHAEL T. SHOR

14 MR. SHOR: Good morning Chairman Williamson and
15 Members of the Commission. My name is Michael Shor and I am
16 with the law firm of Arnold and Porter. I represent
17 Samsung. I have been practicing before this Commission for
18 34 years now and have argued more cases than I care to
19 remember, but this case stands out to me because of the
20 extent to which the Commissioner has asked us all to view an
21 industry in a manner so inconsistent with our actual
22 experience by attempting to cloud key facts.

23 First, Whirlpool asked us to believe that washers
24 and dryers are sold and priced independently. But we have
25 all seen the Sunday inserts from Lowe's and Home Depot,

1 Sears and others offering us precisely paired washers and
2 dryers each at the exact same price. We've all walked
3 through the showroom floors with every washer sitting right
4 next to its matching dryer for every manufacturer at every
5 price point.

6 The retailer and the producer both want you to
7 buy the pair. I suspect the last time you purchased a
8 washer you also purchased its matching dryer both at the
9 same price. These retail pricing practices impact wholesale
10 prices. They have to. Samsung and LG tell you they invoice
11 their washers and matching electric dryers at exactly the
12 same price. The purchaser questionnaires confirm that most
13 washers and dryers are purchased by them at exactly the same
14 price.

15 Because dryers cost significant less to produce
16 than washers, the industry's business model and established
17 pricing practices contemplate that dryer profits cross
18 subsidize washer profits. Because you must evaluate
19 industry profitability in light of these conditions of
20 competition and that's the statutory phrase that Mr. Levy
21 couldn't find, you cannot assess whether low or negative
22 washer profitability indicates injury without also
23 considering the dryer profits that result from the very same
24 pricing you are examining.

25 I implore you once again to request either

1 separate dryer financial data from Domestic Producers or
2 their overall laundry financial data. It is not too late.
3 You have nothing to lose and you are likely to learn
4 something that improves your understanding of the industry.
5 Please do not be misled by Whirlpool unsupported and
6 incorrect assertion that its dryer attachment rate is low or
7 that it prices its washers and dryers differently. Ask them
8 why, following the imposition of duties in this case, they
9 announced the exact same price increase for dryers as for
10 washers.

11 Second, Whirlpool asks us to believe that all
12 washers are interchangeable and compete based on price. Ask
13 yourself when you last bought a washer if you considered
14 brand, if you considered a consumer rating, style, color,
15 technology and features for an appliance that you were going
16 to look at and use for the next ten years or more or did you
17 select the model you bought based on price? Ask Whirlpool
18 why they innovate to differentiate their products from ours
19 and why we innovate to differentiate our products from
20 theirs if price is the key driver.

21 Third, consider Whirlpool's failure to report its
22 product pricing data properly and when they show you slides
23 this morning that show steep price drops from the 2nd
24 quarter to the third quarter for various Samsung and LG
25 models, ask them if that reflects holiday promotions given

1 the 4th and July and Labor Day promotional pricing practices
2 of the industry.

3 Fourth, consider Whirlpool's argument that the
4 competition occurs at the purchaser level and need be
5 analyzed on there. How is that consistent with your
6 shopping experience where all of the major retailers stock
7 all of the major brands? Did the retailer really determine
8 the brand you purchased? Did it floor only the cheapest
9 brand at each price category?

10 Indeed, Whirlpool's depiction of the relative
11 roles of purchasers and consumers is not even internally
12 consistent. On the one hand, they say competition is all
13 about retailers and flooring decisions. On the other hand,
14 they say imports affect the pricing of low and domestic
15 agitator models Samsung and LG do not even compete because
16 consumers cross shop. Apparently consumers play a role in
17 this market only in the one instance where Whirlpool needs
18 then to support an argument it otherwise cannot support.

19 You all likely have experience in this market
20 because you all likely have purchased washers. Consider
21 that experience, consider the role price played in your
22 purchasing decision and consider whether you bought the
23 cheapest. Ask questions based on your experience. Be
24 skeptical of Whirlpool's simplistic story; ask Whirlpool a
25 lot of questions.

1 Thank you.

2 MS. BARTON: Will the first panel please come
3 forward?

4 (Pause.)

5 CHAIRMAN WILLIAMSON: Okay. I want to welcome
6 this panel and Mr. Levy, you may begin when you're ready.

7 MR. LEVY: Thank you again, Mr. Chairman.
8 Jack Levy for Whirlpool Corporation. Before I turn things
9 over to our industry witnesses, I want to comment on one
10 issue that Respondents address repeatedly in their brief and
11 Mr. Shor touched on in his opening remarks. Respondents are
12 saying that you need to throw out the quarterly pricing data
13 because in their words "Whirlpool misled you and failed to
14 back out certain freight costs."

15 Let me tell you this is not true and they
16 misunderstand the facts. So let's set the record straight.
17 Let me take --

18 CHAIRMAN WILLIAMSON: Before you get too far
19 in, Senator Portman is here. Do you mind if we pause and
20 let him make his statement?

21 MR. LEVY: Certainly.

22 CHAIRMAN WILLIAMSON: Thank you.

23 MS. BARTON: The Honorable Rob Portman, United
24 States Senator, Ohio.

25 CHAIRMAN WILLIAMSON: Welcome, Senator

1 Portman. It's good to have you here and you may begin when
2 you're ready.

3 STATEMENT OF THE HONORABLE ROB PORTMAN

4 SENATOR PORTMAN: Thank you, Mr. Chairman.
5 Chairman Williamson, thank you very much. It's great to be
6 back again. I appreciate you all allowing me to speak as I
7 come in. We are still in session, believe it or not and
8 voting, and with any luck the lame duck session will be over
9 soon. But I really appreciate your indulgence in allowing
10 me to come before you today and to talk a little about a
11 very important case.

12 The petition from the Whirlpool Corporation
13 for anti-dumping duties on large residential washers
14 imported from China is incredibly important to my home state
15 of Ohio. I see you have a display here. I'm glad my wife
16 is not here to see that. She would demand that we get a new
17 washer. But this is really important to my home state and
18 to our country.

19 I want to thank my colleagues who have already
20 spoke. I think Senator Brown was here earlier, is that
21 correct, and I know that Congressman Teaberry wanted to be
22 here. I think he's detained in Ohio. I wanted to thank the
23 Ohioans who have come from Clyde, Ohio to be here. My
24 understanding is that in the room today there are 52
25 employees from the Clyde plant, and the only reason there's

1 only 52 and not several hundred is that the bus only fit 52.

2 I thank them for being here because ultimately
3 this is about them and it's about their community. There
4 are 3,000 workers employed at the Clyde facility, more than
5 10,000 Whirlpool employees in my home state of Ohio, a huge
6 employer. It's not the only washing machine manufacturer by
7 the way that employs Ohioans. We have the Staber Company in
8 Groveport. Of course GE operates just across the border in
9 Kentucky.

10 These are important American companies that
11 provide good jobs, benefits and livelihoods to families in
12 our local communities. I've visited the Clyde plant. I've
13 seen it in person. Some of you may have been there.
14 Incredibly innovative plant and really interesting what
15 they're doing. It's a top notch, world class product and
16 they do it very efficiently.

17 They're also heavily invested in energy
18 efficiency, something that as some of you know I've been
19 working on over the years and proud of the work they do
20 there. Every four seconds one of these high quality washers
21 comes off the assembly line, and while autonomous vehicles
22 are just being tested in most places, you can see 60
23 autonomous vehicles buzzing around the Clyde plant floor,
24 where they're helping to produce washers faster and more
25 efficiently than ever.

1 So they've made the investment in the training
2 for the workers at the technology at the plant and energy
3 efficiency, and I'm proud of that as well. It's not just a
4 washing machine plant though; it's an integral part of the
5 fabric of the community. Plant manager Dan O'Brien is with
6 us here today and I'm sure he's told you as he's told me in
7 a study they did in 2014, it showed that one-third of the
8 jobs in Sandusky County are in some way connected to the
9 Clyde plant. Amazing.

10 Suppliers, restaurants, schools, obviously
11 contractors, employees. 70 percent of the County's United
12 Way funds comes from the Clyde plant. The Clyde plant is
13 family and in some cases literally more than ten percent of
14 the workforce at the plant has relatives there. Some
15 families have four generations who have worked there.

16 As I talked to the workers and asked them how
17 they got their job and how they got this, well because my
18 father worked here and my mother worked here and my
19 grandfather worked here, my great grandfather worked here.
20 This is about family and about community. We're talking
21 about not just a plant; we're talking about an entire
22 community.

23 Nearly four years I testified to you in
24 another case affecting Whirlpool. You recall at that time
25 Whirlpool told you it was in the process of repatriating its

1 production and bringing back good-paying jobs to America.

2 They've done it. These jobs came from
3 Germany, they came from Mexico. They kept their promise.
4 They're investing in America and in Ohio in particular, the
5 company has decided to place its faith in us, in you and in
6 me, in our system here in this country, in the marketplace,
7 in the notion that if you make a high quality competitive
8 product that consumers want to buy, you price it fairly,
9 this investment will pay off, and I want to thank you for
10 making the right decision in that case regarding Korea in
11 that case. You found material injury.

12 But before your final determination was even
13 reached in this case, Samsung and LG were already moving
14 their production to China. Free of duties that the
15 Commission had imposed on the washers coming from Korea,
16 they continued to target the U.S. market and have continued
17 to undermine Whirlpool's investment we talked about in an
18 American plant, in American jobs.

19 That's what makes this case before you
20 interesting to me, and I think clear. You've got the very
21 same producers, the very same model numbers from the prior
22 case and the only change in the label is instead of saying
23 "Made in Korea" it now says "Made in China." I hope the
24 outcome of the case is the same as the outcome in the first
25 case.

1 These washers continue to be dumped in
2 significant volumes in the U.S. market. Faced with having
3 to sell at fair value and potentially lose business, Samsung
4 and LG moved to China. A few months ago, the Commerce
5 Department found dumping of up to 111 percent. Both
6 companies picked up their production and moved to other
7 countries.

8 Today, these duty evaders continue to sell
9 underpriced washers here in the United States. So years
10 ago, Congress added the critical circumstances provision to
11 the anti-dumping statute to deal with this type of behavior.
12 Retroactive duty liability was authorized to stop companies
13 from moving to a different country and rapidly shipping
14 large volumes of merchandise to the United States, in
15 advance of a preliminary determination from the Commerce
16 Department.

17 The application of retroactive duty liability
18 may be the only remedy available to the American industry in
19 this particular case. I've visited dozens of manufacturing
20 centers across Ohio and what I hear is I'm sure what you
21 hear. Workers are skeptical. They're skeptical about our
22 ability to have a level playing field, to be able to have
23 fair trade.

24 They're worried. This concern is the reason
25 my colleague Senator Brown and I wrote and passed the Level

1 the Playing Field Act, to give this Commission the tools
2 that you all need to be able to find material injury in
3 these types of cases. Level the Playing Field, as you know,
4 expressly put the anti-dumping and countervailing duty
5 statute, that workers should not have to be laid off or
6 plants shuttered before the Commission finds material
7 injury.

8 I urge the Commission to pay close attention
9 to these new provisions of the law when deciding this case.
10 I'm here today because this case is critical, as I've said,
11 to families and communities in Ohio and to securing future
12 investment and job creation by companies like Whirlpool.
13 They're doing the right thing and investing, and investing
14 in our country, and I'm concerned that if we don't protect
15 them from unfair trade, they'll no longer be able to do
16 that.

17 I want to thank the Commission once again for
18 examining this case closely. In my experience as a former
19 U.S. Trade Representative and as a U.S. Senator from one of
20 the top manufacturing states in the entire country, is that
21 this Commission has been able to look at these cases
22 objectively and apply the law fairly and evenhandedly. I
23 want to thank you for that and thank you again for the
24 opportunity to appear before you and speak up on behalf of
25 these Ohio workers, whose livelihoods are under attack.

1 Thank you, Mr. Chairman.

2 CHAIRMAN WILLIAMSON: Thank you, Senator. Any
3 questions for the Senator? We'll let you get back to your
4 busy schedule on the Hill, but thank you very much for
5 coming.

6 SENATOR PORTMAN: Thank you to the Commission
7 and thank you Mr. Chairman.

8 CHAIRMAN WILLIAMSON: Okay, thank you.

9 MR. LEVY: Thank you again, Mr. Chairman,
10 Commissioners. As I was saying before we turned things over
11 to our industry witnesses, we just want to address one
12 issue, this issue of freight, where Respondents are saying
13 you need to throw out your quarterly pricing data because in
14 their words, Whirlpool somehow misled you or failed to back
15 out relevant freight costs, and quite simply they
16 misunderstand the facts. This is not true, and we want to
17 take a minute to set the record straight.

18 As you know, for the final phase of this
19 investigation, the Commission gave a different reporting
20 instruction than the reporting instruction for the prelim or
21 the Korea-Mexico case for that matter. So let's just be
22 clear. In the prelim and in the prior case, the instruction
23 was to report prices FOB point of shipment. So if for
24 example Whirlpool was selling to a customer out of its local
25 distribution center, its LDC, in the prelim we would be

1 backing off that last leg of freight from the LDC to the
2 customer.

3 Now in the final phase, you gave an entirely
4 new and different instruction, and you instructed parties to
5 report FOB plant for U.S. producers, and for importers, the
6 functional equivalent FOB port of entry. To be clear, we
7 complied with these instructions. So take the example I
8 just gave you, where Whirlpool is shipping to a customer out
9 of its local distribution center.

10 We're now not only deducting that last leg;
11 we're also deducting upstream freight costs associated with
12 transportation to get to the LDC. What we did not deduct,
13 nor were we required to deduct are warehousing expenses.
14 During verification, we discussed with your auditor, Mr.
15 Boyland, a particular subcategory of warehousing expenses,
16 and we were 100 percent transparent in explaining that this
17 cost subcategory might include some small amount of U.S.
18 transportation to the customer.

19 But we explained to him that we had no way to
20 split hairs and separately identify any such costs, and so
21 we made no deduction. The amount at issue here is trivial,
22 and Mr. Boyland seemed satisfied with our explanation and
23 our transparency. Now based on this, Respondents would have
24 you reject all of your pricing data, just throw it in the
25 garbage.

1 But consider this. Whirlpool was truthful and
2 transparent, and conducted itself with integrity, and our
3 data have been verified. If you have any doubts or
4 concerns, please just ask your auditor. It's also worth
5 noting that the size of this cost subcategory we're talking
6 about here, the whole category is very small.

7 How small? Less than one percent of sales.
8 Meanwhile, the average margin of Samsung and LG underselling
9 is more than 15 percent. So even if you were to do
10 something ultraconservative and deduct all of these
11 warehousing costs, you barely move the needle in terms of
12 results. You'd still have pervasive underselling and
13 significant margins of underselling.

14 So in our view, this complaint from
15 Respondents is just a red herring. It's nothing more than a
16 desperate attempt to disqualify the pricing data on the
17 record. Now at this time, I'm going to turn things over to
18 our industry witnesses. We have here Jeff Fettig, CEO of
19 Whirlpool Corporation, Joe Liotine, president for North
20 America, Sam Abdelnour, head of Sales, Casey Tubman,
21 general manager with responsibility for the washer business,
22 and lastly we also have a representative from GE Appliances,
23 Mr. John Magnus.

24 I'm also joined by partner, Myles Getlan and
25 our co-counsel, Deanna Okun. So thank you and with that,

1 I'll turn things over to Whirlpool CEO Jeff Fettig.

2 STATEMENT OF JEFF FETTIG

3 MR. FETTIG: Good morning. My name is Jeff
4 Fettig, and I'm Chairman and CEO of Whirlpool Corporation.
5 I've been with our company for over 35 years. I'd like to
6 first start by saying I'm disappointed that Whirlpool is
7 here in front of you again, as I and we were four years ago.
8 I had hoped our last case would have remedied the unlawful
9 behavior of our competitors.

10 However, Samsung and LG have really left us
11 with no choice but to bring this petition forward. Serial
12 dumping by Samsung and LG continues to injure our U.S.
13 washer business. Just a few years ago, this Commission
14 unanimously voted for a remedy to address dumped and
15 subsidized imports from Korea and Mexico, and I am very
16 frustrated that Whirlpool received virtually no benefit at
17 all from these orders.

18 In fact, LG and Samsung effectively
19 circumvented the remedy before the investigation was even
20 completed by moving their production to China. I do
21 appreciate this Commission's work and attention to these
22 important issues. We are confident that when you fully
23 consider this case, you will find that an affirmative
24 injury decision is once again clearly warranted.

25 You've heard a few things about our company,

1 but let me spend a few minutes to tell you about our
2 company. We were founded and are still headquartered in
3 southwest Michigan in 1905, 105 years ago in 1911. We have
4 over 25,000 U.S. employees and over 10,000 employees in the
5 state of Ohio alone. From the very beginning, we've been a
6 leading innovator of washing machines, first in the United
7 States and now around the world.

8 We continue to produce the best washers with
9 the best employees at the largest and most efficient washing
10 machine facility in the world. I am grateful and they've
11 been mentioned before, but I'd like to acknowledge that we
12 have over 50 of our 3,000 plant employees here today and
13 three of you local community leaders who made a ten hour,
14 430 mile bus trip from Clyde, Ohio to attend this hearing.
15 They're in the back to your right. So thank you for being
16 here.

17 They're here though because this case is so
18 important to our company, to our workers and their families
19 and all the residents in Clyde. I would like to start and
20 draw your attention to Exhibit 1, which I think they'll put
21 up here. It highlights some of the facts about our Clyde
22 operations.

23 Here, we have a facility at 2.4 million square
24 feet. As it was said, Clyde produces a washing machine
25 every four seconds, and is the world's largest plant. Our

1 total investments in Clyde exceed \$1 billion. Our washer
2 business supports approximately 800 U.S. suppliers,
3 including U.S. steel, ArcelorMittal and Revere.

4 As great as this facility, it is our workers
5 who are the pride of our company. As I said, we employ over
6 3,000 people at Clyde, but I would like to take a moment and
7 recognize two of them who are here today. Steve Clapp,
8 who's a veteran and his wife Marcia have worked at Whirlpool
9 for a combined 73 years, which is representative of the
10 commitment of our employees. Steve and Marcia, if you would
11 please stand? I'd also like to recognize them and thank
12 them for all that they've done.

13 Clyde also supports thousands of more jobs
14 across the U.S. through our local supply base. This
15 operations and our workers are why we're here, to defend the
16 business and continue our proud and competitive
17 manufacturing tradition in Ohio. 100 percent of Whirlpool's
18 large residential washers sold in the United States are made
19 at our plant in Clyde, and we want to keep it that way.

20 Regarding the case, I want to be very clear.
21 Samsung and LG are harming our U.S. washer business. At
22 Clyde, the only appliance we make is washers. The return on
23 investments in Clyde must come from our washer business. I
24 have heard the arguments the other side is trying to make,
25 that somehow it's normal to offset losses on the washers

1 with profits on dryers. That's 100 percent completely
2 wrong.

3 We don't make investments for Clyde based on
4 our dryer business, nor our dishwasher business or our
5 refrigerator business. The washer business alone is an
6 investment center and must deliver returns on every
7 investment we make at Clyde for washing machines. In the
8 last few years, Whirlpool has invested more than \$400
9 million in our Clyde facility, toward the development and
10 manufacturing of industry-leading innovative products, which
11 you're going to see later on today.

12 Throughout the period of investigation,
13 Whirlpool launched new platforms, model lines, continuing
14 our record of producing high quality of innovative washers.
15 I'd also like to take a moment to address an investment that
16 we're very proud of. During the last case, I promised here
17 that Whirlpool would repatriate all front load washing
18 machine production to the United States.

19 I'm pleased to report that we've completely
20 fulfilled this commitment and because of these investments,
21 we created 450 new manufacturing jobs at Clyde.
22 Unfortunately, Respondents have prevented us from earning a
23 return on any of these investments. Samsung and LG are
24 offering lower prices today than ever before. These low
25 promotional prices are extending well beyond traditional

1 holiday periods.

2 For example, Black Friday is now Black
3 November and even longer. Samsung and LG have led the
4 charge of expanded promotional periods with their deep and
5 ongoing extended promo prices. This has forced us to revamp
6 our entire promotional pricing programs, in an effort to
7 limit further market share erosion and job losses.

8 Even outside the promotional period, Samsung
9 and LG are discounting in unusually aggressive way. They
10 frequently offer deep discounts very shortly after launching
11 a new model. To give you an example of what I mean here,
12 turn to Exhibit 2. Earlier this year, Samsung launched a
13 new frontload washer they called Addwash, and based on our
14 competitive intelligence we know at launch the wholesale
15 price was \$603.

16 Within 90 days, 90 days, they reduced the
17 wholesale price by 30 percent to \$420. Clearly, this
18 aggressive behavior has nothing to do with life cycle
19 pricing or product innovation. It's just dumping, plain and
20 simple. The Add a Wash example illustrates a point I made
21 when I was last here. Discount prices at the high end of
22 the washer line are compressing prices in the mid-range and
23 low end of the product line. This dynamic continues to
24 exist and has actually gotten worse.

25 But there is a new dynamic. Now we also

1 compete head to head against subject imports at the opening
2 price point models. So if you refer to Exhibit 3, you'll
3 see Samsung's 3000 model, their newest low end top load
4 washer. We have a sample of it here in the room, and
5 according to our competitive intelligence Samsung has now
6 priced this model to retailers as low as \$270 at wholesale.

7 This 3000 has been extremely disruptive at the
8 very low end of the market, and as you see here, it's priced
9 lower, lower than our smaller capacity adjutant washer, the
10 Maytag 415. This is absolutely clear and compelling
11 evidence that they're not only crashing prices at the high
12 end, but they're also aggressively pricing at the low end of
13 the product line as well.

14 During the Period of Investigation, Whirlpool
15 has invested more than \$400 million in our washer business
16 at Clyde. We did this in anticipation of growing demand and
17 a level playing field from the Korea-Mexico orders. But
18 because Samsung and LG decided to dump washers from China,
19 clearly and in effect circumventing the benefit of the prior
20 case, we've lost money on all these washer investments.

21 I'd like to turn to Exhibit 4. On the last
22 shows our investments and the right shows our return. It
23 really is as clear as that. Beyond our current losses,
24 we've cancelled major investments in new washers because the
25 current commercial environment prevents us from having a

1 return. Earlier this year we cancelled our Amax project,
2 which would have added an extra wide large capacity
3 front-load washing machine to our lineup.

4 This cancelled investment prevented the
5 creation of hundreds of more jobs at Clyde and with our
6 suppliers across the United States. In fact, because of the
7 injuries that we've experienced from Samsung and LG's
8 unlawful dumping, we estimate we've been unable to create an
9 additional 1,300 jobs at Clyde and thousands of more jobs in
10 the United States with our supply base, all due to unlawful
11 dumping.

12 Finally, I'd like to make an important comment
13 about critical circumstances. Our legal team tells me
14 critical circumstances is about preventing respondents from
15 intentionally stockpiling product to avoid duties and
16 further circumvent the law. I can't think, I can't imagine
17 a clearer case of stockpiling and intentional circumvention
18 behavior than what we've seen here with Samsung.

19 Samsung has now picked up and moved its washer
20 production twice, not once but twice during the
21 investigation to avoid paying duties. First, Samsung
22 shifted its production platforms to China while you were
23 still investigating the dumped washer cases from Korea and
24 Mexico. Then as soon as we filed our petition on this case,
25 Respondents, and again particularly Samsung stockpiled

1 enough product to allow them to move their production out of
2 China to Vietnam and Thailand, clearly to avoid paying cash
3 deposits or duties.

4 Stockpiling is the mechanism that enabled them
5 to move completely out of China without disrupting their
6 flow of dumped washers into the United States. In fact,
7 Samsung is continuing to dump stockpiled product, furthering
8 Whirlpool's injury. Sadly in effect critical circumstances
9 may be the only meaningful remedy Whirlpool can expect from
10 this case, and the only way to deter future circumvention by
11 these companies.

12 Let me conclude by reminding you that
13 Whirlpool's washer business was very profitable before
14 Samsung and LG began dumping in the United States. We have
15 created thousands of American jobs and could have created
16 much more. But in the current environment, Whirlpool's
17 washer business has suffered significant operating losses.
18 We've suffered a negative return on all of our prior
19 investments. We've cancelled new investments in future
20 products, and this is preventing us from creating thousands
21 of new jobs.

22 I believe this situation is unsustainable for
23 U.S. manufacturing. I'm asking the Commission to enforce
24 the U.S. trade law to address Samsung and LG's continued
25 unlawful behavior and purposeful circumvention. Our 3,000

1 employees at Clyde deserve nothing less, and I do trust that
2 you'll make the right decision in our case, and I appreciate
3 you taking the time to listen to us.

4 Thank you.

5 STATEMENT OF JOSEPH LIOTINE

6 MR. LIOTINE: Good morning. My name is Joe
7 Liotine, President of Whirlpool North America. I've been
8 with the company approximately 12 years.

9 Early in my career I worked in our sales
10 organization, Sales to Sears, and then later I worked in our
11 Key Account business. I've also run our Marketing
12 Departments, both product as well as brand, before running
13 all of North America.

14 In the preliminary phase, I testified at the
15 staff conference and described how Samsung and LG pricing
16 has been harming our washer business. Unfortunately, the
17 preliminary proceedings have not caused Samsung and LG to
18 change their practices. In fact, Samsung has chosen to
19 stockpile products in order to continue dumping washers into
20 the U.S.

21 I am going to turn things over to Sam Abdelnour
22 who runs our head of sales, and then to Casey Tubman who is
23 the general manager responsible for our washer business.

24 After our panel completes its prepared testimony,
25 I look forward to answering any questions you may have.

1 Thank you.

2 STATEMENT OF SAM ABDELNOUR

3 MR. ABDELNOUR: Thank you, Joe, and good morning.

4 My name is Sam Abdelnour and I am the Vice President of
5 Sales for North American Business. I have also been part of
6 Whirlpool's sales team for more than 35 years.

7 In my role, I regularly work with our customers,
8 the retailers. This includes retailers like The Home Depot,
9 Lowes, H.H. Gregg, and regional retailers who are often
10 members of buying groups.

11 I want to echo what Jeff said earlier. We do
12 have great innovative products. The fundamental challenges
13 I face in sales is retailers' concern that our washer prices
14 are not competitive compared to LG and Samsung.

15 I want to provide several real-life examples to
16 illustrate the conditions of competition for washers.

17 Fundamentally, Whirlpool competes for washer
18 sales at the wholesale level. All manufacturers sell to
19 retailers and to distributors. Each retailer looks to floor
20 a range of washers across a full range of price points. We
21 call that "line logic."

22 And at each price point, retailers want to floor
23 multiple washers with different feature packages. Because
24 retailers have limited floor space, they must choose which
25 washers will make it onto their sales floor. For all

1 manufacturers, the competition for floor space is fierce.

2 Winning and maintaining floor spots is critical
3 because consumers typically purchase only those models that
4 they see in the store. As we say, if you don't floor it,
5 you can't sell it.

6 When we negotiate flooring with retailers, I am
7 constantly touting the strength of our washers. LG,
8 Samsung, and GE do the same thing. The reality is that
9 retailers consider all of us to be comparable and know they
10 can sell any of our washers once they have them on the
11 floor.

12 We routinely give presentations to our retailers
13 about our washer lineups. I have seen them rip up the pages
14 touting our features and brands and innovation and focus
15 solely on our price sheet.

16 This reality is that because retailers consider
17 all of these washers to be comparable and a major point of
18 distinction is always price.

19 The wholesale price is important because
20 retailers are focused on margins and turns. Margin is
21 simply the difference between the retail price and the net
22 wholesale price at which the retailer buys the washer.
23 Turns refer to the number of units sold in any given period
24 of time.

25 Retailer profitability is based on both per-unit

1 margin and total sales volume. A retailer will floor models
2 that provide the best margin opportunity. For each floor
3 spot, they want to get the highest return possible.

4 Let's refer to Exhibit 5. In this email, Home
5 depot is discussing BOF and asking for additional GM on our
6 washers. Let me translate, if I can. BOF is
7 balance-of-floor, which is the number of floor spots
8 compared to our competition. GM is simply gross margin.

9 Home Depot is threatening our flooring due to
10 inferior margins on our part. As you can see in the email,
11 the only thing that matters to Depot on this decision is
12 their margin, and they are using LG pricing as leverage.

13 Whirlpool washers have all kinds of innovative
14 features that we would love for consumers to have and see,
15 but the reality is our best innovations don't always make it
16 to the floor unless we are able to offer retailers wholesale
17 prices that are competitive with LG and Samsung.

18 The competition for sales to retailers is not
19 limited to initial flooring decisions. Once we obtain floor
20 spots, we are constantly having to defend those floor spots.

21

22 If we don't continuously provide promotional
23 support to drive volume in sales, we risk losing the floor
24 spot to a competitor offering lower prices and more
25 promotional support.

1 Let me show you an example. Let's take a look at
2 Exhibit 6. This is an email exchange between Home Depot and
3
4 Samsung that Home Depot forwarded to us. As you can see,
5 Home Depot is welcoming Samsung's lower prices and telling
6 Samsung that we will win floor spots and hit Whirlpool and
7 GE where they live. Then Home Depot forwarded this email to
8 us inviting us to reduce our prices in response.

9 Let me give you another example. This one is
10 from a recent top-to-top senior-level meeting with one of
11 our big box customers to discuss the state of our business.
12 Let's refer to Exhibit 7.

13 In this excerpt from the presentation they used
14 to show that Whirlpool needed to provide more margin
15 opportunity, they're telling us that Whirlpool offered the
16 worst margins, which means higher wholesale prices, than our
17 competitors.

18 We have had this same conversation with every
19 retailer, big box and independents alike. Retailers also
20 threatened our flooring when Whirlpool attempted to increase
21 prices. One example of this occurred in mid-2012, after the
22 Korea, Mexico case was filed, and when LG and Samsung were
23 already shipping from China.

24 Please refer to Exhibit 8. In this example, you
25 see four separate emails that are typical of what I receive

1 from retailers when we try to announce a price increase.

2 First, Home Depot is telling us that we will
3 definitely lose floor spots if we implement a price
4 increase. Home Depot later clarifies in another email that
5 the Korea-Mexico case was a nonfactor. And because LG and
6 Samsung had already moved production to China.

7 In another email, Sears is telling us if we
8 implement the proposed price increase our products will not
9 be competitive and will be replaced on their floors.

10 Finally, Lowes is simply saying that they are not
11 accepting the price increase. And why should they? Afer
12 all, Samsung and LG are available to take our floor spots
13 with comparable products at much lower prices.

14 Whirlpool attempted a similar price increase for
15 2014, but the pushback was immediately and strong.
16 Retailers told us GE had announced its own price increase
17 around the same time, but on December 11th, 2013, the Home
18 Depot told us that Samsung and LG would use this opportunity
19 to take our floor spots and grow share. Ultimately, our
20 price increase was defeated.

21 This competition is a daily grind. I am talking
22 every day with our retailers about Whirlpool's productivity
23 on their sales floors. And what do I hear from retailers?
24 The low prices they are getting from Samsung and LG.

25 Let's look at Exhibit 9. This is an example of

1 how retailers expect us to follow Respondents' lower prices.
2 The subject of this email is "LG Basement." This email then
3 reads: "Just thought you might like to go down the stairs to
4 the LG basement. Yesterday they made an offer on steam 4.3
5 cubic feet at \$475. I guess you should get ready to go down
6 the stairs. I will be in the basement waiting."

7 This email is from BrandSmart, one of our valued
8 retailers in Florida. The buyer reminds us of the
9 importance of being competitive on price all the time. He
10 actually has a sign in his office and a saying on his
11 business card, and it says: There is no such thing as bad
12 product, just bad prices.

13 The messaging is similar at the Home Depot.
14 Internal newsletters for sales associates has reminded them
15 that there are no bad appliances, just bad prices.

16 It cannot be clearer. Retailers' flooring
17 decisions are based on net wholesale prices. And LG and
18 Samsung are leading prices to depths we've never seen
19 before. These low prices put us in an untenable situation.

20 If we meet competition, we lose revenue on our
21 sales. If we refuse to meet competition, we lose sales
22 volume. In short, price is the key purchasing factor and
23 price is the focus of the daily discussions with my
24 customers and all retailers.

25 The focus of my comments so far have been on the

1 branded sales to our retailers. The same price-based
2 competition exists for the Kenmore OEM business. The
3 Kenmore contract is awarded through a formal bidding
4 process. Sears provides the specifications and estimated
5 volumes for each model.

6 Each manufacturer proposes a price to produce the
7 same washers. It is the best example of price-based
8 competition. The lowest price wins.

9 Let me turn your attention to Exhibit 10. In
10 2015, Whirlpool lost a bid to manufacture Kenmore front-load
11 washers for the 2016 to 2018 contract period. In the
12 initial phase of the negotiations, Sears told us that our
13 meeting was a productive first step in the partnership, and
14 said they applauded Whirlpool's strength in the laundry
15 category.

16 Essentially they were telling us that they had no
17 issues with our ability to deliver great products. We had
18 high hopes for this one, but unfortunately LG ultimately won
19 the bid. And Sears told us that we were 6 percentage points
20 higher than LG.

21 This is just one example of how we lost Kenmore
22 business to imports from China because of price. Details of
23 our other allegations concerning Kenmore have been provided
24 on the proprietary record.

25 Thank you for your time today at the Commission.

1 At this point I would like to turn it over to Casey Tubman.

2 STATEMENT OF CASEY TUBMAN

3 MR. TUBMAN: Good morning. My name is Casey
4 Tubman and I have the honor of being the General Manager of
5 Whirlpool's U.S. washer business. Some of you may remember
6 that I testified before the Commission four years ago, and
7 unfortunately it feels like Groundhogs Day and I'm here
8 again.

9 Let me tell you a bit about myself. While I
10 haven't caught up to Jeff and Sam yet, I have been with
11 Whirlpool for 20 years. I was first hired as a washer
12 engineer, and then I transitioned into product development
13 and innovation.

14 From there, I moved to the sales and
15 merchandising side of our business where I engaged with
16 retail buyers on a daily basis, and now I am responsible for
17 the entire U.S. washer business, including the financial
18 P&L.

19 At this point, if it's okay, I am going to stand
20 up and go through the products that we've brought here
21 today. Let me make sure this works (the microphone). Is
22 that working? Great.

23 So Jeff and Sam earlier mentioned our tremendous
24 quality and innovation of our products. And if you'll refer
25 to Exhibit 11, which Jason has brought up, thank you, we're

1 just going to go through a few of these as we talk about the
2 products.

3 I am a product guy through and through, so I get
4 a big excited. I may go fast, and I'll try to keep the
5 language in what you know.

6 One thing we talk about is, this is a VMAX
7 platform. So a VMAX washer. We talk in terms of our
8 product platforms as we design the internal projects, and so
9 again if I say VMAX I want you to know what I'm talking
10 about. This (indicating) is a VMAX washer.

11 This is an Advantage washer (indicating). And
12 these two here are Alpha Washers (indicating), front-load
13 washers. The other thing is, instead of listing out the
14 alpha numeric model code for you, I might just say a
15 four-digit or a two-digit or a three-digit. So this is a
16 Whirlpool 8500. It has a much longer model number.

17 This is a Maytag 955, a Whirlpool 92, and then a
18 Maytag 8200. And we put the signs on them so you can see
19 that, as well. So as I said, let me get going here.

20 We talk about the VMAX platform. This platform
21 launched in 2014, in mid-2014, and it brought something new
22 to the world, a new innovation that we brought as a company
23 called "the intuitive touch controls." And, again, very
24 simple. We call that "intuitive" because they are.

25 We use words that talk to the consumer in their

1 language, things like I would tell you, okay, bring me your
2 whites, or your delicates, or your sheets. Right? You know
3 what those are when I ask you. If I said bring me your
4 permanent press, you might not know what to bring to me.
5 And that's, when we ask you what do you want to wash. Then
6 we ask you how do you want to wash it.

7 And let's say you were in a hurry. It's a
8 Saturday morning. You've got maybe a sporting event in the
9 afternoon that you need to get to and you have those sheets
10 that you need done. You might tell me to put it in the
11 Quick Wash. So we have a Quick Wash cycle. So again, it's
12 simple and intuitive terms. When you come up to it, you
13 know what you're looking for and you can pick it real easy.

14 Next I'm going to talk about this Advantage
15 Washer. Again, Maytag. As you can see, quite large when it
16 was launched in late '15. It was the largest top-load
17 washer in the industry at 6.2 cubic feet. This is for
18 families, larger families let's say, or people like me who
19 just want to do one load of laundry per week. Just put it
20 all in at 6 cubic feet, 6.2.

21 The other thing is, washers are to wash, right?
22 We talk about cleaning performance. That's what it's about.
23 With what's called the "Power Wash Cycle" here on Maytag,
24 and you'll see it on this Maytag, and this Maytag, and the
25 Maytag we have over here, you'll see this Power Wash Cycle.

1 What does that mean? It means you get the best
2 cleaning in the industry. That's what that means. Every
3 time you see that Power Wash logo, know that it means the
4 best cleaning in the industry.

5 I'm going to move on to the Alpha. So we have
6 two Alphas here. You can see both beautiful looking. The
7 one here, the Whirlpool 92 has what we call "Black Diamond"
8 on the front. It's a pattern. It may be tough to see from
9 up there. As you get closer, you can take a look at it.
10 But what that is is, that's something we call TOM, Thermal
11 Overmolded Metal. So basically if you can print any design
12 you want on a piece of film, we can then mold it onto the
13 metal and you can have your customer washer whatever you
14 want it to look like.

15 More importantly probably than that is, what
16 innovation do we bring with this product? This launched
17 earlier this year. It has the load-and-go bulk dispensing
18 system. And what we have here is, you fill this cartridge
19 up with detergent, and you fill that up with enough--it will
20 basically last you between two weeks and a month depending
21 on how many loads you are doing. But what's great about
22 this is, let's say you have kids like mine, middle school,
23 high school. They seem to wear, I don't know, three to
24 five outfits a day, it seems like. And they have a lot of
25 clothes to wash.

1 They expect me to do it, and I'm not going to
2 wash their clothes anymore. So with this, basically they
3 can put their loads in, select the power button, select
4 start, it does the rest for it. It dispenses detergent as
5 it needs to based on the load size they're washing, and it's
6 taken care of. There's no overdosing. There's no
7 forgetting to put the detergent in. It's handled for them
8 altogether.

9 Then if I step to the Maytag which is a similar
10 version built on our Alpha Platform, again great piece here.
11 I could tell you lots of things about this, but what I want
12 to call out is it has also a dispensing system as we talked
13 about. It has the Power Wash cycle that we talked about.
14 So again best cleaning in the industry. Then it has this
15 feature called "Fresh Hold." And why is this one important?

16 The thing about it, I've got middle school and
17 high school kids and they're athletes. So they show up
18 usually about 11 o'clock at night with their uniform for the
19 next morning and say, hey, I need this done.

20 Well, again, luckily with the detergent
21 dispensing system they can do it themselves. The problem
22 is, it means they're up another hour or so waiting for it to
23 wash and then put it in the dryer and get it going.

24 With the Fresh Hold, you don't have to do that.
25 Basically what the Fresh Hold does is it uses something

1 called "Dynamic Venting Technology. So they throw it in.
2 They press the Start. They press the Fresh Hold. It washes
3 the clothes, and then at the end of the wash cycle it
4 basically has a fan in the back--and that's again the
5 Dynamic Venting technology--that brings air in and it
6 circulates it. It tumbles it like a dryer does, and it
7 basically will dry it.

8 Now it will take it six hours to dry. It will
9 take a while overnight to dry that, but they didn't have to
10 stay up. They got to go to bed. They can grab it in the
11 morning and stuff it right back in their bag and head off to
12 school. So, again, a great innovation for them.

13 The other thing I probably should mention about
14 all of these is, we have Wi-Fi connected with NEST. You
15 will hear smart appliances. Let me talk to you about why
16 these are smart. So you can buy a sister model. This is a
17 Whirlpool 8500, as I mentioned, and there's an 8700. It's
18 the Wi-Fi connected model, the sister model. And what that
19 does it, think about if you were at home maybe and running a
20 load, and you were in your office doing some work. You were
21 upstairs and you're in your office, and you're wondering if
22 that load's done.

23 Well, you don't have to make the trip down to the
24 basement to look. You don't have to get down there and find
25 out it's got 10 minutes left and you just made an extra

1 trip. You basically wait and your phone sends you a text
2 that says "it's done," or you just look at your phone screen
3 and it will say "it has 10 minutes left."

4 Now the really nice thing is, let's say that you
5 actually had it with one with the Fresh Hold, and you had to
6 run out for some reason. You had to run to the school or to
7 some event and you're going to be gone for a few hours. And
8 the notification comes up and says, "Hey, your wash load is
9 done. What do you want me to do?"

10 And you're not home for hours. You're thinking,
11 okay, great, it's going to sit there. It's going to be damp
12 and crumpled up in there. I'm going to have to rewash it
13 maybe.

14 On your phone, press the Fresh Hold button. It
15 starts that tumble and drying and you don't have to worry
16 about it. You come home later, if it's not dry yet you
17 stick it in the dryer. If it's dry, great, you got an extra
18 thing done.

19 Okay, next if I can I'd like to focus your
20 attention on Exhibit 12. As you can see from Exhibit 12,
21 these outstanding products and innovations are recognized by
22 respected third-party reviewers. Our washers occupy
23 multiple top-ten slots in both Consumer Reports and
24 Review.com. We are proud to have the current top-three
25 front-load washers in Consumer Reports, and the number one

1 top-load washer in Review.com. I know I am bragging about
2 our products, but I also have to say that we trade these top
3 ratings with our competitors on an ongoing basis.

4 So we may have that top spot now. Six months ago
5 one of our competitors may have had that spot. And
6 honestly, the top ten are pretty much similar because the
7 differences are very minor.

8 The point of all this is that we make washers
9 that are high quality, safe, reliable, and innovative. And
10 of course I have to believe that our washers are the best.
11 But I'll bet dollars-to-doughnuts that Samsung and LG claim
12 the same thing when they get up here.

13 The reality is that retailers consider all our
14 washers, Whirlpool, Samsung, LG, and GE to be comparable.
15 As Sam told you, our sales people talk with retailer every
16 day, and what they hear about is price and margin
17 opportunity.

18 I would like to spend a few minutes providing
19 specific examples of how we are being harmed by LG and
20 Samsung's dumping activity.

21 As Sam mentioned before, we submitted a bid to
22 produce Kenmore front-load washers for Sears. We did not
23 win this business because we were underbid by LG. Let me
24 add a little color to what Sam told you.

25 Earlier I showed you the 8200 right here to my

1 right. And the next one over to its right is the Kenmore
2 equivalent model supplied by LG. These are two attractive,
3 highly featured front-load washers.

4 The Maytag 8200 covers the same basic
5 specifications as the Kenmore model. The 8200 is the number
6 one rated front-load washer in Consumer Reports, and with
7 the Power Wash it's the best cleaning front-load washer in
8 the industry.

9 We lost these significant sales volumes for one
10 reason and one reason only: It was not for lack of any
11 feature or the quality of our product, it was because LG
12 offered a lower price.

13 This low pricing has not just impacted the
14 Kenmore business. We have not been able to successfully
15 floor this model more broadly.

16 Let's return to the Whirlpool 8500 at the front
17 of the grouping here. This is one of our richly featured
18 newer VMAX top-load washers, and it meets the definition of
19 ITC product pricing product 10. It competed against both LG
20 and Samsung during the Period of Investigation, and during
21 this time Samsung was selling a larger capacity washer, a
22 5.6 cubic foot compared to the 5.3 cubic foot 8500. Despite
23 their higher capacity, their prices undercut our prices and
24 we were never able to gain meaningful flooring of this
25 model. This product never--simply never had a chance to

1 sell.

2 Let's talk about Advantage next. With an
3 industry leading 6.2 cubic foot capacity, it's a great
4 washer. Actual flooring and thus sales volume have been
5 less than expected because of Samsung and LG products priced
6 significantly lower. Because of their aggressive pricing
7 behavior, we are not making a return on our product
8 investment.

9 MR. TUBMAN: Next, the Samsung active wash,
10 which I have brought, and I apologize behind me to the far
11 right there. This is a Samsung active wash model and it
12 tells an important story. Why, because Samsung will get up
13 here and point to the active wash as a great example of
14 their innovation, but if you refer to Exhibit 13 you can see
15 that within three months of fully launching the active wash
16 models Samsung lowered their wholesale price by more that 25
17 percent to \$438. This does not seem like a small discount
18 as they have stated in their brief.

19 During this same time, our competitive product,
20 the 8500, was wholesale priced around the \$590 range. The
21 point I want to make here is that if their innovation was so
22 special they shouldn't have to discount it so aggressively
23 and basically give it away.

24 I've just walked through some examples of the
25 impact of Samsung and LG's aggressive discounting on their

1 highly featured washers. Why is this important, because
2 discounting highly featured washers forces prices to be
3 compressed down throughout the entire product line up. It's
4 basic line logic. We cannot make a profit on the mid and
5 low ends of our product line up if prices are crashing down
6 at the high end.

7 Now let's talk about what's new in this case
8 versus the one four years ago. Samsung and LG now compete
9 directly with our low-end models. If we can back to Jeff's
10 Exhibit 3, here we have two top-load washers that Jeff
11 referred to earlier, the Samsung 3000 and the Maytag 415.
12 We also have these two washers here to my left. Samsung
13 introduced the 3000 in early 2015 and it meets the
14 characteristics of ITC Product 9. It also competes directly
15 with the 415 and several other of our Whirlpool models.

16 Our competitive intelligence indicates that
17 Samsung's wholesale price to retailers for this model in
18 early '16 was about \$270. Let me say that again \$270.
19 Samsung and LG claim that they don't compete at the low end
20 and it's simply not true. Since Samsung introduced this
21 model its low price has driven significant sales volumes and
22 it has depressed prices for our low-end models.

23 I also want to point out that these two washers,
24 one with an agitator and one with an impellor compete
25 head-to-head. You don't have to take my word for this.

1 Exhibit 14, please. This is an email from the
2 Home Depot. In this email, Home Depot is telling us that
3 Samsung will re-up on the 3000 at 399, asking where will you
4 have the new Maytag or Whirlpool 4.2 with agitator.

5 As you can see, Home Depot knows that agitators
6 and impellers compete. Here, they're using the 3000 as way
7 of getting better pricing on our agitator models. It is
8 clear that these two washers compete head-to-head and there
9 is direct competition between impeller and agitating
10 top-load washers.

11 So Jeff referred to our washer business
12 operating losses since 2013. And as a person who has had to
13 deliver those results, I can attest that the injury is real.
14 The wholesale pricing environment in which we compete makes
15 it all but impossible for my washer business to succeed.
16 These losses reflect our inability to charge the prices
17 required to fully cover our operating costs and to earn a
18 return on the substantial investments we have made in Clyde
19 in the last several years.

20 Whirlpool has always been committed to investing
21 in product development and launching new, innovative washers
22 that wash clothes better while saving more money. To that
23 end, we built and launched two new top-load platforms during
24 the period of investigation, the V-Mac top-load platform in
25 late 2014 and the Advantage top-load platform in 2015. And

1 we didn't just reinvest in the top-load, most recently, we
2 added the larger capacities and other features to our
3 high-end front loaders through our Alpha 2016 launch.

4 Unfortunately, as Jeff has mentioned, we have
5 also had to cancel certain investments. Earlier this year,
6 we reached the final toll gate to fund a 29-inch wide, large
7 capacity front-load washer platform called A-Max. In the
8 end, I had to determine whether we could earn a return on
9 this investment or not. While this new front-load washer
10 would've been a great product, I look closely at Samsung and
11 LG's pricing and determined that under these conditions we
12 could not generate a positive return on this project.

13 Let me tell you the hardest part of cancelling
14 the A-Max project was knowing that I would prevent creating
15 -- it would prevent me from creating 75 to 100 new jobs just
16 in the Clyde Plant alone.

17 Let me conclude by saying that as the leader of
18 Whirlpool's U.S. washer business I am really proud of our
19 team at Clyde. These 3,000 workers build an extraordinary
20 product. The quality, safest, reliability, performance, and
21 features of our washers are second to none and carry the
22 most recognized brands in the washer industry.

23 I know I speak for every employee in our Clyde
24 Plant when I say we are eager to continue our legacy of
25 innovation in efficient, U.S. manufacturing. This will not

1 be possible unless we can compete on a level playing field.
2 That is why I'm back here asking for your help. Thank you.

3 STATEMENT OF JOHN MAGNUS

4 MR. MAGNUS: My name is John Magnus, and my
5 client, GE Appliances, has directed me to appear today to
6 share a general view about the case and to take note of any
7 GEA-specific questions that arise so that we can address
8 those in writing after the hearing.

9 So this Louisville, Kentucky based business was
10 for many decades an operating unit of General Electric
11 Company and it is now owned by Qingdao Haier a Chinese
12 appliance company listed on the Shanghai Stock Exchange.

13 While not a Petitioner, GEA supports this case
14 and believes the evidentiary record compiled by the agencies
15 clearly shows dumping and consequent injury. As a domestic
16 producer, GEA appreciates the connection between enforcing
17 fair trading standards on the one hand and maintaining high
18 quality USA manufacturing jobs on the other hand.

19 Production at Appliance Park in Louisville where
20 GEA employs 6,000 workers is highly efficient and there's a
21 wonderful buzz with the activity resulting from repatriation
22 and from new investment, but dumped pricing of imports has
23 continued to frustrate GEA's ability to earn a return on the
24 investments in domestic, large residential washer
25 production.

1 Since the Commission issued its affirmation
2 determination in 2013, the presence of dumped, large
3 residential washers in the U.S. market has persisted. The
4 only difference is the dumped machines country of origin.
5 And although that country of origin is now China, this is
6 not a U.S. versus China controversy. On the contrary, it is
7 a story of two specific firms continuing to engage in
8 behavior long recognized under multi-lateral trade rules and
9 under U.S. law is unacceptable.

10 GEA has been pleased to cooperate with the
11 Commission and its staff during the investigation, is
12 appreciative of the staff's efforts and looks forward to a
13 final determination that reflects the evidentiary record
14 that they have worked so hard to compile for you. Thank
15 you.

16 MR. LEVY: Mr. Commissioner, that concludes the
17 prepared remarks of our panel and we'd like to save any
18 unused minutes for closing. So thank you. We look forward
19 to your questions.

20 CHAIRMAN WILLIAMSON: Okay, thank you. I want
21 to express the Commission's appreciation for all the
22 witnesses from the industry that have come today. I also
23 want to express our or welcome the members of the Union who
24 are present in the audience. We're very glad you're here to
25 observe our proceeding.

1 This morning we're going to begin the
2 questioning with Commissioner Broadbent.

3 COMMISSIONER BROADBENT: Great. Thank you, Mr.
4 Chairman. I want to echo a welcome to the panel. We really
5 appreciate you being here to help us work through these
6 issues.

7 I wanted to sort of get some broader context and
8 take advantage of having Mr. Fettig here. We really
9 appreciate your presence.

10 Can you talk to me a little bit about the global
11 market for residential washers?

12 MR. FETTIG: This is Jeff Fettig.

13 Sure, I'd be happy to. You know as a global
14 company we produce washers in virtually all part of the
15 world. We have a leading -- besides the United States, we
16 have a leading market position in many of the top countries.
17 Off the top of mind, we produce washing machines not only in
18 the U.S., but Mexico, Brazil, several countries in Europe,
19 India, and China, so we're well versed with this. And you
20 know based on our view, we see great technology exchange
21 that we get. We have access to all the great technology in
22 the world, all the innovation in the world, but there's
23 absolutely no question -- and we have the experience to
24 prove it -- the best cost location to produce washing
25 machines to sell in the United States, is in the United

1 States, and Clyde is the most competitive plant we probably
2 have in the world.

3 So we compete every day. There's nothing
4 magical of what's going on in the rest of the world. We
5 know what it is. We know what the technology is. We know
6 what the costs are. We know what the value chains are and
7 we have our locations where they are today to serve the
8 local markets that they are, in this case the United States.

9 COMMISSIONER BROADBENT: Okay. And in addition
10 to LG and Samsung, who are the other competitors? Is that
11 higher potentially?

12 MR. FETTIG: Again, this is Jeff Fettig.

13 Well, certainly, I mean Electrolux, Bosch
14 Seimens Panasonic, Haier, Midea out of China. There's a few
15 other smaller places in China and several small producers
16 and some large ones, Miele, a German firm, and so on. So
17 there's certainly more than 20 fairly large manufacturers of
18 washing machines in the world today.

19 COMMISSIONER BROADBENT: Okay. But Whirlpool is
20 more dominate in the Americas and Europe?

21 MR. FETTIG: We're the largest in the world. We
22 are the largest in the both North America and Latin America.
23 We are either number two or number three in Europe. We have
24 a very strong position in India. And I would say with a
25 recent acquisition we're probably in the top five in China

1 now.

2 COMMISSIONER BROADBENT: Okay, great. And then
3 how much -- I know you're exports are kind of falling from
4 the U.S. What's causing that?

5 MR. FETTIG: Well, a couple things. You know
6 our biggest export market in the U.S. is Canada and the
7 Canadian market has dropped fairly dramatically over the
8 last couple of years. We've had real recession from a
9 demand standpoint in Canada. That's primarily the drop.

10 COMMISSIONER BROADBENT: Okay, good.

11 In each case on residential washers asking for
12 specific innovations that separate Whirlpool from its
13 competitors. We got a long list of innovations and patented
14 technologies that your firm have introduced that Casey did a
15 great job introducing us to. How do we sort through these
16 innovations to get to the issue of how the various washer
17 producers are differentiated? Are there any key
18 innovations that you recommend that we focus on?

19 MR. FETTIG: Again, this is Jeff Fettig.

20 You know let me say you know there's no question
21 we're proud and committed and confident in the innovation we
22 continually bring to the marketplace. The macro issue that
23 we deal with is in the United States is at the end of the
24 day we're selling washing machine to retailers and buyers
25 and they're making floor spot decisions and they have a

1 fixed number of spots available.

2 And as Casey pointed out, and I'll ask him to
3 comment further on this, is you know the fact of the matter
4 is they believe that the top brands, ourselves and the
5 Respondents as well, are all equally good. And ultimately,
6 even if we have the greatest innovation in the world if we
7 can't hit a price point they want for a floor spot they
8 won't even floor it. So you know innovation is something
9 we're committed to. It's required to stay competitive in
10 the game. It does not get us floor spots because ultimately
11 that space on the wholesale price we sell to the retailers
12 and if we don't get it on the floor we can't sell it.

13 Now we do advertise. We do online things. All
14 that we do our best to educate the consumers, but also the
15 huge majority of consumers go to a shop to see the product
16 and that's the challenge. But having said that, Casey would
17 you refer to the innovation that we think is unique and
18 compelling?

19 MR. TUBMAN: This is Casey Tubman.

20 I think what I would add there to Jeff's
21 comments is we basically have core features of a washer,
22 right? People buy a washer to wash clothes and there's core
23 features: capacity -- sorry, I guess there's an exhibit
24 there.

25 Exhibit 21 shows the core LRW features. And

1 again, we all have these core features and they're all up
2 and down the spectrum of the line up, let's say. The key is
3 these features or innovations aren't free. So I could take
4 my high-end innovations, like my load and go or my fresh
5 hold dynamic venting technology and I could crash them down
6 to an OPP product, but that costs a lot of money. And we're
7 in the business of making money, so we obviously want to
8 charge more for those.

9 Samsung and LG have innovation too. I'm not
10 going to say they don't. I would say we all have innovation
11 and it's different by company and sometimes it's the same by
12 company, but this isn't what critical. What's critical is
13 that you meet the minimum qualifications at a price point
14 for that -- or the core features at a price point for that
15 buyer and then it's a matter of what wholesale price are you
16 going to give them to sell that produce.

17 MR. LEVY: Casey, maybe you could just
18 elaborate, though, the extent to which innovation is
19 relevant at the retail level.

20 MR. TUBMAN: So again, Casey Tubman.

21 I will add one more thing. I think for us what
22 we see is with the innovations these are ways for the
23 retailer and the sales associate to steer that consumer that
24 comes in.

25 Jeff mentioned that the consumer comes onto the

1 sales floor and they've been out of the market for 10 years,
2 most likely. They're going to look at what's on that floor.
3 They're going to study it. They're going to have sales
4 associates talking to them and they're going to be learning
5 more and more, but that sales associate knows which ones
6 he's going to get paid the most commission on or he knows
7 which one's going to have the most margin for the company
8 that he's working for and of course, they're going to try to
9 steer towards that where they can.

10 Now if the consumer says I have to have one,
11 they may go that way, but for the most part what we
12 understand is sales associates can drive consumers to buy
13 what they want them to buy and gain that commission that
14 they're being paid by others.

15 COMMISSIONER BROADBENT: Okay. And you
16 mentioned the Internet platform for selling things; is that
17 growing at all so that you have a more direct relationship
18 with the consumer?

19 MR. FETTIG: Again, Jeff Fettig and then I'll
20 ask Joe to make a comment about it.

21 You know online sales is growing slowly.
22 There's consumers that generally do their research when
23 they're in the marketplace for things that may be available
24 before they go to the store, but online transactions are
25 still less than 10 percent of total sales and many of those

1 are actually just the transaction itself. It's people
2 who've gone to a Home Depot or a Lowe's or a Sears, decide
3 what they want and don't want to stand in line and then go
4 home and make the transaction.

5 MR. LIOTINE: Joe Liotine.

6 To build just on Jeff's point, online sales
7 really appear play online sales from retailers that don't
8 have physical brick and mortar locations. It's more like 1
9 or 3 percent. It's actually very small.

10 To Jeff's point, most people do want to go in.
11 They might go to more than one store, about one and a half
12 stores is likely the visit and then they might go home and
13 purchase once they've had a chance to think about it and
14 talk about it with family members or whatever it might be.
15 That could be as high ^^^ that combination of the bricks
16 and clicks is high as 15 or 18 percent and that has grown a
17 bit over the last few years, but still, there's a need for
18 consumers to see it.

19 To Jeff's point earlier, you haven't likely
20 bought a washer in the last five or eight years. You're not
21 really sure what's out there, so you kind of want to see it
22 and experience it. So we expect it to grow, but it hasn't
23 been much more than 1 to 3 percent for the pure play guys.

24 COMMISSIONER BROADBENT: Okay, great.

25 This is probably a question for Mr. Levy. So

1 the Commission's factored into its analysis the fact that
2 Whirlpool's Clyde, Ohio facility has a foreign trade zone
3 and sources parts from China.

4 MR. LEVY: I'll ask my partner, Myles Getlan, to
5 speak to that question. Thank you.

6 COMMISSIONER BROADBENT: Mr. Getlan.

7 MR. GETLAN: Thank you.

8 No, it really is not a factor. I think at the
9 prelim phase there were a lot of questions about the FTZ.
10 There was just a misunderstanding maybe about the nature of
11 Whirlpool's FTZ operations. I think the staff report or the
12 pre-hearing report clarifies matters here.

13 Just like any manufacturing FTZ in the United
14 States, Whirlpool saves on duties for any imported parts and
15 components that it uses for its washer production at Clyde
16 and so it's simply a cost-savings device, just like other
17 manufacturers that use it. It helps them maintain
18 competitiveness, but it shouldn't be a factor in the
19 Commission's determination.

20 COMMISSIONER BROADBENT: Great. Thank you very
21 much. My home state is Ohio and I'm sort of familiar with
22 what Whirlpool's added to employment and just the way of
23 life out there and really appreciate all the work you all
24 do.

25 CHAIRMAN WILLIAMSON: Thank you. Commissioner

1 Schmidtlein.

2 COMMISSIONER SCHMIDTLEIN: Thank you. Good
3 morning.

4 First, I'd like to thank Whirlpool for their
5 hospitality. I had the privilege to visit the plant a few
6 months ago I think it was and it was very impressive and
7 very interesting. Mr. Tubman was there and explained all of
8 the features of the various models, so thank you very much
9 for that.

10 And I'd also like to welcome all of the
11 employees who made the long trip to Washington to be with us
12 today. We really do appreciate you being here.

13 Let me start with -- I think I'm going to go
14 right to one of the Respondent's main arguments, which is
15 this attachment pricing argument. And you know I would
16 refer you to the staff report. I think they actually
17 referenced it in their opening statement. It's on page
18 2-28, which shows the purchaser responses that indicate that
19 most purchasers found that in 75 percent of their purchases,
20 or above, the washers and dryers were priced the same.

21 So I want to understand your response to their
22 argument. I mean, first of all, does Whirlpool -- I'm not
23 sure if this is a question for Mr. Levy or maybe Mr. Fettig
24 or one of the other Whirlpool employees. Does Whirlpool
25 price the washers and dryers the same when you sell to

1 distributors and retailers? Is it intentional?

2 MR. FETTIG: On that question, Casey I think --

3 MR. TUBMAN: Why don't I just take this one?

4 So the question asked washers and electric
5 dryers priced the same, correct, I think that was how the
6 question was maybe asked? And the reason I say that --

7 COMMISSIONER SCHMIDTLEIN: The staff report
8 doesn't indicate -- yes, actually, it does down here.
9 Electric dryers, yes, you're right.

10 MR. TUBMAN: So if we talk about dryers and
11 washers, electric dryers and washers sometimes are priced
12 the same. Gas dryers and washers are never priced the same.
13 So it depends on the consumer. If they're a gas dryer or an
14 electric dryer, also for the retailer at the wholesale
15 priced differently for the washer versus the gas. And I
16 think this is just an area where we might as well get it out
17 on the table now 'cause there's a lot of questions about our
18 dryer business and you know how does that cover our
19 investments in washers. It's simply not true.

20 I can't ask people at one plant to be paying for
21 people in another plant. It just doesn't work that way. We
22 have different investments that we make, different projects
23 that we run, two different plants that run these products.
24 We have separate negotiations with our trade customers.

25 I had a project earlier this year, strictly a

1 washer project. We then went to our trade customers and had
2 wholesale negotiations about that washer. There was no
3 dryer conversation at that point in time.

4 COMMISSIONER SCHMIDTLEIN: But electric dryers
5 they are priced the same.

6 MR. TUBMAN: So in some cases they are.

7 COMMISSIONER SCHMIDTLEIN: The staff report
8 indicates that a purchaser said 75 percent or more.

9 MR. TUBMAN: Absolutely. So let me explain a
10 little bit.

11 There is a retail price and a wholesale price.
12 So at retail those retailers will tell you they are priced
13 the same. They set that retail, not the manufacturer.
14 Let's make sure we get that out there. And when they do
15 that they do that for a reason. They are trying to sell a
16 pair. If you're a retailer, you want to sell -- when a
17 customer comes in two-thirds of the time it's a duress
18 purchase. That means their washer has broken at home. That
19 customer is coming in to buy a washer.

20 If the retailer is good, they'll figure out a
21 way to sell them a dryer at the same time because if they
22 sell them the dryer they make money on the dryer as well.
23 So they're incentivized to sell two pieces. The sales
24 associates are incentivized that way. The retailers are
25 incentivized that way.

1 Obviously, for us, if we sell a washer and a
2 dryer every time it's great for our company, but that is not
3 how it works. We do not sell washers every time we sell a
4 dryer. And so as you would say at retail you might see them
5 priced the same. Again, electric dryers, not gas dryers.
6 Gas dryers are always priced separately and different.

7 Then there's the wholesale price, so this is
8 probably the question you really want to ask.

9 COMMISSIONER SCHMIDTLEIN: Well, I think the
10 staff report -- I mean maybe I'm wrong. The staff can
11 correct me. This question went to the invoice price from
12 manufacturer to the distributor or the retailer, so they
13 weren't talking about the retail price sold to consumers.

14 MR. TUBMAN: And that may be the case. Let me
15 offer the wholesale side.

16 COMMISSIONER SCHMIDTLEIN: Okay.

17 MR. TUBMAN: So at the wholesale, again, you
18 might have the washer and the dryer at the same what we call
19 minimum advertised price or the map price. And so if the
20 requirements of gross margin for that trade customer are
21 equal between washers and dryers then that electric dryer
22 would be the same wholesale price at a gross cost. Now at
23 gross that is the case. Once we actually do incentives and
24 other thing the net wholesale cost is not the same. So if
25 you collected that data sometime it would tell you that the

1 net cost is not the same on the electric dryer as the
2 washer.

3 MR. LEVY: Commissioner Schmidtlein, just a
4 point of clarification. So the question in the purchaser
5 questionnaire I believe was lifted verbatim from
6 Respondent's proposal. And what it asked was how often is
7 the invoice price the same as between a washer and the
8 matching electric dryer.

9 Now we know gas dryer prices are always the
10 same, but invoice price denotes the gross wholesale price,
11 not the net wholesale price. And in Whirlpool's experience
12 the gross wholesale price between the washer and the
13 matching electric dryer is very often the same. The net
14 wholesale price between the washer and the matching electric
15 dryer is very rarely, if ever, the same when you account for
16 backend allowances and discounts and so it's a question
17 that is not designed to get at a net wholesale price answer.
18 And so in that regard might be a little bit misleading.

19 COMMISSIONER SCHMIDTLEIN: Why is it that the
20 invoice price is so often the same, given that the cost
21 structure for an electric dryer is so different from a
22 washer? Is that just a coincidence that you're invoicing
23 them at the exact same price, and then later deducting out
24 these various promotional items to get to a different
25 amount? Why do they start out the same?

1 MR. TUBMAN: Casey Tubman again. Let's just
2 give an example -- they're both a \$499 price point for the
3 washer and for the electric dryer. And the requirements of
4 that trade partner are twenty-five points of margin. If you
5 take the twenty-five points off that \$499, it's going to
6 give you the wholesale invoice price. And because they both
7 started at \$499, it's going to be the same. I could sell
8 you a \$499 dishwasher with that same gross margin and guess
9 what? The invoice price is going to be the same. I could
10 sell you a \$499 range--same gross margin--I'm going to end
11 up at the same invoice price.

12 COMMISSIONER SCHMIDTLEIN: So it's being driven
13 by the fact that the retailers want to sell washers and
14 electric dryers at the same price point?

15 MR. TUBMAN: At the same price point.

16 COMMISSIONER SCHMIDTLEIN: Price point, which is
17 the same price, right?

18 MR. TUBMAN: Correct. Invoice price, then
19 discounted later.

20 MR. FETTIG: Jeff Fettig. The other thing to
21 consider, just to be clear. It's very common where we would
22 have, say five washing machines on a floor, and only two
23 dryers. So the assumption that there's always a matching
24 dryer at the same price is simply not true. There can be
25 available that, but the retailer doesn't always match up the

1 same amount of dryers with washers. So it's an interesting
2 comment, but it's not reflective of the level -- the way the
3 transactions actually take place.

4 Plus on top of that, you have many sales that
5 are washer only. You have many sales, if your dryer breaks
6 and your washer's OK, you go out and buy a dryer. Of
7 course, retailers, because they want to sell more, try to
8 convince you to buy both at the same time, but that doesn't
9 happen all the time at all.

10 We have a wide range of -- we have some models
11 where that only happens 20% of the time. We have some
12 models where that may be 120% of the time, meaning we
13 actually sell more dryers than washing machines. So it's an
14 interesting comment. It just doesn't reflect the
15 transactions that actually take place.

16 COMMISSIONER SCHMIDTLEIN: All right. I
17 appreciate that. Before my time is up, I actually wanted
18 to get to one more topic that has been, as you pointed out,
19 Mr. Levy, one of the respondents' main arguments. And it
20 had to do with the freight costs and how that impacts the
21 pricing products.

22 And in your statement in the beginning, you
23 mentioned that there was a certain subcategory that
24 Whirlpool did not back out the warehousing cost. And that
25 in that, there's a certain subcategory for transportation

1 cost to some customers, but it was a very small amount, that
2 you couldn't capture because Whirlpool doesn't account for
3 it on a normal basis. Did I summarize that --

4 MR. LEVY: It's essentially right. Whirlpool
5 did not seek to back out warehousing costs, nor was it
6 required to. In fact, I think the respondents had proposed
7 revised instructions that said everybody back out
8 warehousing costs, and the Commission struck that submission
9 from the record. I think they've reattached the submission
10 to their prehearing brief, the Commission essentially
11 rejected the proposal to back out warehousing costs.

12 Now within the bucket of warehousing costs in
13 Whirlpool's books and records, there is a subcategory of
14 warehousing costs, and within that, Mr. Boyland asked, you
15 know, "I'm looking at the name for the subcategory of
16 warehousing costs and the details are proprietary. Does
17 that have any U.S. transportation to the customer?"

18 And we were 100% transparent, and we said,
19 probably it does have a little bit, but we just can't
20 isolate it. We can't identify it, and we can't measure it,
21 so we didn't make any deductions. So we were completely
22 transparent about that. He didn't ask us to report those
23 subcategory costs provided for him.

24 I think he was satisfied with the explanation,
25 but the point I made this morning, and I think is really

1 critical, is that even if you were to make this
2 ultra-conservative assumption that this subcategory of
3 warehousing costs was all freight, and we were to back it
4 out, we're talking about less than 1% of sales.

5 COMMISSIONER SCHMIDTLEIN: So this is my
6 question. Do you have any idea who much of the pricing
7 products it would impact? So the coverage, it's --
8 the coverage for Whirlpool is small, compared to the
9 imports. So do you have any sense of -- would it be, have a
10 disproportionate impact on those particular products that
11 happen to be the pricing products?

12 MR. LEVY: So the way in which Whirlpool's
13 allocation methodology was presented and verified for
14 freight, it would have a uniform impact on front-load and
15 top-load, respectively, so differently, but uniform by year
16 as I recall. And so, but again, on average, less than 1% of
17 sales would be affected, even if you were to adjust the
18 prices for the totality of that subcategory.

19 And again, if the Commission's interested in
20 having those costs, we're happy to report them or happy to
21 show how they would be allocated to the pricing products
22 using the verified methodology. We have nothing to hide
23 here. And I think the respondents are making a big deal of
24 this because they have to discredit the pricing products,
25 the record's so damning, but we've been 100% transparent

1 with your auditor, and we're happy to provide whatever
2 information you require.

3 COMMISSIONER SCHMIDTLEIN: All right. Thank
4 you.

5 CHAIRMAN WILLIAMSON: Thank you. I just wanted
6 to start off and ask a question about what no one's seemed
7 to talk about today. Maybe it's not relevant. But still --

8 The refrigerator case has never gotten out of my
9 mind, and of course, there was a lot of talk about finish,
10 and you had purchasers. And I know neither side has really
11 any purchasers here today. And I haven't really heard
12 anything about this finish and what role that plays. You've
13 all talked about basically everybody seems to have pretty
14 much the same functions.

15 When I look at these washers here, just from
16 this distance, even though I know washers and dryers are
17 things that visitors are not supposed to see in your house.
18 Still, those three in the middle which look more like the
19 modern cars with that aggressive, shall we say, design.
20 Does that all matter here?

21 MR. TUBMAN: Casey Tubman. I would say it does
22 not. When we go in to talk about, from a consumer
23 standpoint yourself, when you're in the store shopping, it
24 may. But when we're in negotiating for a floor spot, I
25 think Sam said it well. We've had times where we try to

1 show a product and they won't even look at it. They just
2 want to sit down and talk about the price. Or they take
3 our, what we call the "pitch", you know, that we're going
4 through, and kind of what I did here, kind of telling about
5 -- and we're told "we don't want to hear about that. Sit
6 down, let's talk about the price."

7 So we're all comparable. I think that's why
8 they're not here telling you any differently. We're are
9 comparable. We all have nice-looking product. And in the
10 end, it really comes down to, what kind of a deal are we
11 gonna give 'em?

12 CHAIRMAN WILLIAMSON: And does -- shoppers don't
13 seem to care either? I mean it's something you only buy
14 once every ten or twelve years.

15 MR. TUBMAN: I think it's a personal preference
16 when a shopper is there, and they will make a decision on
17 the shop floor. That's why Mr. Liotine said, and there may
18 be some others, is people come into the store because they
19 want to see it. They want to kick the tires and they want
20 to see what it looks like. And that is those--I will call
21 it--that are spending a little bit more money. Others that
22 are under duress and have a limited budget would come in and
23 buy what they can afford.

24 MR. LEVY: Commissioner, having lived through
25 the refrigerator case -- suffered through it perhaps -- I

1 think what the Commission observed on the record of that
2 case was that Bottom-Out refrigerator/freezers were, in many
3 ways, perceived as sort of the jewel of the kitchen. Fit,
4 feel and finish was an important factor.

5 And the extent to which domestic-like product
6 and subject imports were interchangeable, was somewhat
7 different from what you see on the record in this case. By
8 contract, when you examine large residential washers in
9 Korea and Mexico, I think what you observed and you got at
10 the time I think testimony from purchasers, that a washing
11 machine by contrast is more of a workhorse than a show
12 horse.

13 The vast majority of consumers have it in their
14 basement, have it in a laundry room. Rarely is it the
15 centerpiece of their home. But with that said, all
16 companies take innovation seriously. They all compete on
17 that basis. And on this record, I think the record is
18 clear, again, that innovation and other such nonprice
19 factors are table stakes.

20 They're necessary pre-conditions to competing at
21 the wholesale level. Everyone's got it, and everyone is
22 comparable. And that's why, in this environment,
23 competition boils down to that wholesale price. We're not
24 trying to dismiss the importance of these considerations,
25 but on this record, for this product, there's parody.

1 CHAIRMAN WILLIAMSON: Thank you. We're not
2 fighting the last war. But on that line, looking to a
3 manufacturer from copying new features introduced by another
4 manufacturer? Is intellectual property important in this
5 regard?

6 MR. FETTIG: This is Jeff Fettig. We certainly
7 do use intellectual property and patents to protect a number
8 of our innovations and technologies and inventions. And
9 candidly we've had patent disputes with competitors in the
10 past. But in terms of non-IP protected thing, I would say
11 we see quite a fast-copying going on in our business. And
12 our products get copied on a regular basis. Casey, is there
13 anything else specific you want to add?

14 MR. TUBMAN: No, I think as you mentioned, Jeff,
15 we do have IP patent protection on things, and for us, that
16 allows us to then keep the value of that innovation where
17 possible, where others may give the value away quicker. And
18 so we actually have the Load&Go as a perfect example.

19 We've had that in the market for several years
20 now. And over the course of those years, the wholesale
21 pricing of it has stayed very flat, where we've actually
22 seen others bring innovation in the market -- and again, you
23 can back at the different exhibits and look -- but you'll
24 see their innovation come in the market, and three months
25 later, it's hundreds of dollars down.

1 We spend money on innovation. It's a lot of
2 engineering resources, a lot of development time, so there's
3 a lot of cost built into that, plus just the material costs
4 of the actual innovative feature, and we're not in the
5 market of giving that away. So that is very important to
6 us.

7 CHAIRMAN WILLIAMSON: But I guess everybody can
8 come up with a set of features and give some fancy name to
9 it and market that -- is that a --

10 MR. TUBMAN: I think what I would say is,
11 hopefully they are using consumers to determine what those
12 features are, to know that they're going to be valuable to
13 the consumer in the marketplace. I would agree, people can
14 come up with features. And there's some out there today.
15 For instance, we have our front-load washers here, and they
16 have what's called an Add-a-Garment on them.

17 So we developed this in 2000 or 2001, I don't
18 remember the exact time of the year, when we launched our
19 front-load washers. And what it was, was -- we knew
20 consumers would come back to that washer, and they would
21 open up the door and want to throw something in. But with a
22 front-load washer, you know, there's water moving around in
23 there, you need to keep it closed. So what we put on there
24 was a Pause button, so you'd actually stop the washer, you'd
25 let it settle for about six to eight seconds, and then the

1 water would drain off the door, and you could open it up
2 and throw your extra garment in. Seems pretty natural.

3 This year, Samsung launched that with a little
4 door on their door called Add-Wash; it does the exact same
5 thing. You press the Pause button, you open the small door,
6 and you throw your garment in. If you have a sheet that you
7 forgot, you're going to have to open the big door either
8 way. So we just provided it in a different way. But you
9 are right. You can provide different features in different
10 ways. Usually they have a cost associated with them.

11 MR. FETTIG: This is Jeff Fettig. I just wanted
12 to emphasize that point. We invest hundreds of millions of
13 dollars on research and development technology to get drive
14 innovation. We believe strongly in innovation. We believe
15 strongly in really understanding customer insights in doing
16 unique things that add value to what they're doing. And we
17 showed you several examples of those. They do cost money, a
18 lot of money. And why do we do innovation? We want to sell
19 more and we want to make more money. And we want our
20 customers to be happy. That's why we do it.

21 Let me show you an example of what is not
22 innovation. It's bringing out something, claiming it's
23 innovation and discounting that 30% ninety days after you
24 bring it to marketplace. There's no way in the world is
25 that innovation, it's dumping -- because if you don't get

1 paid for innovation --

2 Part of our definition is, if you don't get paid
3 for it, it's not innovation, which only makes common sense.
4 So ours we invest in, we have real innovation that customers
5 actually can use and see, but we need to get paid for it.
6 And that's why we don't give it away like others do.

7 CHAIRMAN WILLIAMSON: Okay. Another feature of
8 the earlier case, is actually something called feature
9 dumping, where you're actually putting innovation, but it's
10 not really undervaluing -- is that an issue here?

11 MR. LEVY: The short answer is no. What you saw
12 in the Bottom-Out case was the situation where there were
13 material differences between feature sets of subject imports
14 and certain U.S. produced product. And on some level, the
15 essence of the concern was that these richer features were
16 being brought down to price points of less-featured washers.

17 I think the way the Commission can look at the
18 record of this case, again going back to Exhibit 21, is that
19 for the core features that matter, the ones reflected in
20 your pricing products, everyone has these features in
21 various combinations. And so you have the ability, and I
22 think you found this in the preliminary phase, to make
23 apples to apples comparisons between comparably featured
24 washers and see what's going on.

25 And so, on that basis, what you see is that you

1 make apples to apples comparisons for similarly featured
2 washers and you can observe who's the low-price leader. And
3 I think that comes through in the underselling record. I
4 would like to just call your attention though to one other
5 piece of the record. If you could pull out your product
6 paper to Exhibit B.

7 And this is a really interesting chart that you
8 don't get to see in many cases. But here for three of the
9 pricing products in the final phase, you have essentially
10 the identical pricing products in the preceding
11 investigation from Korea and Mexico. And you could see the
12 progression of prices for identically featured washers and
13 what is essentially, you have continuity, in terms of the
14 pricing buckets.

15 And what you could see from there is number one,
16 who's leading prices lower? Subject imports or domestic
17 producers? But you can also see whether in relative terms,
18 are prices lower, are they more depressed now than ever
19 before? Or is it more of the same, and the prior levels
20 were found to be injurious by this Commission. Are we on
21 par? Or are we lower? And I think it's a very interesting
22 illustration of what's going on, and frankly, the severity
23 of the current situation.

24 MR. SHOR: Excuse me, Mr. Chairman. If there
25 are APO exhibits that were distributed to the Commission,

1 can I ask that I get a copy?

2 CHAIRMAN WILLIAMSON: Okay. See the secretary.
3 Okay.

4 MR. PORTER: We can't copy the secretary, but
5 Carl Moyer from our team has extras, if anyone requires it.

6 CHAIRMAN WILLIAMSON: Okay. Y'all can take care
7 of that. But thank you for those answers. And
8 Vice-Chairman Johanson?

9 VICE CHAIRMAN JOHANSON: Thank you, Chairman
10 Williamson. I would like to thank all of you for appearing
11 here today, including the many workers from Clyde, Ohio, who
12 traveled all the way to be here. And this is a very
13 interesting investigation. I feel like we all know quite a
14 bit about the washer industry, having this is our second
15 time around, so thank you again for being here.

16 I'd like to begin on an issue which figured
17 quite prominently in the briefs and also in the statement of
18 Senator Portman this morning. That is critical
19 circumstances. The data in the prehearing report indicate
20 that both the domestic industry and U.S. imports from China
21 showed increased U.S. inventories of washers from January to
22 June 2015 and January to June 2016.

23 Is it customary for all inventories to build in
24 anticipation for promotional sales schedule to occur in the
25 third and fourth quarters of the year? And are these

1 observed inventory build-ups a customary seasonal event?

2 MR. FETTIG: This is Jeff Fettig. Let me first
3 address the macro inside that question. There's clear
4 established well-patterned seasonality of any appliance.
5 Washers, refrigerators, whatever -- so we have a normal
6 seasonality pattern that doesn't change year after year.
7 And I would just say, unequivocally, that the increase in
8 imports from China in the first half of this year has
9 absolutely nothing to do with normal purchasing seasonality.
10 Joe, is there anything you would like to add to that?

11 MR. LIOTINE: Joe Liotine. Yeah, I mean the
12 back-half promotions, Black Friday in particular, it would
13 not be customary, to answer your question. To build
14 inventories in Q1 or Q2 of a year for a Q4 promotion. That
15 would not be very customary, but to Jeff's point, that would
16 happen much more closely aligned of when the event occurs,
17 really around the November time period.

18 MS. OKUN: Commissioner Johanson, may I add,
19 from the perspective of looking at this record and the
20 statute and the purpose of the statute. Both Mr. Fettig and
21 Mr. Liotine have talked about the question you've asked
22 about seasonality.

23 But what I think is unusual on this case, and
24 unusual for the Commission, and part of what the statute
25 tells you to look at, in terms of other circumstances, is --

1 this is the second time you've seen the same player do the
2 same thing. They're using these inventories, the build-up
3 of inventories to give them time to move their production to
4 another country. It happened while the investigation of
5 imports against Korea and Mexico, the LRW case from Korea
6 and Mexico was pending, they made this move.

7 So you don't have to guess about what this
8 inventory is for. And I think that's very consistent with
9 what the statute says, that you need to deter the
10 circumvention of anti-dumping duty orders and the only way
11 to do it in this case, the only relief that would deter the
12 circumvention, is to impose retroactive duties, and I think
13 it's very consistent with what the statute gives to you,
14 but it's not a situation that the Commission has seen very
15 much. So I think that puts those inventory numbers and the
16 surge, the stockpile of inventories, into perspective of
17 what the statute asks you to look at. Thank you.

18 VICE CHAIRMAN JOHANSON: Thank you, Ms. Okun.
19 And sticking with this issue, Mr. Tubman, I believe you said
20 that there is a build-up which occurs each year prior to
21 November, which is the big sales period, is that correct?
22 November is probably your largest sales, is that right?

23 MR. TUBMAN: Yes, November is Black November
24 now. And it is a large sales period. To Mr. Liotine's
25 point, we typically would build those products a month to

1 two in advance --

2 VICE CHAIRMAN JOHANSON: Okay, so it's only a
3 month or so in advance? That's a question I was going to
4 ask.

5 MR. TUBMAN: Yeah, I was going to share with
6 you. You have to move them through the system to get them,
7 so Lowe's has a system to get them out to their stores, and
8 it takes a couple weeks to do that. So they order them from
9 us, then, weeks before that. So there's roughly a month to
10 six weeks of time that it takes to get them through to that
11 final consumer place.

12 MR. FETTIG: And again, I would add -- and we
13 can show clearly the industry monthly normal levels. And so
14 even when we're talking about Black Friday, heavy
15 promotional period, it is higher, but it's not radically
16 higher. And again, this is an established pattern that you
17 see year-in, year-out. So there is some -- I'd call them
18 elevated -- but they're not dramatic as it relates to the
19 total year.

20 VICE CHAIRMAN JOHANSON: And you all have noted
21 that there have been increased inventories from China for
22 January to June 2015 and January to June 2016. Could you
23 all perhaps give us -- well, I don't know if that's possible
24 or not -- but show the typical inventories for those periods
25 of times in prior years? And I don't know how you would --

1 if you would have that information or not.

2 VICE CHAIRMAN JOHANSON: Well if anecdotally
3 you could explain how large inventories usually are during
4 this time period, let's say 2014, 2013, 2012, etcetera.

5 MR. LEVY: Jack Levy for Petitioner. We could
6 certainly provide you Whirlpool inventory data as a
7 benchmark, but I think if you want to understand better the
8 inventories of Respondents, you need to only ask them for
9 more data.

10 VICE CHAIRMAN JOHANSON: Okay. I will bring
11 that up this afternoon, because I think that would be of
12 course relevant to what we were looking at here with regard
13 to your arguments on critical circumstances. Okay. I'd
14 like to move on to another issue now. Respondents assert
15 that lost market share for the U.S. industry is solely in
16 the agitator subsegment of top load washers, where Samsung
17 and LG do not compete. How do you all respond to this
18 contention?

19 MR. LEVY: Jack Levy again for Petitioner.
20 Commissioner Johanson, I'd like to speak to that, but I'd
21 maybe call your attention to Confidential Exhibit A, and the
22 way this is organized, it's just a summary of market share
23 trends over the POI, looking at the market in different
24 segment slices. Do you have that in front of you?

25 VICE CHAIRMAN JOHANSON: Yes.

1 MR. LEVY: So first, there's a segment that's
2 all LRWs, and I think there it's clear that the U.S.
3 industry is losing share and at the expense of the subject
4 imports. In the front load segments, if you want to call it
5 that, I think we all agree that the U.S. industry gained a
6 little bit of share over this period. By the way, so did
7 subject imports gain a fair amount.

8 What's going on in this segment? Well, as Mr.
9 Fettig testified, this is a function of Whirlpool
10 repatriation, a reinvestment and expansion of its production
11 in front load. But of course, you know, just because you
12 produce it doesn't mean you can sell it, right? So how did
13 they manage to sell in excess of demand and gross share?

14 It came at the expense entirely of non-subject
15 imports, in particular LG Korea, which was under an
16 anti-dumping order. So that's what's going on in that
17 segment. But frankly, the share growth should have been
18 much, much larger but for dumped imports from China, and I
19 think you can see that in the data, and you can certainly
20 see the adverse price effects in the five products that
21 relate to front load.

22 But turning to top load, again as a segment if
23 you want to call it that, the U.S. industry is losing share,
24 and again, at the expenses of subject imports. If you were
25 to define a segment as just top load impeller, essentially

1 non-agi, what do you see in that segment? Well, what you
2 see is that the U.S. industry is losing share and losing
3 share to subject imports.

4 That is, you're probably scratching your head
5 now saying that doesn't jibe with what the Respondents just
6 told me. What's going on here? Well, it's sort of a
7 no-brainer that if you define a segment as agitator, it's
8 all U.S. So the shares are constant. What's going on here,
9 and if you go to the section that says "Top Load versus
10 Agitator," U.S. production is shifting away from agitator
11 and toward impeller production over this Period of
12 Investigation because frankly the distinction between the
13 two product segments is becoming more and more murky.

14 Remember, you have a regulatory change in
15 2015, standard cycles for agi are no longer deep fill, it's
16 shallow fill. They're all using AG detergent. Agis are
17 going to be EastStar. Impellers can be non-East Star.
18 There's not a big difference anymore between these segments.
19 In that environment, U.S. producers made a decision to
20 produce more impellers relative to agitators.

21 So that the Respondent's calculation, it's a
22 bit of voodoo math. What they're saying is what is the
23 percent of U.S.-produced top load impellers as a percent of
24 total top load sales in the market, and they're saying aha,
25 there you're growing. But that's just a function of a shift

1 from agitator to impeller.

2 If you look at the impeller segment, the U.S.
3 industry is losing share and losing share to subject
4 imports. So it really is nothing more than voodoo math on
5 their part. If you want to talk about what's happening with
6 top load impellers, then look at the top load impeller
7 segment. U.S. industry share loss at the expense of subject
8 imports, and this other calculation tells you nothing about
9 the adverse effects of subject imports.

10 It's frankly an unremarkable observation that
11 U.S. producers are making relatively more impellers and you
12 can see that shift where it says "Top Load Impeller Share"
13 in the top load versus agitator segment. You can see that
14 there is a shift away from agi and toward impeller
15 production in the marketplace.

16 So I hope that's responsive to your question,
17 and I've got to tell you when I read Respondent's assertion
18 that the U.S. industry was gaining share in top load
19 impeller, I was mystified at how they did the math. But we
20 figured it out and I think it's laid out here quite clearly.

21 VICE CHAIRMAN JOHANSON: Thank you for your
22 responses. My time has expired.

23 CHAIRMAN WILLIAMSON: Thank you. Commissioner
24 Pinkert.

25 COMMISSIONER PINKERT: Thank you, Mr.

1 Chairman. I want to thank the entire panel for being here.
2 I also want to thank the workers in the back for coming to
3 observe these proceedings, and I want to welcome back Ms.
4 Okun, who is quite familiar with some of the things that we
5 do around here at the Commission.

6 So I want to go back to this question of the
7 dryers versus the washers, and I understood your testimony
8 that you look at those as products in their own right, not
9 as a combination product. But when you're evaluating the
10 profitability of the enterprise for purposes of determining
11 capital expenditures, are you looking at the profitability
12 of both segments, or are you looking at washers separately
13 from dryers?

14 MR. FETTIG: This is Jeff Fettig.
15 Absolutely, we evaluate it based on the profitability of
16 washers by themselves. We evaluate investments in dryers
17 for capital on dryers by themselves, and I'd add the same
18 with dishwashers, the same with refrigerators and so on and
19 so forth. You know, the fact of the matter is is you cannot
20 subsidize a major product category like washers with
21 profitability off the rest of your line.

22 It's just a -- it's a slippery slope and we
23 don't do it. We don't do it at all. Again, washers are
24 made in one factory, Clyde, Ohio. We have a billion dollar
25 investment in Clyde, Ohio. We only make washers in Clyde,

1 Ohio and that has nothing to do with the other five
2 factories we have in Ohio. We have to get a return and
3 particularly, particularly when you have a billion dollar
4 investment there. You can't make it up anywhere else.

5 COMMISSIONER PINKERT: So I don't want to get
6 into the exact numbers, but if you were to try to explain
7 the capital expenditures that we see on the record of this
8 investigation, would you explain them by reference to the
9 profitability that we observe on the washers or something
10 else? What explains that level of capital expenditures?

11 MR. FETTIG: Jeff Fettig again. A number of
12 things. One, as we made this \$400 million investment in
13 Clyde, there's three things. One thing we forecasted, one
14 thing was known and one thing that we expected. We
15 forecasted that the industry demand coming off the deep
16 recession really since 2006 -- I think it's Slide, Exhibit
17 15.

18 You can see the top of the blue line. That's
19 the former high of industry demand, which was in 2006. You
20 can see how far we came down, and then look at it. We still
21 were near bottom in 2012, which when we started to make
22 those investments. So we had high confidence and it was
23 very reasonable that demand would return in the United
24 States, and in fact it has very nicely. So that was one
25 piece.

1 The second piece as we said. Part of that
2 capital is for repatriating all front load washing machines
3 to the United States, which we think was absolutely the
4 right decision and it required a lot of capital and we did
5 that. The third is just ongoing great ideas we had in
6 product innovation.

7 The one thing we got wrong, the one thing we
8 got wrong was that we would have a fair and level playing
9 field. We mistakenly thought that we would see remedies due
10 to the Mexico and Korea orders, and in fact we got no
11 remedy. So the big, the only change of material from a
12 return standpoint on this was washer prices being dumped now
13 from China rather than from Korea and Mexico.

14 COMMISSIONER PINKERT: Is there something on
15 the record or something you can put on the record that shows
16 what the profitability assumptions you were making were at
17 the time?

18 MR. FETTIG: Yeah. For every investment, we
19 have what we call investment sheets that keep track of all
20 the assumptions, and we certainly can provide those for
21 these investments in post-hearing briefs.

22 COMMISSIONER PINKERT: Thank you. I think
23 that will be helpful. I want to go through some of these
24 features with you, because I heard something. I don't want
25 to put words in Mr. Levy's mouth, but I heard something

1 about impeller versus agitator that I want to follow up on,
2 and that is from the point of view of the consumer, does it
3 really make a difference whether they have an impeller or an
4 agitator?

5 MR. FETTIG: This is Jeff Fettig. The answer
6 is no. They're washing machines and they wash clothes.
7 That's all. They're top load washing machines, and the
8 impeller agitator did the same thing. They turn clothes.
9 It's just a different technology to be able to do that.
10 From a consumer standpoint, I've really honestly never had a
11 consumer ask me about should I get an impeller or an
12 agitator. They say which washing machine washes best?
13 That's what they ask. Casey, you can probably add a better
14 technical answer to that.

15 MR. TUBMAN: Yeah. Just in case the question
16 came up, we brought one along. But basically you can tell
17 this is -- this would be an agitator as you would look at
18 it, but all you have to do is that and it becomes an
19 impeller. And so as you look at the unit that we have in
20 the room over here, you can see that actually in a unit.
21 But it's as simple as that.

22 MR. LEVY: And just to clarify, so there was a
23 technology change that took place in 2015, March of 2015 as
24 a result of federal regulations. Before, the standard wash
25 cycle for an agitator was deep fill, and so you needed those

1 veins going all the way to move the clothing in that deep
2 water. After the regulations took place, it essentially
3 became illegal to produce and sell a washer where the
4 standard cycle was deep fill.

5 So regardless of whether you had that, I'll
6 call it that aesthetic, the water level, the only point that
7 was working in the washer was the impeller part, because it
8 was shallow fill. Regardless of whether it had an agitator,
9 it had to be shallow fill and then it needed HE detergent.
10 So it functioned just like the impeller system model, if you
11 will.

12 So from a technology point of view, the
13 distinction between agitator and impeller, I think you know,
14 the language from the preliminary determination got it
15 right, that the lines have been much blurred as a result of
16 this regulatory change. But you know to be sure, there are
17 nonetheless washers in the lineup that continue to have this
18 aesthetic, and many washers, including impeller-based
19 washers, have an option of deep fill, going all the way up
20 the lineup for consumers who might think that more water
21 washes better. Is that a fair statement Casey?

22 MR. TUBMAN: Yes, I would agree with that, and
23 I think Jack to your point, there are impeller models that
24 are currently better energy rated than agitator models, but
25 there's also agitator models that are better energy rated

1 than impellers. So they really are cross-shopped by
2 consumers now, and again as easy as that is, you can knock
3 that off.

4 But you can see it in the unit. It's probably
5 a little more obvious. We sometimes refer to them as
6 agipellers now. We don't call them agitators anymore
7 because they aren't doing the motion that they did in the
8 past.

9 COMMISSIONER PINKERT: Thank you. Now Mr.
10 Fettig, you talked about features or innovations being
11 defined in part by whether you get some return on the
12 innovation from the customer. I'm wondering whether the
13 customer would be aware of and willing to pay for the direct
14 drive aspect that you talked about?

15 MR. FETTIG: This is Jeff Fettig. You mean
16 the direct drive. Can you clarify that?

17 COMMISSIONER PINKERT: Well, in that list of
18 features that you had, that shows that Whirlpool and GE and
19 Samsung and LG have similar features, there is a reference
20 to direct drive there, and I know that, I've pointed this
21 out in other cases, that direct drive was a feature that I
22 remember from the 1970's being introduced in turntables. So
23 I'm wondering is the customer aware of direct drive and
24 willing to pay for it?

25 MR. FETTIG: Again this is Jeff Fettig.

1 Yeah. This is the drive system from the motor to the unit
2 itself. Historically, there was another technology which we
3 called belt drive. It was literally a belt with cylinders,
4 and that for a long time was particularly how the top load
5 business technology was. Direct drive is now virtually
6 available -- in fact, I don't know -- we don't produce any
7 belt drives in the United States. So let me have Casey
8 answer directly.

9 MR. TUBMAN: So let me -- maybe I can answer
10 the question. You asked about it being innovation, whether
11 the consumer was willing to pay for it, and the answer is
12 it's a core feature. Now does this exhibit show you core
13 features? As Jeff said, it has become more of a norm in our
14 products, and so we don't consider that innovation as part
15 of the drive system.

16 MR. FETTIG: It was when it was first
17 introduced, but that's been years ago.

18 MR. TUBMAN: That's been --

19 MR. LEVY: And Jack Levy for Petitioner. I
20 think it's fair to say that all subject imports and all
21 Whirlpool and Whirlpool produced front loaders are direct
22 drive, which means it has this BPM motor. With regard to
23 top load, nearly all of the subject imports have direct
24 drive. The vast majority of what Whirlpool has in top load
25 has direct drive.

1 But at the low end, there continues to be some
2 belt drive with a PSC motor, and in fact one of the products
3 we have here today, this product over here, the Samsung
4 3000, is an example of a low end belt drive product from
5 Samsung, which is competing head to head with, you know,
6 various Whirlpool-produced products, including agitator
7 washers.

8 COMMISSIONER PINKERT: Thank you.

9 CHAIRMAN WILLIAMSON: Okay, thank you.
10 Commissioner Broadbent.

11 COMMISSIONER BROADBENT: Thank you. This
12 relates to market share arguments. Mr. Levy, you referred
13 to the technology change in 2015 as effectively making the
14 agitator a defunct piece of technology because of the deep
15 fill requirement for washing, which was I guess discouraged
16 by the new regulations.

17 Does this indicate that it would be reasonable
18 to look at the decline in the sales of agitator washers as
19 primarily driven by a movement away from that technology?

20 MR. LEVY: I think what you can observe is
21 that there is a choice on the part of domestic producers to
22 shift their production away from top loaders with a
23 particular feature set or aesthetic to other top loaders.
24 But I think that the assertion that Respondents make, which
25 is that there's somehow this hermetically sealed segment

1 that is agi, and there's a unique demand for this product to
2 the exclusion of other products is an assertion that we
3 reject.

4 The fact is is that at the retail level,
5 consumers are cross-shopping across a range of
6 configurations. The Commission found as much in the
7 Korea-Mexico case, and at the wholesale level, retailers are
8 flooring an assortment of products, front load, top load and
9 all sorts of other features again on the basis of price.

10 So you know, I think that the regulations are
11 an interesting development. It bespeaks the fact that more
12 impellers are being produced today, but I don't think that,
13 you know, the assertion that agi is somehow this, you know,
14 unique hermetically sealed product segment is one that is
15 descriptive of this industry.

16 MR. TUBMAN: Casey Tubman. Jack, I don't know
17 if this is okay to add this in the minds of what the
18 question was, but we are also bringing agitators up and down
19 the line. So you talk about this segment. There's no
20 segment. You can buy an agitator or a model with what I
21 call the post. You can buy a model with the post at the
22 opening price point. You can buy a model with this post at
23 \$800.

24 So we're actually 900 if you buy it in color.
25 So you know, we're selling these up and down the line now.

1 It's not one OM part of the segment. We have mid-range and
2 we have high end agitator models in the market today.

3 MR. FETTIG: This is Jeff Fettig. I would
4 just add, the simple way I see it is the 2015 regulatory
5 change basically forced everyone to change. So there was
6 really no difference in performance between an agitator spin
7 or an impeller spin. We don't look at that as separate
8 segments at all. They're all top loaders and the market
9 share losses clearly, in our view, had nothing to do with
10 that and everything to do with dumped prices by LG and
11 Samsung.

12 COMMISSIONER BROADBENT: Okay. Let's see, in
13 Section 6(b) of its brief, the Nationwide Marketing Group,
14 and this is for you Mr. Levy, stated that promotional
15 activity appears to be growing for extended periods, and
16 actually this is probably more for the panel and not you,
17 Mr. Levy, so I'll retract that.

18 But I'm just trying to get a sense on these
19 promotional time periods throughout the year, where they
20 actually start, you guys see the dividing line? So if you
21 could sort of estimate the share of the calendar year that
22 would include holiday or promotional pricing versus when no
23 promotional pricing is going on, and what happens to prices
24 between these different promotional periods? Are there
25 instances where non-commercial pricing is suppressed between

1 promotional pricing periods?

2 MR. ABDELNOUR: So I'll take that one. This
3 is Sam Abdelnour. We've seen over the past four or five
4 years key big promotional periods, 4th of July, Black
5 Friday, Memorial Day go from a long weekend to a week to
6 almost a month in heavy aggressive promotions, generated by
7 LG and Samsung, at very deep discounts to the trade
8 customers from a wholesale perspective.

9 We call those Tier 1 holidays. Then there are
10 also Tier 2 holidays like President's Day and Labor Day and
11 holidays like that, Columbus Day, that may be a shorter
12 period of time, and they've gone from two or three days to a
13 couple of weeks. I think the second part of your question
14 was what happens when these promotions are not running?

15 What happens historically is product goes back
16 to the normal market price, and it gives the opportunities
17 for retailers to show discounts when they're on promotional
18 price. Those periods have gotten a lot smaller as the
19 promotional periods have gotten longer, and frankly what
20 we've seen is even the extensions of promotional periods
21 into, as an example, Black Friday could run as far as the
22 end of December, and we've seen that activity from LG and
23 Samsung over the last couple of years.

24 MR. TUBMAN: If I could add, Casey Tubman
25 here. Commissioner Broadbent, to what you asked about the

1 time period between, there's been a phenomenon we've seen
2 this year actually. When the Period of Investigation ended
3 in June starting with the July 4th holiday, and then we
4 expected the July 4th holiday to end let's say, we saw
5 prices held down the entire back half.

6 I've got a merchandising team that works with
7 our sales guys on how do we fight this, and it's just at a
8 point where there's nowhere to hide. Every week it's deep
9 discounted and there's no relief from it, what we've seen in
10 the back half. Again, we believe that's the stockpiling of
11 five to six months' worth of inventory up until the end of
12 the Period of Investigation, and then blowing through it in
13 the back half.

14 COMMISSIONER BROADBENT: Mr. Fettig, I heard
15 in your earlier comments talk about how the Korea-Mexico
16 order didn't have much of a remedial effect for Whirlpool as
17 you all faced the market, and then the companies just
18 shifted over their production to China.

19 I think in some of our materials, there's sort
20 of speculation that if we put an order out here, it will go
21 to Taiwan or Vietnam, somewhere else. How easy is that to
22 do, to move an entire plant to another country that would
23 impact this market?

24 MR. FETTIG: Well, Jeff Fettig. As I said in
25 the first petition, while we were still doing the

1 investigation on Mexico and Korea, they were in the process
2 of moving to China, both LG and Samsung. In this petition,
3 as we mentioned, with the stockpiling and all of that going
4 on, we believe Samsung has already shifted all of their
5 production out of China into Vietnam and Thailand, and that
6 LG is in the process.

7 So the question of how hard is it? It's hard.
8 From a businessperson's viewpoint, I can't imagine, I can't
9 imagine how that is an economic value-creating thing to do.
10 There is no way in the world we can move Clyde, Ohio in one
11 year. It might take us five or seven years to move Clyde,
12 Ohio.

13 So you know, again I view this as this isn't
14 an economic decision that Vietnam is better than China.
15 China wasn't an economic decision that Mexico is better than
16 Korea or that China was better than Mexico or Korea. This
17 is clearly to circumvent the law.

18 OO Could I, Commissioner Broadbent, just
19 again, putting that into perspective of the reason you've
20 heard so much about critical circumstances on the unique
21 facts of this case, because I think obviously you look at
22 the statute in applying it and the statute tells you to look
23 at volume. But it also tells you to look at other
24 circumstances.

25 I would ask all of you to go back to the '88

1 Act and read through the legislative history. We put some
2 of it in our brief. But I think it talks exactly about this
3 situation. The only way to deter what we see as the picking
4 up and moving, country-hopping with what is an expensive
5 process and moving from some place that's very close to the
6 United States to someplace very far to the United States
7 makes, as Mr. Fettig said, no economic sense.

8 The only way to deter that is to provide
9 critical circumstances and impose those duties on that
10 stockpile that came in, and hopefully that would send a
11 message that they can't get away with doing that, and would
12 send messages to other, I think to other companies out there
13 operating under this type of business model.

14 (Pause.)

15 COMMISSIONER BROADBENT: That's all my
16 questions.

17 CHAIRMAN WILLIAMSON: Okay. Commissioner
18 Schmidtlein.

19 COMMISSIONER SCHMIDTLEIN: Okay, thank you. I
20 just have a couple of questions. The first one is the
21 Respondents spent a lot of time focusing on the six largest
22 purchasers here. Do you have a view as to whether or not
23 those purchasers should be given more weight in terms of
24 their responses to the questionnaires?

25 MR. FETTIG: This is Jeff Fettig. First of

1 all, I'm not sure who the six are, but the point is every
2 purchaser said that. Nobody's more special than the other
3 and Sam, you're probably best equipped to answer this.

4 MR. LEVY: Sam, why don't you just give some
5 sense of, you know, the size of these different purchasers,
6 and then maybe I'll give a legal response.

7 COMMISSIONER SCHMIDTLEIN: Uh-huh.

8 MR. ABDELNOUR: So we kind of break it between
9 big box and then regional independents and then independent
10 retailers, and I think that the fact that we're discussing
11 this would highly disappoint a lot of these guys, other than
12 the big box guys because they fully represent a third of our
13 industry by themselves collectively. In fact, we've got --

14 CHAIRMAN WILLIAMSON: Who is the third?

15 MR. ABDELNOUR: Everybody but the big box
16 guys.

17 CHAIRMAN WILLIAMSON: Okay, thank you. Sorry
18 for interrupting.

19 MR. ABDELNOUR: Yeah, sorry about that.

20 COMMISSIONER SCHMIDTLEIN: That's all right.

21 MR. ABDELNOUR: So they represent a big
22 portion of our business, and they negotiate as heavily and
23 as hard as anybody we do business with. The negotiations
24 that take place between Lowe's or Depot or P.C. Richard is
25 no different, and frankly if you think about retailers like

1 P.C. Richard or APT in Chicago, a one-store operation, they
2 wouldn't be included in the big box arena.

3 But in the markets they do business in,
4 they're actually bigger as a percent of the market than the
5 big box guys. So they are extremely important to our
6 business, and they negotiate extremely hard with us and they
7 constantly want to make us help them compete against what LG
8 and Samsung is doing.

9 MR. LEVY: And Commissioner Schmidtlein just
10 from a legal perspective, I'm not aware of any precedent for
11 derating or, you know, giving less weight to certain
12 purchasers relative to others, you know. The Commission
13 sent out questionnaires to I think about 30 purchasers. By
14 all indications, they spent a lot of time and energy
15 answering your questions and the staff tabulated that
16 information.

17 I think what you've heard from the industry
18 witnesses is that, you know, even the smaller players
19 collectively are about a third of the retail market, and the
20 experience that they have, they are no less knowledgeable
21 about the realities, the conditions of competition in this
22 industry than a few big box players. In their regional
23 markets they're as big if not bigger.

24 The other point would be, you know,
25 Respondents specifically would have you weight their answers

1 by reference to the sales volumes to let's say the 20 or so
2 retailers that are smaller, essentially and derate the
3 weight of their responses because of their sales. I would
4 suggest to you that those purchasers stand in as a proxy for
5 the one-third of the entire industry.

6 And so if you were to derate on that basis,
7 you would essentially be giving less weight to them relative
8 to the market reality. So you know, I think that we could
9 have a very elaborate debate among lawyers about how to
10 reweight purchaser questionnaires, but I'm not aware of any
11 past practice from the Commission to do that.

12 I think that you take the questionnaire
13 responses as you find them and, you know, particularly where
14 purchasers say they have, you know, the same experience
15 understanding conditions of competition as others. I don't
16 know why you would dismiss or disqualify their responses.

17 COMMISSIONER SCHMIDTLEIN: Well maybe you
18 could follow up in the post-hearing, because I guess my
19 response to that would be would we be distorting the reality
20 of the situation, though, if we -- if we are treating every
21 single purchaser exactly the same when the numbers reflect
22 that there are a handful that account for, you know, a
23 certain large percentage. If we're trying to determine
24 whether or not these shifts were occurring because of price
25 or non-price factors, doesn't it make a difference what

1 those very large purchasers are saying?

2 And so again, like I know you've put out the
3 number one-third, so it might be more responsive and
4 pertinent if we did it in the post-hearing, so you could
5 address it with the actual numbers.

6 MR. LEVY: Sure. We'd be happy to speak to
7 that more in the post-hearing, but I'd also like to just
8 remind the Commission where the names of some of these
9 smaller retailers come from.

10 COMMISSIONER SCHMIDTLEIN: And I'm not saying
11 we would disregard the smaller retailers. It's just a
12 question of how we weigh them.

13 MR. LEVY: That's a fair question. But just
14 as a reminder, you know, where did the names come from?
15 They came from the lost sales and lost revenue allegations
16 in the petition and from other domestic producers. So these
17 are the actual customer accounts, where there's head to head
18 competition between subject imports and the domestic like
19 product.

20 So you know, from our point of view they can
21 speak to the actual conditions of competition and causation
22 of injury that the Commission needs to analyze. So, you
23 know, how or whether we reweight or discount certain
24 purchasers is, you know, a new and interesting proposal from
25 Respondents, and we'll speak to it more fully in our

1 post-hearing submission.

2 COMMISSIONER SCHMIDTLEIN: Okay, all right.

3 MR. LEVY: Thank you.

4 COMMISSIONER SCHMIDTLEIN: The other question
5 I had, following along a similar line, is with regard to the
6 Respondent's argument that there are two large purchasers,
7 Lowe's and Home Depot, this is not confidential in their
8 brief, that began purchasing Samsung and LG for what they
9 claim were non-price reasons, and that that accounted for a
10 significant portion of the increase in subject imports
11 during the POI. How do you respond to that argument?

12 MR. LIOTINE: This is Joe Liotine. Yeah, in
13 terms of that claim, it's true that both entrants, Lowe's
14 and Home Depot, late 2012 and 2013. It's also true that the
15 Whirlpool brand entered Home Depot during that time period
16 and Maytag got a much bigger presence at Lowe's during that
17 time period. So it's not as if those were the only two
18 events.

19 There were many events that happened, and by
20 and large those didn't affect any of the data, as they were
21 in the baseline from either late 2012 or early 2013.

22 COMMISSIONER SCHMIDTLEIN: So what was driving
23 that? Lowe's was just not selling as many washing machines
24 before 2012? Why were they suddenly now --

25 MR. LIOTINE: Well, it's hard to say why

1 exactly. They, I'm sorry, we had been constantly looking
2 for more business, both at Home Depot and at Lowe's, as were
3 Samsung and LG certainly. So different negotiations
4 transpired, and we were able to get more penetration as they
5 were. There are some other factors in terms of Home Depot's
6 floor and how they made decisions, and I think they
7 changed, certain changes on approach.

8 They also expanded their floor in Home Depot
9 in particular. They had a smaller floor than average than
10 most big box, and they got a little larger. That gave them
11 the opportunity to expand their assortment, and they took
12 that opportunity to add brands, both Whirlpool as well as
13 others during that time period. So that one's a little bit
14 unique.

15 COMMISSIONER SCHMIDTLEIN: So you don't think
16 it was being driven by their desire to offer a variety of
17 brands?

18 MR. LIOTINE: Well certainly I think as we've
19 talked about, brands are one of the things that retailers
20 want to show. They want to show they offer all national
21 brands. It makes them feel credible, right, to a consumer,
22 that they're a place they're shopping where they're going to
23 get choice, selection and the best offering.

24 So they all want to offer all brands. But the
25 devil in the details is how many models? Was it one model?

1 Is it three models? Is it five models? That's where the
2 negotiation happens really at wholesale to get those more
3 floor spots. So that's really what took place. So yes they
4 added Whirlpool, but how many? Yes, they added Samsung, but
5 how many washers did they add? That I think is what really
6 brings forward, you know, the negotiation tactics to get
7 those floor spots.

8 COMMISSIONER SCHMIDTLEIN: Okay.

9 MR. LEVY: Commissioner Schmidtlein, just one
10 other thing to add in connection with that argument. I
11 think you heard testimony that Samsung, LG, Whirlpool,
12 Maytag all these brands found new flooring and new customer
13 accounts by the beginning of 2013. On some level at the
14 start of your POI, it's baked in the cake.

15 That's your baseline. So when you see market
16 share loss that's deep in 2015, for example, I don't know
17 how that's explained by the fact that everyone was flooded
18 at the start of 2013 at a different level than 2012. I just
19 don't ^^^^ to me that argument doesn't resonate.

20 COMMISSIONER SCHMIDTLEIN: Okay. Yeah, I
21 understand. All right. So one last thing. We've seen the
22 claim that -- I think this has to do with the pricing data
23 as well, that the range of capacity for some of the pricing
24 products means that the pricing data isn't available because
25 you could have a slightly larger capacity washer being

1 compared to a smaller one.

2 So my question is how does the capacity of a
3 washer affect its price? In other words, are you always
4 going to pay more? Is a slightly higher capacity washer
5 always going to be more expensive than that slightly lower
6 capacity? Does the consumer understand, you know? Are they
7 focused on that difference?

8 MR. TUBMAN: Sorry, Casey Tubman again. Can
9 someone pull up Exhibit 3 I believe it is? Who's got the
10 clicker? There we go. So here you can see, and we've got
11 these in the room so you can actually see them in person,
12 kind of like a consumer would see them on a shop floor. The
13 Samsung is a four cubic foot, which is a larger capacity
14 obviously, than the Maytag 415, which is a 3.6 cubic feet.

15 And again, at a wholesale price, you can see
16 that it's actually priced lower. We've also seen that in
17 the marketplace, so when the consumer comes in they would
18 get the same impression. So not necessarily are you paying
19 more for capacity if someone is underselling another piece.

20
21 COMMISSIONER SCHMIDTLEIN: But in your
22 experience, in terms of how you all price your product, are
23 you -- obviously, you know, you're looking at the various
24 price points for these different models and who they're
25 competing against. You know, is it that you have to price a

1 slightly larger capacity washer is going to be a little bit
2 higher, because this really goes to their claim that the
3 pricing products are not reliable because we don't know.

4 In some of those pricing products, they could
5 have reported washing machines that are lower, slightly less
6 in volume than the ones being provided in that particular
7 pricing product, do you see what I'm saying?

8 MR. FETTIG: This is Jeff Fettig. You know, I
9 would make this similar to the innovation discussion. I
10 wish that was true, and typically larger capacity means
11 higher cost, okay.

12 COMMISSIONER SCHMIDTLEIN: Uh-huh.

13 MR. FETTIG: But as the evidence shows, you
14 know, in our line logic that probably would be normally the
15 case, unless I'm going to argue over tens of a cubic foot.
16 But any meaningful amount yeah, you would expect price per
17 -- capacity per price point. But as this exhibit shows,
18 Exhibit 3 and we've got many others, it's the same as
19 innovation.

20 They're selling a much higher capacity, ten
21 percent higher at a lower price. So I would say in terms of
22 economics I would agree with it. In terms of reality,
23 that's not what they're doing.

24 MR. LEVY: And Commissioner Schmidtlein, just
25 going back to the question of the pricing products, in the

1 prior investigation involving Korea and Mexico, the parties
2 largely agreed, Respondents and Petitioner, on breaks of 0.5
3 cubic feet sort of capacity buckets for purposes of making
4 apples to apples price comparisons.

5 In the preliminary determination, the
6 Commission obviously used the same increments of 0.5 cubic
7 feet, but also the same dividing lines from before, so
8 there's a certain consistency. Those same 0.5 cubic foot
9 increments and the same dividing lines have been repeated in
10 this final phase, and I think there's a tremendous
11 consistency between what Petitioners and Respondents have
12 advocated for across the proceedings.

13 If you look at specific pricing products, you
14 may see in some pricing products that the subject imports in
15 fact are, you know, slightly more richly featured in terms
16 of a little more capacity. In other pricing products, maybe
17 vice-versa. But on balance, they're all very close and
18 there's no inherent bias overall in the complexion of the
19 comparisons.

20 Importantly, your pricing products instruct
21 parties to report their high volume runners in any given
22 quarter. So in the post-hearing submission, we'd be more
23 than happy to go product by product and, you know, using
24 that as a surrogate for what's sort of driving the numbers,
25 give you a richer understanding of the fairness of those

1 comparisons.

2 COMMISSIONER SCHMIDTLEIN: Okay. That would
3 be helpful. All right. Thank you very much.

4 CHAIRMAN WILLIAMSON: Okay, thank you. Sort
5 of following on Commissioner Schmidtlein's questions, Mr.
6 Abdelnour, I think you made a reference to the fact that if
7 you're talking to a third of the market, there's not the big
8 box stores. Is there something different we would hear from
9 them? Because I know I asked a question earlier why there
10 were no purchasers here and I didn't get an answer to that.
11 But it's -- I'm kind of curious.

12 MR. ABDELNOUR: This is Sam Abdelnour. I'm
13 not sure I understand your question. Could we hear --

14 CHAIRMAN WILLIAMSON: In terms of what they
15 might say about the nature of the competition between LG,
16 Samsung and Whirlpool products.

17 MR. ABDELNOUR: What I can tell you is I don't
18 hear anything different from any trade customer we do
19 business with, regardless of size. So I hear the same plea
20 and negotiation from Home Depot as I do from some of these
21 guys that we put in that one-third bucket. They all are
22 competing for the same business, and they are all asking us
23 to find a way to be more competitive in the marketplace,
24 based on the pricing from LG and Samsung.

25 So I really can't distinguish between the

1 level of concern they have, the level of negotiation they've
2 put forward, and the value of a single floor spot on their
3 floor. We compete as wildly for that one floor spot there
4 as we do anyplace else.

5 CHAIRMAN WILLIAMSON: Okay. What is --
6 Exhibit 9, this Brandsmart go to the LG basement. Exactly
7 what does that mean? I think it means go to the bottom
8 price, but I wasn't sure because it was -- it can be
9 interpreted as something differently.

10 MR. ABDELNOUR: His reference is they've taken
11 the price down to a new low, and the reference of I'll meet
12 you down there is I expect you to lower your price to that
13 level or jeopardize the floor spot.

14 CHAIRMAN WILLIAMSON: Okay. I was just
15 wondering because I --

16 MR. ABDELNOUR: Yeah.

17 CHAIRMAN WILLIAMSON: I live in New York City
18 and we usually go to P.C. Richard's store. It's pretty
19 crowded, so I assume they're not putting as many models out
20 on the floor as others. So does that affect any way how
21 they're competing?

22 MR. ABDELNOUR: Sure. Well, every floor spot
23 is tough.

24 CHAIRMAN WILLIAMSON: Uh-huh, and in New York
25 it must be worse?

1 MR. ABDELNOUR: But certainly the bigger
2 floors have more floor spots. But they're as valuable as
3 the smaller floors. In the case of a P.C. Richard, and that
4 is one of the folks I mentioned, that if you think about
5 should they be included in this data, they're bigger in New
6 York as a percent of the business than Sears, than Lowe's,
7 than Depot and in some cases bigger than all of them
8 combined.

9 They negotiate as tough and as often as
10 anybody does for floor spots. They have a large display
11 floor because they spend a lot of time in the appliance
12 business, do a lot of appliance business. But they value
13 their floor spots very much.

14 CHAIRMAN WILLIAMSON: Okay. The one on 86th
15 Street on the east side has got a -- it's pretty tight.

16 MR. ABDELNOUR: Yeah, it sure is.

17 CHAIRMAN WILLIAMSON: Sort of a different line
18 of questioning. How does your range of brands affect your
19 manufacturing operations, and do you develop each platform
20 only for a particular brand?

21 MR. LIOTINE: Joe Liotine. In terms of our
22 range of brands, they're certain organized and they exist in
23 our platform. So Casey will kind of step in and talk a bit
24 more about it, but you'll see there's usually a Maytag and a
25 Whirlpool on our Vemax platform. The same with our Alpha.

1 So we look at it when we launch big platforms, and make sure
2 we're thinking about what features and the look and the
3 aesthetics of each brand.

4 Not all projects would have our brands.
5 That's not always the case. There's some cases where we
6 wouldn't do that, and so we do consider it obviously. It's
7 part of the up front planning for when we launch, and
8 there's usually a timing at which we're looking to
9 transition different models and bring new models forward.
10 So we kind of synchronize those launches in that fashion.
11 Casey, anything else you want to add?

12 MR. TUBMAN: Casey Tubman. I think the question
13 you asked was again about the manufacturing piece of it, as
14 well. And they are manufactured in the same plant on
15 similar lines, things of that nature. So there are some
16 shared things between the brands.

17 But as Joe mentioned, from an investment
18 standpoint, they're stand-alone investments, whether we're
19 going to put a brand on a platform or not. What tooling it
20 takes to put that brand in, because as you can see there's
21 usually a different look to each of the brands and each of
22 the products, and so there's obviously capital and
23 investments that are required for that brand.

24 CHAIRMAN WILLIAMSON: Would your competitors,
25 Samsung and LG, be doing the same thing?

1 MR. TUBMAN: I--

2 MR. LIOTINE: They may have more than one look of
3 a product on the same platform. They obviously only have
4 one brand. So the brand mark might be the same, but they
5 would have multiple looks on the same platform. So those
6 looks in terms of aesthetic changes and things like that,
7 would require similar investments as we would have.

8 MR. LEVY: Joe, maybe you could speak a little
9 more to your brand strategy and what the purpose is.

10 MR. LIOTINE: Sure. From a brand standpoint,
11 really it's an advantage for Whirlpool. It enables us to
12 offer a bigger assortment of product and really touch our
13 retailers and our buyers in a way that's interesting to
14 them.

15 What I mean by that is, each retailer is trying
16 to find ways to stand out uniquely to consumers. And so
17 brands is a way that they can accentuate that with
18 marketing, communications, floor assortment, whatever it
19 might be. And so as an example, we historically look at
20 Lowes as a Whirlpool house. If you were to look at the
21 Lowes flooring and the Lowes marketing, it's slightly
22 over-indexed in our national average.

23 At Home Depot, it's more of a Maytag house. It
24 over-indexes on flooring for Maytag, and probably marketing
25 and communications for Maytag that helps differentiate them

1 from Lowes.

2 And then Sears has historically their brand
3 that's been a Kenmore house. And so that really does enable
4 us to help them be different and compete against each other
5 in unique ways. And that really does work in our favor, and
6 we think we can do that better than anyone else, given our
7 portfolio of very, very strong brands.

8 CHAIRMAN WILLIAMSON: Okay, good. And I guess
9 that means you have probably separate sales forces for each
10 of those brands? Is that true?

11 MR. LIOTINE: This is Joe. I can start, and Sam
12 can jump in. But, no, all of our brands are sold by one
13 sales force. We usually--they handle all brands.

14 CHAIRMAN WILLIAMSON: Okay.

15 MR. TUBMAN: I guess I might add one thing,
16 because we do have separate brand marketing teams to drive
17 the brands and what they stand for, and to provide that
18 opportunity that Joe talked about, the different things that
19 we can provide the retailer. We do have stand-alone groups
20 for that.

21 CHAIRMAN WILLIAMSON: Okay. I almost wanted to
22 ask you about the Maytag Man and the repairs, but I won't
23 because that's not an issue here.

24 MR. LIOTINE: I'd be happy to later.

25 (Laughter.)

1 CHAIRMAN WILLIAMSON: Okay. Respondents argue
2 that consumers frequently purchase washers with new
3 capabilities, and I was wondering whether you agree or
4 disagree with that statement. And is there any outside
5 data, literature, or articles that you could place on the
6 record that indicate that purchasers are not driven by new
7 capabilities but rather the need to replace a unit by
8 price?

9 MR. LIOTINE: I'm sorry? Could you repeat that?

10 CHAIRMAN WILLIAMSON: Okay. The Respondents argue
11 that consumers frequently purchase washers to obtain new
12 capabilities. And I was wondering do you agree or disagree
13 with that?

14 MR. FETTIG: In terms of what creates demand for
15 washing machines in the United States, I would disagree with
16 that. It's factually strongly supported, almost 70 percent.
17 More than two-thirds of all demand for washing machines is,
18 you know, it breaks. It's a replacement.

19 The rest is virtually all related to either new
20 construction, or moving to a new house, or remodeling, or my
21 family size changed, or that sort of thing. I don't think
22 there's any--certainly there's no factual data that I've
23 seen in 35 years that tells me they go out--of any
24 consequence--that they go out and buy a new capability.

25 MR. LIOTINE: On that point, just to illustrate.

1 Exhibit 15 kind of shows, you know, both the overall
2 single-family home sales, the washer demand, the
3 correlations there. That's back to the point Jeff made.
4 About 70 percent of all purchases are duress or replacement.
5 There may be 20 or so that's related to remodeled, or
6 housing, and kind of the consequences of that. Then the
7 last could be, you know, my family changed. I had children,
8 or I don't have children anymore, or whatever it might be.
9 So there's some smaller piece in there that really is demand
10 drivers and has been and the data is pretty clear.

11 CHAIRMAN WILLIAMSON: So some extreme washing
12 machines don't just break on holidays, so why do we have
13 this Black Friday phenomenon?

14 MR. TUBMAN: This is Casey Tubman. Maybe I can
15 answer that. And I think Sam may have alluded to it
16 earlier, or one of us did. While there is an increase
17 during the holiday period, it's not 3X the amount. It's a
18 small, incremental lift during that point in time.

19 And again, people are under duress. Some not.
20 They don't have extra money sitting around. They're
21 paycheck-to-paycheck. And so if they know a sale is coming
22 up in a week, you go to the Laundromat for a week, and then
23 you buy it on the holidays. So we do see--and we see those
24 tails before and after where if your washing machine is
25 making noise and you know it's going to go out, and it's the

1 4th of July sales time, you're probably going to go out and
2 buy it before it breaks on the 15th of July and now there's
3 no sale, in your mind.

4 CHAIRMAN WILLIAMSON: Okay.

5 MR. TUBMAN: So we do see a little bit about that,
6 but it's again, numbers wise it's minor.

7 CHAIRMAN WILLIAMSON: Okay, thank you. Vice
8 Chairman Johanson.

9 VICE CHAIRMAN JOHANSON: Thank you, Chairman
10 Williamson. Two of my colleagues have brought up the
11 refrigerators case, and I might add to what Chairman
12 Williamson said that washers don't always break on holidays,
13 but sometimes refrigerators do. My sister's did the day
14 after Thanksgiving.

15 And so she sat down--it's interesting. She sat
16 down and got on the computer and she ordered a new frig
17 online. So, contrary to what I heard earlier about you all
18 having a low volume of sales through the Internet, maybe in
19 refrigerators it's different? Or maybe all that might
20 change. That's just a comment on my part. But she got out
21 a yardstick and measured and sat down and drank a few cups
22 of coffee and got that job done.

23 Anyway, moving on back to this investigation, I
24 want to go back to the issue of top-load and front-load
25 washers. Because once again the Respondents wrote quite

1 extensively on that matter.

2 What impact have the new Department of Energy
3 standards for washers had on competitive conditions in the
4 U.S. market? And have distinctions between front-load and
5 top-load washers become less pronounced, or disappeared
6 because of these new standards?

7 MR. TUBMAN: Casey Tubman. I think yes because of
8 the new standards all washers had to meet certain energy
9 requirements. And so they have become, I'll call it, closer
10 in nature to each other.

11 And so a front-load washer is going to meet that
12 energy requirement just as a top-load washer has to meet
13 that energy requirement. So I'm not sure I'm answering the
14 question you asked, but maybe if you want to provide more
15 clarity, but they all have to meet the same energy standard
16 to be sold in the U.S.

17 MR. LEVY: Commissioner Johanson, so if I
18 understand your question, you're not so much focused on
19 blurring of a dividing line between agitator and impeller
20 top loaders, but you're trying to understand the extent to
21 which there's interchangeability or cross-shopping between
22 top-load and front-load configurations?

23 VICE CHAIRMAN JOHANSON: That's right. I'm just
24 wondering if the Energy Standards have changed that dynamic?

25 MR. FETTIG: This is Jeff Fettig. And, Casey, you

1 can add on. You know, I think there was a time in history
2 where there was--the reality was where front-load had a
3 different energy and water consumption usage--

4 VICE CHAIRMAN JOHANSON: And it was lower,
5 correct?

6 MR. FETTIG: And it was lower.

7 VICE CHAIRMAN JOHANSON: Because they didn't have
8 the impeller.

9 MR. FETTIG: Yes. But that's long past. I mean,
10 you can get equal energy efficiency, water, wash performance
11 front or top because of improvements in technology. So it
12 really comes down to consumer choice.

13 MR. LEVY: And, Commissioner Johanson, just to
14 point out, during the Period of Investigation, if we look at
15 front-load as its own segment, we see demand increasing very
16 similarly and in parallel with consumption of top-load
17 washers.

18 But, Casey, maybe you could speak to cross
19 shopping.

20 MR. TUBMAN: No, I was just going to say I think
21 maybe the answer to the question is, the consumer comes in,
22 and again they haven't bought in 10 years. They may not
23 have even seen front-load last time they were in.

24 They come in. They're going to be looking
25 around. They're going to be studying the front-load.

1 They're going to be studying the top-load. They may have
2 done their research ahead of time. As you noted, some
3 consumers are on the Internet and looking at things ahead of
4 time.

5 But because they now offer--they both offer large
6 capacities, they both offer ways to see in, they all offer--
7 not they all, but they both would offer, top-load and
8 front-load, similar capabilities in terms of wash and
9 cleaning and energy use and so on and so forth. And some of
10 that was driven by the energy change as the top-load becomes
11 more and more energy efficient.

12 And so I would say from a cross-shopping
13 standpoint, they're all on the table when the consumer comes
14 in to look at them.

15 VICE CHAIRMAN JOHANSON: Okay. Thanks for your
16 responses. Once again, I'm revisiting this point because
17 the Respondents do not produce certain top-load washers, the
18 agitators, if that's correct.

19 MR. TUBMAN: I think the way--sorry, it's Casey--

20 VICE CHAIRMAN JOHANSON: The other way around?

21 MR. TUBMAN: The way I would phrase it is, they
22 would claim to not produce to-load washers with agitators.

23 VICE CHAIRMAN JOHANSON: Right.

24 MR. TUBMAN: What I would say is they produce
25 top-load washers with impellers without a post. And we

1 produce top-load washers with a post and without a post.

2 Again, if you want the extra part--

3 VICE CHAIRMAN JOHANSON: That's the post you have
4 in your hand?

5 MR. TUBMAN: --the extra post, that's the
6 difference between what they're talking about. They could
7 stick one of these just as easily. You might ask them this
8 afternoon if they're developing anything that has one of
9 these in it. But, you know, they could put one of these in
10 tomorrow.

11 VICE CHAIRMAN JOHANSON: Okay. Thanks for your
12 responses. And I assume I'll hear more on this subject from
13 the Respondents this afternoon.

14 Also, I had spoken earlier about promotional
15 pricing periods. Could you all please describe what happens
16 to prices between promotional pricing periods? Are there
17 instances where non-promotional pricing is suppressed
18 between promotional pricing periods, which would in the end
19 result in little change in pricing? It would even it out?

20 MR. LIOTINE: Joe Liotine. I mean the promotional
21 prices--promotional periods is kind of a general term, and
22 holidays, frankly, has become a general term. They're
23 longer and longer and more pervasive. But usually they go
24 down for a certain period of time.

25 Historically it was let's say three days to five

1 days. Now it's more like two or three weeks. And they
2 would come back up to the level they were before the holiday
3 or the promotional period. That was historically the case.

4 I think what Casey and maybe Sam alluded to
5 earlier is, both the promotional periods are longer, and the
6 time in between is a lot shorter. And so they do go kind of
7 up and down, but not to the same degrees and not for the
8 same duration as in the past.

9 MR. TUBMAN: It's Casey Tubman again. Again, the
10 phenomenon we have seen this year, especially since the
11 Period of Investigation ended, is for the prices to be down
12 and to stay down.

13 And so there is no longer this, I'll call it,
14 relief period where the pricing might be lifted. It's been
15 low pricing the entire back half of the year.

16 VICE CHAIRMAN JOHANSON: Okay. Thanks for your
17 response there.

18 And on the issue of quality reliability, which is
19 significant in this investigation, you all have noted that
20 Samsung recently recalled 2.8 million large residential
21 washers, including 100 percent of the top-load washers
22 produced during the period of investigation.

23 Would consumer complaints and a recall regarding
24 certain subject imports explain lower prices to some part
25 for subject imports?

1 MR. FETTIG: This is Jeff Fettig. The recall was
2 for every front-load washing machine, or top-load washing
3 machine they made since 2011, and the recall came out in
4 September or October. So it's five years worth of
5 production over 730 consumer reports, and this Period of
6 Investigation was--that all came out after the Period of
7 Investigation.

8 So, in fact I can't see it as the source of lower
9 prices because they're not even saleable products now.

10 VICE CHAIRMAN JOHANSON: Were these problems known
11 during the Period of Investigation, though?

12 MR. FETTIG: I can't speculate, other than
13 according to U.S. law you're supposed to report to CPSC, and
14 I can't explain why it took five years.

15 MR. LEVY: Sam, maybe you could speak to whether,
16 you know, in your communications with retailers this issue
17 came up in price negotiations?

18 MR. ABDELNOUR: This has never come up in price
19 negotiations. I think every company has recalls of some
20 sort, product issues over a period of time.

21 VICE CHAIRMAN JOHANSON: But this was a very large
22 recall, right?

23 MR. ABDELNOUR: This was a very large one. And
24 there have been other, other very large ones. And I think
25 they assume that Samsung will figure it out, get product

1 back into the market, continue to be very aggressive,
2 continue to be very promotional. So at the same time they
3 don't use that against us to get lower prices. They don't
4 say, hey, here's an opportunity for you to do some business
5 because Samsung is out of product. Can you lower your price
6 in order to do that?

7 So we don't have those kinds of conversations.

8 VICE CHAIRMAN JOHANSON: Okay. Thanks for your
9 responses. I have just one more question. I don't think it
10 will take real long.

11 But Respondents take the position that the
12 pricing product coverage is poor and unrepresentative,
13 knowing among things that washers with LCD displays should
14 have been included.

15 Are we missing something, without including these
16 products?

17 MR. LEVY: I think you're referring to Exhibit 35
18 where they claim that certain products were either
19 erroneously not reported by U.S. producers, or should have
20 been reported even though they don't meet the pricing
21 products definitions.

22 We will address all that in our post-hearing, but
23 for all of their claims that there was a failure to report
24 when it was warranted, they're just plain wrong. Either
25 they're referencing skews from another country from five

1 years ago, or they're misunderstanding the features.

2 With regard to LCD, your instructions were to
3 report non-LCD models. Whirlpool's LCD models that were not
4 excluded--not reported in the bucket are more richly
5 featured and higher priced.

6 So if you want us to include in that bucket
7 higher prices, sure. Just tell us.

8 VICE CHAIRMAN JOHANSON: Okay. Just for your
9 reference, the Respondents argue at pages 64 to 65 of their
10 brief.

11 Okay, that concludes my questions. Thank you.

12 CHAIRMAN WILLIAMSON: Commissioner Pinkert?

13 COMMISSIONER PINKERT: Thank you, Mr. Chairman.
14 In your prehearing brief, and then again today in testimony,
15 you point out that import inventories increased immediately
16 after the Petition was filed in this case.

17 Did this have any impact on prices that you faced
18 in the marketplace?

19 MR. TUBMAN: Casey Tubman. No, we did not see a
20 change in the marketplace, I'll say in the first half. What
21 we did see is, as I mentioned, in the second half it built
22 up all that stock approximately five to six months is our
23 estimation, and then as soon as July first came around and
24 the Period of Investigation had ended, it was rock-bottom
25 price from then on.

1 COMMISSIONER PINKERT: Can you help me to
2 understand why there wouldn't have been an impact based on
3 this increase in the import inventories?

4 MR. TUBMAN: Casey Tubman. I would say again they
5 were building up the stockpile. So they were using what
6 they had at that time and what was flowing in. They would
7 have been discounting it like they normally would discount,
8 and building up this stockpile.

9 And again, from my point of view, it would be
10 because they knew they would have to pay penalties as of
11 July 1. So if you build up that stockpile, you now have
12 enough supply to discount the whole back half of the year
13 until you've moved to a different location, which again we
14 have seen already.

15 MR. FETTIG: This is Jeff Fettig. From a point of
16 view of circumvention, it makes perfect sense what they've
17 done, because they loaded up so much inventory in the first
18 half which gave them time to ship production from China to
19 Vietnam and Thailand, the production base. They had all
20 this inventory in the U.S. in order to not have cash
21 deposits, which is substantial, over \$200 million. And then
22 as they got their Vietnam-Thailand production going in
23 August, September, October, and starting new shipments, they
24 just have literally liquidated all that inventory at rock
25 bottom prices.

1 That's why we said that there's been continuous
2 discounting since the middle of the year, because they're
3 liquidating all that Chinese inventory at even lower prices
4 and bringing on new dumped product from other countries.

5 So their whole intention was circumvention.

6 MS. OKUN: And Commissioner Pinkert, if I could
7 add, and we will certainly do more post-hearing, but I think
8 in looking at what you've heard from these witnesses is
9 there was no post-petition effect. I mean, they did not get
10 a positive. So it's not a case where we were asking you to
11 discount the post-petition period because the inventory
12 buildup and the volumes it increased prior to the imposition
13 of duties exacerbated injury to the U.S. industry.

14 And again we will do more to tie that in for the
15 last part with relation to pricing products, but I think it
16 is clear from the record that the post-petition period was a
17 period of continued injury that was exacerbated by these
18 inventories.

19 COMMISSIONER PINKERT: Thank you.

20 Now there was some talk about the Kenmore brand
21 and the competition to satisfy the Kenmore interests, if you
22 will. What is the outlook for the Kenmore brand? I asked
23 that question a few years ago and it seemed that the answer
24 was that it was uncertain.

25 What about today?

1 MR. LIOTINE: Joe Liotine. Certainly the outlook
2 for Kenmore and Sears in total, as they're related, you
3 know, has been a little negative and has appeared to shrink.
4 The outlook probably isn't that much different than what we
5 would have told you before. We don't, you know, have a
6 crystal ball in terms of what will happen, but they're
7 certainly in distress.

8 What I can say, though, is from our standpoint
9 our business with them over the Period of Investigation, we
10 actually grew our laundry business during that time period,
11 both in absolute and in a relative basis.

12 So as much struggle as they've experienced in
13 total and in other categories, it actually was a source of
14 addition to our business. And so we obviously care a lot
15 about it and manage it pretty closely and are monitoring it.
16 But it was a positive for us. So as much duress as there
17 was, we were fortunate to be able to navigate through that.

18 MR. LEVY: Jack Levy for Petitioner. We would be
19 more than happy to provide you with proprietary data, but I
20 know Respondents have essentially made this argument that,
21 you know, Sears is a sinking ship and you're on it, or, you
22 know, you've attached your fate to their falling star.

23 It's a great theory, but the facts are 100
24 percent the opposite. That is to say, Whirlpool is, during
25 this Period of Investigation, gained share of the Sears

1 account both on a branded and on a Kenmore basis.

2 So the theory may or may not have validity. The
3 facts are quite the opposite, and we would be more than
4 happy to report the facts and debunk their theory.

5 COMMISSIONER PINKERT: Certainly. Please flesh
6 this out in the post-hearing submission, but I want to stay
7 with this outlook question.

8 And I wonder whether the brand, the Kenmore brand
9 itself, might survive regardless of what happens with the
10 broader corporate entity?

11 MR. FETTIG: This is Jeff Fettig. A good
12 question. You know, I'd say basically, one, we don't know.
13 Two, if you listen to Sears, who's the owner of the Kenmore
14 brand, they have publicly said they will look for
15 potentially selling it to someone, or licensing it to
16 someone. So, you know, in the sense that the brand has
17 value with consumers, it does have a value.

18 So, yeah, I suspect it will survive.

19 COMMISSIONER PINKERT: Thank you. If you can
20 supplement that in the post-hearing, I think that would be
21 helpful.

22 And finally, with respect to the price
23 compression theory, we talked a little bit about that
24 earlier today. But how can we be confident in the causal
25 relationships here? And let me just specify what I mean by

1 that.

2 How can we be confident that low prices for
3 highly featured models are pushing down prices for other
4 models versus some causal impact going in the other
5 direction?

6 MR. TUBMAN: So I think this is how we would
7 explain it, and I'll go to an exhibit in just a minute. In
8 fact, let's start with Exhibit 3 if we can. Actually, you
9 know what, let's start on a different one--sorry, Jack--
10 let's go to, I think it's 16, if I remember right, back up.
11 There you go. Exhibit 16.

12 So I think this is what you're asking about here,
13 which is where you can see, you know, if you have the best
14 features and you shove them down a price point, the person
15 you're competing with might have better features, in which
16 case you lose.

17 And therefore that then escalates down the whole
18 line. And there is a full lineup of product, right, both
19 for us and for LG and Samsung. They have products that span
20 the whole lineup.

21 I think at some point, maybe it was in the last
22 case, I can't remember, there was this argument about well
23 we don't play in that low end, and therefore you're dragging
24 us down. So that's where I would go back to Exhibit 3 now.
25 Who's got the clicker. There we go. If I look at this, you

1 know, this shows that Samsung has a piece at the low end.
2 And this is one example. We could show others. But this is
3 a piece that is competing at the low end.

4 And therefore you could see this where they have
5 better features at a lower price. And it is driving the
6 bottom down, let's say. But in both cases, what you'll see
7 is that it's the competitors doing it and not us. And it is
8 a continuous lineup.

9 So for the most part we're in the business to
10 make money. And my bosses here will all tell me that. We
11 are in the business to make money. And so we have a certain
12 material cost of a product, and to think that I would be out
13 there using it to pull down other pieces below what my cost
14 is just doesn't make sense.

15 And so obviously we would like to make as much
16 money as we can on a product. Just like every retailer, we
17 like to make as much money as they can selling those
18 products. It just isn't rational, I'll say, to say, yeah,
19 the bottom's pulling everybody down.

20 And again you could use things like other ways to
21 hold those up, let's say, if possible, but because it's a
22 continuous line as soon as you move one the dominoes just
23 continue to fall.

24 MR. LEVY: Commissioner Pinkert, if I could
25 elaborate, I think part of your question was how do we know

1 it's price compression and not a price anchor from the
2 bottom? And part of the answer is, the purchasers have told
3 us so. Overwhelmingly they've said this is price
4 compression dynamic that is real. And with respect to price
5 anchor, they've said, not to much.

6 But putting that aside, I think this is
7 fundamentally linked to Respondents' argument about
8 attenuated competition with the aggie segment. And of
9 course they made this tired argument in the last case
10 involving Korea and Mexico, and in that case what this
11 Commission found was that there was a cause and effect
12 relationship across the U.S. washer lineup, including
13 U.S.-produced aggies, and on that record I think it's fair
14 to say the Commission observed indirect competition between
15 subject imports and U.S. produced aggies, and cited price
16 compression as the key dynamic.

17 And in fact the Court of International Trade
18 affirmed you on that finding.

19 What's different in this case, qualitatively, two
20 things actually. One you've heard that the technology
21 distinction between aggie and non-aggie is far less coherent
22 than ever.

23 But more to the point, as Mr. Tubman is
24 indicating, what's new and different is that subject imports
25 are now directly at the bottom. There's no indirect chain

1 reaction alone. They are there at the bottom undercutting
2 U.S. producers at entry-level price points.

3 And so you don't even need to find price
4 compression in order to observe a cause-and-effect
5 relationship between subject import pricing and injury
6 across the product lineup, including U.S. produced aggie
7 washers such as the one shown here.

8 COMMISSIONER PINKERT: Thank you, very much.

9 CHAIRMAN WILLIAMSON: Thank you. Commissioner
10 Schmidtlein--just to follow up on that last, I didn't quite
11 understand the anchor example. I understand the price
12 compression, and I understand the argument about the imports
13 are now at the low end, too.

14 But what was the anchor alternative, just so I
15 can understand the dynamic?

16 MR. LEVY: I think the Respondents' thesis that
17 they wanted to test was that if somebody is over here with
18 basic features, or maybe a better example, you know, they're
19 over here with basic features, and they reposition at a
20 lower price point, that there's a chain reaction and they're
21 pulling all these down with them from the bottom.

22 And the question was, in the questionnaire: Do
23 U.S. produced aggies in this area, are they the price
24 anchor? And that question was recommended by Respondents
25 and posed to purchasers, and overwhelmingly the purchasers

1 said, not so much. That's not what's going on here.

2 Overwhelmingly what they say is that this is
3 what's going on, top down.

4 CHAIRMAN WILLIAMSON: Okay. Thank you. I just
5 wanted to understand that.

6 Commissioner Johanson? No? If there are no
7 further questions from Commissioners, does Staff have any
8 questions for this panel?

9 MR. ANDERSON: Mr. Chairman, Staff has no
10 questions. Thank you.

11 CHAIRMAN WILLIAMSON: Thank you. Do Respondents
12 have any questions for this panel?

13 (No response.)

14 CHAIRMAN WILLIAMSON: I see a hand waving back
15 there. I guess that means no.

16 Okay, well that means it's time for a lunch
17 break. I want to thank this panel for their being here
18 today and giving us their testimony.

19 We will now take a lunch break and we will resume
20 at 1:50. That's one hour from now. I want to remind
21 everyone that this room is not secure so please take any
22 business or proprietary business confidential information
23 with you. And we will recess the hearing until 1:50. Thank
24 you.

25 (Whereupon, at 12:48 p.m., the hearing was

1 recessed, to reconvene at 1:50 p.m., this same day.)

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1 A F T E R N O O N S E S S I O N

2 MS. BELLAMY: Would the room please come to
3 order.

4 CHAIRMAN WILLIAMSON: I want to welcome the
5 afternoon panel. And Mr. Shor, you may begin when you're
6 ready.

7 MR. SHOR: Thank you. Good afternoon, Chairman
8 Williamson, members of the Commission. Once again, I am
9 Michael Shor appearing on behalf of Samsung.

10 Before introducing our panel, I wanted to touch
11 briefly on two issues, like product and critical
12 circumstances. With respect to like product, I want to
13 remind the Commission that Whirlpool has defined the scope
14 of its petition to cover not only finished washers, but also
15 certain covered parts: complete baskets, complete tubs, and
16 any portion of a cabinet, but Whirlpool has not provided a
17 like product analysis justifying the inclusion of these
18 parts with finished washers in a single-like product nor
19 has it explained why other washer parts are not also part of
20 that singular-like product.

21 Indeed, reading Whirlpool's pre-hearing brief,
22 one would not even know that this case includes parts at
23 all. Nothing in the Commission's like-product analysis or
24 practice permits a Petitioner to bring a case against a
25 finished consumer product and then shoehorn into the same

1 like-product a few component parts of its own selection
2 simply by asserting that it wants to include them to prevent
3 what it unilaterally defines a potential risk of future
4 circumvention.

5 Congress has dealt expressly with potential
6 circumvention. It has set forth a test for when assembly of
7 a finished product in the United States from imported
8 components constitutes circumvention of an order covering
9 the finished product. There is no justification or
10 statutory basis for Whirlpool's preemptive remedy for a
11 problem that does not even exist as neither Samsung nor LG
12 assembles washers in the U.S.

13 For covered parts to be included in an
14 eventually anti-dumping order the Commission must make one
15 of two determinations, one, that the covered components are
16 part of the same like product as finished washers and the
17 combined imports enter U.S. producers or two, that the
18 covered components are distinct-like product injured imports
19 of covered parts. Neither determination is justified on the
20 record before you.

21 Respondents demonstrated in our pre-hearing
22 brief that covered parts constituted a distinct-like product
23 or products from finished washers. They differ under the
24 Commission's traditional six-factor-like product test and
25 they differ under the Commission semi-finished products

1 analysis.

2 Under the six-factor test, covered parts and
3 finished washers are not interchangeable. One cannot use a
4 tub, basket, or cabinet to wash clothes. Their physical
5 characteristics differ. Finished washers are sold
6 principally through retailers to consumers, whereas covered
7 parts are either consumed to make washers or sold to repair
8 companies to fix existing washers.

9 The components are manufactured through
10 different production processes than finished washers.
11 Consumers and producers do not perceive finished washers and
12 covered parts to be substitutable. And finally, they are
13 priced very differently. Likewise, covered parts are a
14 distinct-like product under the Commission's semi-finished
15 products analysis. They are not dedicated to the production
16 of washers are they sold to repair existing washers and they
17 do not individually or collectively provide the essential
18 character of a washer. Rather, to make a finished washer
19 they must be assembled with scores of other parts.

20 Finally, it is impossible for domestic producers
21 of covered parts to be injured by subject covered part
22 imports. The parts are not interchangeable between
23 manufacturers. A Samsung basket cannot be used to repair a
24 Whirlpool washer.

25 Imposing duties on covered parts only increases

1 cost to consumers who have to repair washers that they
2 already have purchased. It provides no benefit to the
3 domestic industry producing the like product.

4 I'll next turn to critical circumstances. As we
5 noted in our pre-hearing brief, we fully expect that
6 Commerce will issue a negative critical circumstances
7 finding when it announces its final determination on Friday.
8 The simple truth is that Samsung did not massively increase
9 its imports in advance of the preliminary determination,
10 notwithstanding anything you heard this morning.

11 Samsung did not even increase its imports by the
12 15 percent threshold Commerce requires for its critical
13 circumstances test. Nonetheless, I'd be happy to answer
14 your questions on this issue.

15 I'd now like to introduce John Toohey of LG.

16 STATEMENT OF JOHN TOOHEY

17 MR. TOOHEY: Good afternoon. I'm John Toohey,
18 Director of Strategy for LG Electronics USA. This is my
19 seventh year at LG and during that time I've had broad
20 exposure to the US home appliance market and have played a
21 personal role in LG's growth therein.

22 Our team is here today to discuss the important
23 characteristics of the U.S. washer market and the role of LG
24 and Samsung in that market. So the ITC has the necessary
25 information to make an informed decision. You heard a

1 version of market reality this morning that in many ways
2 does not match our experience.

3 Let's start with market characteristic number
4 one. Washers are not a commodity product. Unlike many
5 industrial products that the Commission considers, washers
6 are a branded consumer product. The consumer's choice among
7 brands, designs, features, and innovations has never been
8 greater. In fact, there are a variety of washer
9 configurations offered in up to 10 brands with prices
10 ranging from \$300 to over \$1,500 at retail.

11 If all washers were created equal there wouldn't
12 be so many options available to U.S. consumers across such a
13 broad spectrum of features and price points. Brand is
14 critically important and manufacturers position their brands
15 differently. Part of LG's strategy with regard to brand is
16 to develop lifelong relationships between consumers and our
17 brand. That concept is reflected in our brand promise
18 "Life's Good."

19 Under the LG brand, we market a wide range of
20 products that appeal to consumers in different stages of
21 their lives, starting as early as their teenage years or
22 even younger, when they may be their first LG cell phone.
23 By the time the consumer reaches the homeowner stage of life
24 and is entering the market for major appliances, they
25 already know and trust the LG brand.

1 This life-cycle-based strategy has contributed
2 to LG's success over the past several years and is expected
3 to contribute further as more young consumers who grew up
4 with LG cell phones in high school and then graduated to LG
5 TVs in their first apartments begin to buy LG appliances in
6 their first homes.

7 As the current slide illustrates, Millennia's,
8 the yellow line, are the fastest growing cohort in the U.S.
9 washer market and they continue to represent an increasing
10 share of purchases.

11 Brands can also serve to differentiate products.
12 People buy different brands for different reasons. This
13 point is made clearly by the current slide, which shows the
14 reasons consumers bought a new washer and how these reasons
15 differed significantly by brand. The only category where
16 Whirlpool and GE perform higher than LG and Samsung is among
17 consumers who bought a new washer because "the old one
18 didn't work at all."

19 In the most discretionary categories, such as
20 "just wanted a new one" or "remodeled my kitchen" LG and
21 Samsung brands significantly over-performed both Whirlpool
22 and GE. This clearly shows that the brands are
23 differentiated in the minds of consumers.

24 Another way that brands are important is in how
25 they reflect products that are new, exciting, and better

1 meet consumer needs, which brings to market characteristic
2 number two. Production innovation is critical for
3 manufacturers to differentiate their products and drive
4 consumer demand. LG has a rich history of innovation and is
5 known for bringing innovation to U.S. consumers.

6 This next slide showcases LG's new twin wash
7 system, which is one of the most innovative concepts the
8 washing machine industry has ever seen. This unique
9 offering provides consumers with the ability to
10 simultaneously wash two loads. With a big load, such as a
11 comforter in the front-load washer above and a small or
12 delicate load in the sidekick pedestal washer below. Twin
13 wash was one of the biggest hits at the Consumer Electric
14 Show last year and is now broadly available at retailers all
15 across the U.S., which I think is a sign that retailers
16 value innovation as well when they make their flooring
17 decisions.

18 We have a sample of the twin wash system here
19 for the Commission to see. I'll just point it out. In the
20 back room it is the pair that is the tallest of all the
21 washers here. This slide shows the same sample units that
22 we have in the room. The twin wash washer is paired with a
23 sidekick pedestal, a matching dryer and the dryer has its
24 own pedestal. As we'll discuss later, washers and dryers
25 are inextricably linked in this market.

1 As another example of innovation, LG lead the
2 market by moving the control panel to the front of the
3 top-load washer. LG brought this innovation to market in
4 2012, which provided consumers with a more intuitive design,
5 making the controls easier to see and to operate. Again, we
6 have an example here for the Commission to see. It's in the
7 very rear, the last pair washer and dryer, which are
8 stainless steel colored. This new product immediately sold
9 very well and became an overnight success. So successful,
10 in fact, that Whirlpool decided to follow this innovation
11 with their version in 2016.

12 To highlight the difference that innovation
13 makes, we also brought a conventional top-load washer with
14 an agitator for the Commission to see. The differences
15 between these washers are readily apparent and they sell at
16 very different price points. The agitator-type washer is
17 the old-fashioned type that most of our parents grew up
18 with. It's got a moving shaft in the center in the tub that
19 slouches the water and the clothes around, the white one
20 near the back of the room. This conventional washer is not
21 what LG and Samsung sell; yet, it is a very large part of
22 the market for Whirlpool and for GE.

23 Market characteristic number three is that the
24 U.S. washer market has a distinct lower value segment. I
25 apologize that the pie chart is so faded, but I'll try to

1 explain it. Notwithstanding the fact that the top-load
2 agitator models being sold today are relatively energy
3 efficient like other washer configurations, U.S. producers
4 still sell this configuration. One reason we believe is to
5 establish a bright line distinction between their cheapest
6 models and their more expensive models in order to maintain
7 an entry level price point category.

8 Another reason is to appeal to consumers with a
9 preference for agitator-based washers. We saw the
10 demographic trend chart and I think it's fair to say that
11 certain demographic generations may have preferences for the
12 older styled washers. The agitator models, as you can see,
13 look really old fashioned with rotary dials and white
14 cabinets.

15 The current slide shows that the largest segment
16 of the U.S. market, at 38 percent by units, is top-load
17 washers with agitators. This is the entry level or
18 so-called value segment because these products have the
19 lowest price points in the market. Note the ASP, or Average
20 Selling Price, of \$460. Also, this segment is dominated by
21 Whirlpool, who has 66 percent share when you include the
22 agitator models that Whirlpool makes for Sears and GE with
23 another 23 percent share. LG and Samsung do not compete at
24 all in this value segment of the market, either through
25 their own brand or through OEM sales.

1 Consumers in the value segment are often budget
2 constrained and cannot afford to step up to washers in the
3 other two higher priced segments. Based on what retailers
4 have consistently told LG, it is very difficult, if not
5 impossible, to persuade a consumer who intends to purchase a
6 value top-load agitator washer at \$450 to spend \$600 for a
7 high efficient top-load washer, let alone \$750 for a front
8 load washer. This is a clear market reality.

9 Our front-load and top-load washers are higher
10 priced across the board than U.S. produced top-load washers
11 with agitators and by large amounts. It is my understanding
12 that Whirlpool is saying that any price reduction for our
13 top-load and front-load washers cascades all the way down
14 the market affecting prices for U.S. produced top-load
15 washers with agitators. This is their so-called price
16 compression affect.

17 I have seen no empirical support for this
18 theory. LG has access to a database of model-specific
19 retail prices for washers from GAPP intelligence. And in
20 our experience retail prices are representative of the
21 invoice prices that manufacturers charge to retailers. This
22 database identifies washers by brand as well as by
23 configurations.

24 Slide 8 shows average retail price trends for
25 front-load washers, top-load washers with agitators, and

1 top-load washers without agitators for U.S. producers at
2 Whirlpool and LG and for Whirlpool and GE and for LG and
3 Samsung combined. It shows the following: first, that on
4 average, LG and Samsung's retail prices for front-load and
5 top-load washers are higher than U.S. producers' prices for
6 top-load washers and they have remained relatively stable.

7 Second, the line shows the earliest downward
8 trend is in the line for a U.S. made, non-agitator
9 top-loaders. If price compression were true, I would expect
10 the downward trend in this line to be preceded by a downward
11 trend in the higher priced import models. That is just not
12 the case.

13 Third, it would be my expectation that if price
14 compression did exist, it would stronger among models and
15 price points that are closer to each other; therefore, a
16 more likely explanation for any downward trend in the
17 agitator segment would be the decline in prices for U.S.
18 made non-agitator models.

19 A totally separate and plausible explanation for
20 a decline in prices of U.S. made agitator models is provided
21 by the fact that both Whirlpool and GE have significant
22 volumes in that segment of the market; therefore, there is
23 the potential for price declines in this segment due to
24 intra-industry competition between Whirlpool and GE. You
25 can see in Slide 9 the price declines and close correlations

1 and trends between top-load washers sold by each.

2 I will now pass the microphone to Doug
3 Mittrucker.

4 STATEMENT OF DOUG MITTRUCKER

5 MR. MITTRUCKER: Good afternoon. My name is
6 Doug Mittrucker and I've been with LG Appliances in the Home
7 Appliance Division for just over nine and a half years.

8 My current position is a sales director for our
9 key accounts. I spent the first eight years of my career at
10 LG on the Home Depot team, which the first five, I was
11 assigned specifically to the laundry and dishwasher
12 categories as a senior account manager.

13 It is extremely misleading to think of the
14 industry before you today as the washer industry. From a
15 commercial standpoint, there really is no such thing as
16 separate business that consists only of washing machines.
17 All major producers of washing machines also sell dryers and
18 pedestals. And perhaps, most importantly, all washers and
19 dryers are explicitly designed to sell together at the same
20 price.

21 We've brought a few pairs of laundry here today
22 in order to illustrate that point that John pointed out
23 earlier. One of these pairs is on the screen. As you can
24 see, the components are designed as an integrated set that
25 consists of a washer, a dryer, and for front-loaders

1 includes pedestals. LG has taken the suite concept to the
2 next level and includes a second entirely separate washer,
3 the sidekick, in the base of the pedestal.

4 Consumers walk into a retailer like Lowes or
5 Home Depot, see this laundry pair on display and walk out
6 having bought a washer, a matching dryer, and if they choose
7 a front-loader, possibly a couple of pedestals.

8 As you can see from the next slide, Whirlpool's
9 Global Director of Innovation has touted their strategy of
10 selling laundry suites. Because consumers buy them together
11 retailers price the washer and matching dryer the same, or
12 if you have noticed from this year's Black Friday ads,
13 bundle them together at a single price. The fact that
14 washers and dryers are priced together would not be so
15 important if they were sold completely separate, but they
16 are not. They are sold together.

17 In the industry, the metric for measuring paired
18 laundry sales is the attachment rate. The rate is very
19 high. Indeed, in a sworn statement my Whirlpool counterpart
20 testified to attach rates above 90 percent for at least some
21 washers. Besides selling two products instead of one,
22 retailers prefer to make paired sales because it lowers
23 their home delivery costs. That is because of third-party
24 companies that they hire to deliver and set up the
25 appliances in your home will offer substantial discounts to

1 the retailer on the second unit delivered.

2 To make merchandizing and margin management
3 simpler, retailers have forced common washer/dryer pricing
4 onto the manufacturers. I will tell you that this is not
5 our preferred option. Washers cost much more to make than
6 their matching dryers. I believe that we have provided some
7 information from our manufacturing arm in Korea to
8 illustrate this magnitude of this cost differential. The
9 cost differential is so large because washers weigh more
10 than dryers, they're more complex, and their components must
11 operate in much harsher environments of water and heat,
12 harsh detergents, and vibrations.

13 Therefore, because retailers require a single
14 price point for two very different products, LG, and all
15 manufacturers, have no choice but to choose a mid-point
16 price, which is somewhere lower than the price we would like
17 for the washer. Then, in exchange, we collect a higher
18 price for the dryer. If you consider washer pricing and
19 costs separately from the dryer, this common pricing sales
20 phenomenon creates very high apparent profits on the dryer
21 and very little apparent profits on the washer. Therefore,
22 if you want to measure how well this or that appliance
23 company is doing you must look at the laundry business as a
24 whole. This includes washers, dryers, and for
25 front-loaders, pedestals, which is a very highly profitable

1 accessory item as well.

2 In conclusion, it makes no sense to consider
3 washer profitability alone because they're not priced as a
4 stand-alone product nor sold that way.

5 I will now pass the microphone back to John.

6 MR. TOOHEY: I next would like to address
7 something that Whirlpool has repeated ad nauseam,
8 specifically, that it was LG's low prices to retailers that
9 accounted for our success. This is not true. In fact, a
10 good part of LG's success over the past couple of years is
11 attributable to our ability to gain expanded distribution
12 within new retail accounts. I have a personal perspective
13 on this matter because of my role at LG.

14 In the past few years, LG has entered three new
15 strategic retail accounts; namely, Lowe's, Costco's, and
16 J.C. Penny. I can provide specific details about each in
17 our confidential post-hearing briefing, but our sales to
18 these three retailers accounted for a substantial portion of
19 LG's washer sales in 2016. And I can say without
20 qualification that that LG's selling price had very little
21 to do with the desire of these major retailers to start
22 carrying LG washers because I was part of the LG team that
23 negotiated with each of them.

24 Let's start with Lowe's. Given Lowe's
25 significant clout in the U.S. appliance market, including

1 laundry, LG approached Lowe's in 2010 to propose the idea of
2 working together. Although Lowe's agreed to meet and listen
3 to LG's pitch, they told us that they weren't interested at
4 that time in carrying our appliances. About a year later,
5 toward the end of 2011, Lowe's reached out LG and requested
6 a presentation from us on the pros and cons of Lowe's
7 starting to carry LG home appliances. Among several
8 points, the presentation highlighted why LG had been
9 successful at other retailers.

10 From 2002 to 2011, for every retailer where LG
11 was sold we grew, even within retailers that were otherwise
12 shrinking. This demonstrated that LG was doing something
13 that grew market share independent of our retail placement.
14 The argument for Lowe's to carry LG was based on LG being a
15 growing brand that resonated with U.S. consumers, many of
16 whom are already part of Lowe's existing shopper traffic.
17 We presented data that demonstrated that many of Lowe's
18 customers were already aware of the LG brand, no doubt in
19 part to LG's TVs and Smartphones.

20 In fact, a large proportion of LG appliance
21 purchasers shopped at Lowe's and walked out empty handed to
22 buy an LG product somewhere else. That presentation
23 concerned all major home appliances, including laundry,
24 refrigerators, and cooking. And perhaps, most importantly,
25 the issue of pricing of individual units was never part of

1 the discussion.

2 A few months later, Lowe's informed LG that they
3 had decided to start carrying LG major home appliances.
4 That the decision to add LG was based on Lowe's strategy to
5 deliver the best choices to consumers and that Lowe's was
6 impressed with LG's track record of strong product
7 innovation. In addition, Lowe's agreed that many LG
8 customers were leaving Lowe's empty handed, which
9 represented significant incremental business opportunity.

10 Once again, the subject of pricing was never
11 raised in the discussion of whether Lowe's would begin to
12 carry LG. The decision to add LG was about the brand and
13 the potential to win more consumer business with innovative
14 products. Of course, once the roll out started, we
15 ultimately had to agree on pricing, but this happened only
16 after the decision by Lowe's to add LG to its line up.

17 We started selling LG products at Lowe's in the
18 first quarter of 2013. I assembled all of the
19 contemporaneous documentation concerning our discussions
20 with Lowe's and prepared a detailed annotation of all the
21 documents, which can be found in Exhibit 19 of the
22 pre-hearing brief.

23 The next retailer I'd like to discuss is Costco.
24 In last 2012, LG was approached by Costco. At that time
25 Costco was also selling LG TVs and Costco wanted to add the

1 LG brand to their home appliance offerings, including
2 refrigerators, laundry, and cooking.

3 MR. TOOHEY: Costco told us that it wanted to add
4 LG appliances due to LG's brand appeal to Costco's members
5 from their experience with other LG products. At that time,
6 Costco was carrying Whirlpool appliances, including washers
7 but they were apparently not selling well. At that time, LG
8 decided not to pursue the Costco business opportunity
9 because we were in the midst of trying to launch at Lowe's
10 in queue on 2013 and needed to see how the market dynamics
11 settled.

12 In mid-2014, a little more than a year after
13 entering Lowes and after some internal deliberation, LG
14 reengaged with Costco. Costco still believed that there was
15 a strong demographic and psychographic overlap between
16 Costco members and LG's target home appliance consumers with
17 respect to things like income level, age and attitudes.

18 We started a pilot with Costco in late 2014
19 mostly in California. The pilot was deemed successful and
20 the decision was made to roll out nationally in several
21 hundred Costco clubs. The broader rollout was completed in
22 queue for 2014. Interestingly, the Costco merchandizing
23 model does not involve an in-store sales associate for
24 appliances. The products are simply on display and it's up
25 to the Costco shopper to self serve by researching the

1 products independently and ordering on Costco.com.

2 I note that according to Trackline LG's average
3 selling prices for washers at Costco exceed those of
4 Whirlpool. I also note that we were informed by Costco that
5 LG's sales surpassed Whirlpool sales shortly after our broad
6 rollout began and so in a sense, Costco represents a natural
7 experiment to test Whirlpool's theory, notwithstanding the
8 complete self-serve approach and LG's higher retail selling
9 prices, LG sold more laundry appliances at Costco during
10 2016 than Whirlpool. Obviously something other
11 than price in the retailer drove the purchasing decision.
12 That something, of course, is consumer demand for LG's
13 innovative products. The third new retailer is JC Penney.
14 JC Penney contacted LG in the Spring of 2015 when I received
15 a call from JC Penney's vice president of strategy who told
16 me that JC Penney had decided to enter the major appliance
17 category and were reviewing which brands they should offer.
18 They explained that their strategy involved offering a
19 good/better/best selection for their consumers and they
20 envisioned LG as the best brand.

21 Following this phone call, LG undertook internal
22 assessments about the attractiveness of JC Penney as a
23 retailer. We decided to move forward with exploratory
24 discussions. These discussions culminated in a meeting at
25 JC Penney's headquarters to review the pros and cons. At

1 the meeting JC Penney emphasized that their strategy was to
2 offer consumers what they called the "Most Wanted National
3 Brands" and so they believed LG would be a good fit given
4 the incredible strength of the LG brand.

5 In the first quarter of 2016 we conducted a pilot
6 test in 22 JC Penney stores and then rolled out to about 500
7 JC Penney stores by the end of the third quarter of 2016.
8 Once again, the subject of pricing was not a part of the
9 initial discussions about whether JC Penney would begin to
10 carry LG. the decision and the desire to add LG was about
11 the brand and the potential to win more consumer business
12 with innovative products. I will now pass the microphone
13 over to Greg.

14 STATEMENT OF GREG THOMPSON

15 MR. THOMPSON: Good afternoon. My name is Greg
16 Thompson. I am the Director of Product Marketing for
17 Laundry Products for Samsung Electronics America. I am
18 responsible for the marketing of Samsung's Laundry Products
19 in the United States. This entails working on product lines
20 and promotional strategies for washers and dryers working
21 with retailers and our sales team on marketing strategy and
22 working with the marketing team to ensure strong messaging.

23

24 I have a total of 4 years experience in the
25 laundry appliance business. Between 2008 and 2013 I worked

1 with sears Holdings Corporation in various capacities
2 including in almost three years as Sears Divisional
3 Merchandise Manager for Home Appliances which included
4 laundry. Sears' buyer for laundry appliances reported
5 directly to me. I would frequently sit in on meetings with
6 Whirlpool, GE, Samsung and LG as they pitched their new
7 washer and dryer pairs to Sears. I thus have experience
8 both buying and selling home washers and dryers on the
9 producers' side and the retailers' side.

10 I have read the public version of Whirlpool's
11 prehearing brief and I believe it presents a misleading
12 analysis of how domestic and imported LRWs compete in the
13 marketplace. My objective today is to help you better
14 understand the industry and market for LRWs.

15 My testimony today will focus on three important
16 conditions of competition in the industry. One: The paired
17 marketing, pricing and sales of residential washers and
18 dryers and its implications for analyzing industry
19 profitability. Two: How and where imported and domestic
20 LRWs compete including how retailers make flooring decisions
21 and three: how LRW producers distinguish their products
22 including the role of branding and product innovation.

23 First, a particular characteristic of the U.S.
24 Market is that washers are designed, marketed and priced to
25 be sold in pairs with dryers with each washer and matching

1 electric dryer having the exact same retail price point.
2 This business model impacts the wholesale pricing and
3 necessarily means that producers' intent that dryer profits
4 will cross subsidize their intentionally lower washer
5 profits.

6 Let's start with the obvious. Casey Tubman, who
7 spoke to you this morning is the General Manager for
8 Whirlpool's laundry business. I am the director of
9 Samsung's U.S. laundry business. We don't have business
10 units, marketing or sales directors, managers or salesmen
11 responsible only for washers or only for dryers. Even my
12 annual bonus is tied to the overall laundry appliance
13 performance and not separately to washer performance or
14 dryer performance.

15 Our management structure reflects the business
16 reality, the washers and dryers are designed, marketed and
17 priced in matching pairs. It is an integrated business with
18 dependent pricing and profitability as I will now explain.
19 Every washer we sell has a matching dryer and I believe
20 virtually every washer sold by Whirlpool and GE also has a
21 matching dryer. They share the same design and appearance
22 and more advanced washers are paired with more advanced
23 dryers. Retailers almost always prefer to
24 sell each half of a washer and electric dryer pair at the
25 exact same price. This industry-wide pricing practice

1 reflects the fact that retailers display matching washers
2 and dryers together. They generally advertize them together
3 and it makes sense to them and to consumers that each half
4 of the matching set sells for the same price.

5 Matching prices reinforces the message that the
6 washer and dryer are a pair. It is easy for the consumer to
7 determine the price for the set and it encourages and
8 simplifies the sale of the pair. Our research shows that
9 most of the time consumers will buy a washer and dryer pair
10 and regardless when selecting a washer 86 percent of the
11 consumers consider the combined cost with the matching
12 dryer.

13 This retail practice of pricing washers and
14 dryers the same effects wholesale pricing. This is because
15 wholesale prices are normally negotiated based on a margin
16 off the map and because the map price for a matching
17 washer/dryer pair are the same, this tends to also equalize
18 wholesale prices for the pair. Many of our customers
19 require the matching washer and electric dryer to be priced
20 the same. Others simply prefer it. Regardless the
21 established general industry practice, from the
22 producer/importer to the purchaser is to invoice the washer
23 and dryer at the same price. This practice also explains
24 why after obtaining high duties on a washer, Whirlpool and
25 GE both announced the same price increased for both washers

1 and dryers. The issue for the producer is that a dryer
2 typically will cost significantly less to produce than a
3 washer. They weigh less and are just less complex.

4 The rest is simple arithmetic. If I have to sell
5 my washer and dryer at the same price but the washer costs
6 more to produce than the dryer, I will set my price with a
7 view to optimize an overall level of profitability. The
8 industry pricing model requires higher dryer profitability
9 to offset low or even negative washer profitability. These
10 conditions of competition mean that industry financial
11 performance can meaningfully be assessed only by looking at
12 the washer and dryers together and not washers in
13 isolation. That is how Samsung assesses its performance
14 internally and it is how the Commission should look at the
15 industry as well.

16 One final comment on attachment rates. I want to
17 clarify what the term "attachment rate" means in the
18 industry because Whirlpool appears to be using the term
19 somewhat differently. The attachment rate for washers and
20 dryers is the simple ratio of dryers sold to washers sold.
21 It is not, as Whirlpool appears to suggest, the percentage
22 of washers and matching dryers sold simultaneously on the
23 same retail ticket. As I have described, our pricing and
24 profitability depends on how many matching dryers we sell
25 for each model washer overall. I will now turn to my

1 second topic, the nature of competition among different
2 washer brands. Throughout this case, Whirlpool has
3 portrayed LRW sales practices in a very simplistic and
4 incorrect way. According to Whirlpool retailer flooring and
5 purchasing decisions are based primarily on price.
6 According to Whirlpool, different manufacturers have
7 different innovation and promote their brands differently
8 but somehow this all cancels out because all washers are
9 interchangeable.

10 Indeed, if Whirlpool's portrayals were true, the
11 major retailers would not showcase all the major
12 manufacturers at all the major price points. They would
13 stock only the lowest cost models and producers like Samsung
14 would not develop new features. We have focused instead on
15 lowering costs.

16 First, the pre-criteria for a retailer in
17 deciding whether to floor a new model is consumer demand.
18 Will it sell in large volumes? Because the retailer is
19 interested in total profits, not just the profit margin on a
20 single sale. We have a saying in the retail industry that
21 you take margin dollars to the bank, not margin rate. If a
22 retailer believes it will sell, then it will be stocked as
23 long as the margin is acceptable. I believe all of the
24 producers offer acceptable margins or those producers'
25 models would not be found at national retailers.

1 To end my years as a purchaser at sears including
2 as the divisional merchandise manager for home appliances, I
3 sat in on a number of pitch meetings from all of the various
4 manufacturers; Whirlpool, GE, LG, Samsung, Electrolux and
5 Heir. The first topic of discussion was always how great
6 the new machine is and how fast and furious it will sell.
7 They would explain why the new model, with its new and
8 distinct features and its innovations would appeal to
9 consumers.

10 Typically the pitch decks would not even mention
11 wholesale costs. Retailers want to sell the most profitable
12 models. Profit equals volume times margin. In this
13 industry volume is more important than the margin rate. If
14 a product sells only in low volumes it is not going to be
15 highly profitable. Indeed, high margin opportunity is not
16 the only determining factor. As I believe all of the major
17 suppliers offer reasonable margin opportunities in roughly
18 the same range.

19 Consumers demand drives retailer flooring and
20 purchasing decisions. Consumer demand drives volumes.
21 Retailers have to floor those models with brands,
22 capacities, features and overall fit, feel and finish that
23 most appeal to consumers. Consumers drive retailer
24 purchasing decisions from retailers to their suppliers. It
25 is not the other way around as Whirlpool's argument

1 implies. It is also not accurate to say that LRWs compete
2 primarily or solely based on price at either the wholesale
3 or retail level.

4 As I mentioned at the wholesale level, the
5 primary consideration is consumer demand and volume. Which
6 models will most appeal to consumers. While a reasonable
7 margin opportunity is required, the actual margin is rarely
8 a deciding factor as all suppliers are competitive.
9 Moreover it is the margin dollar rather than the price that
10 would be considered.

11 At the retail level, the purchasing factors are
12 even more complex. Perhaps it's obvious to me and everyone
13 in my industry but it is worth stating, LRWs are not
14 commodity products that compete solely or primarily based on
15 price. They are highly differentiated brand consumer
16 products. Samsung spends tens of millions of dollars a year
17 promoting a brand image. We expected a favorable experience
18 with one product, we will enhance our brand awareness and
19 brand perception and lead to crossover purchases of other
20 products.

21 We spend even more on R&D and design to
22 distinguish our LRWs from Whirlpool's and others. We want
23 our machines to have new and different features, designs and
24 styles that we hope will appeal to more consumers than
25 Whirlpool's or GE. Product innovation, physical

1 differentiation and brand differentiation all are strategies
2 intended to minimize price based competition not enhance it
3 as Whirlpool's story implies.

4 If our strategy was to gain market share by
5 underselling, there would be no need for us to innovate and
6 improve. We would invest instead only in manufacturing
7 improvement to lower costs and compete based on price.
8 Instead Samsung has a strong history of innovation which is
9 displayed in the storyboards alongside the wall and we
10 invite you to take a look at the storyboards during the
11 break.

12 What Whirlpool has not told you is that our
13 industry is consumer-driven. Our latest research based on
14 consumer survey conducted in June taught us that the top
15 five reasons consumers gave for purchasing a Samsung LRW are
16 in order: Quality, energy efficiency, advanced technology,
17 capacity and overall look and feel. Fifty-two percent of
18 consumers cited innovation features as a reason compared to
19 thirty-nine percent for Whirlpool.

20 Among those who purchased a Samsung washer, cost
21 was identified as the top factor by only 14 percent of
22 purchasers and those who purchased the Samsung washer, only
23 14 percent perceived the Samsung washer as being less
24 expensive than a Whirlpool washer. Seventy-five percent
25 perceived that a Samsung washer to be more expensive or the

1 same as a Whirlpool washer. Fully 50 percent of those who
2 purchased a Whirlpool washer on the other hand perceived
3 the Samsung washer to be more expensive. Only 18 percent
4 perceived the Samsung model to be cheaper.

5 Let me try to explain some of the ways our
6 products differ from Whirlpool's. In here, I'm not trying
7 to make any qualitative assessment. I just wanted you to
8 appreciate some ways in which our products differ. In 2014
9 we introduced the world's largest capacity frontload and top
10 load washer at 5.6 cubic feet and incorporated our new super
11 speed technology in both our front load and top load
12 washers. Super speed technology permits consumers to wash a
13 full load of laundry in as little as 36 minutes which
14 reduces wash time by up to 40 percent without sacrificing
15 cleaning performance.

16 In 2015, we introduced our new active wash
17 feature in certain top load washers. Washers with active
18 wash incorporates a built-in sink, permitting consumers to
19 pre-treat clothes prior to washing and in 2016 we introduced
20 new front-load washers with the add-wash feature permitting
21 consumers to add in additional clothes while the cycle is
22 running.

23 Both these new designs also introduced the
24 industry-leading new black stainless steel color. These
25 innovations have made a difference with consumers. Take our

1 active wash feature for example. Cathy is displaying the
2 active-wash model. It is a relatively simple concept.
3 Incorporating a sink into the washer. We have found that as
4 consumers move their washers from the basement into other
5 areas of the home, 70 percent do not have a dedicated sink
6 next to the washer for pre-treating stains and washing or
7 even rinsing swimsuits.

8 Samsung has eliminated this inconvenience by
9 incorporating the sink with a water-jet built right into the
10 washer. Samsung has patented this feature and no one else
11 sells anything similar on the market. Since we introduced
12 this feature in early 2015 we have sold many active wash
13 units in the United States. Our add-wash feature also has
14 been extremely well-received by the consumers. Cathy is
15 showing you that model next.

16 The add-wash feature allows you to simply add an
17 item during the wash and not have to wait for the cycle to
18 end or set up another load for missing items. If you like
19 your front-load washer and discover that extra pair of socks
20 on the floor after you have started a load, you no longer
21 have to worry about pausing the cycle, opening the door and
22 having water spill onto your feet.

23 Again, no domestic front-load washer offers this
24 feature. I would encourage the Commission to take a look at
25 these washers. Open them up and examine the design, control

1 panels and features. Evaluate their fit, feel and finish
2 including the soft-close lid, knob and stainless steel
3 impeller. Because these innovations make a difference to
4 the consumer, they make a difference to the retailer.

5 We do not design, manufacturer, position our
6 products to be the cheapest. Rather we want them to be the
7 best and we believe that we are succeeding in that. We view
8 JD Power as the leading source of consumer satisfaction
9 data. The JD Power Consumer Survey Ranks products by brand
10 and type. JD Power has ranked Samsung's front load washer
11 number 1 in overall satisfaction for 8 consecutive years in
12 addition to ranking Samsung number 1 with respects to
13 performance and reliability, ease of use and styling and
14 appearance.

15 With respect to top-load washers, JD Power has
16 again ranked Samsung number 1 overall in addition to ranking
17 Samsung number 1 with respects to performance and
18 reliability along with styling and appearance. Samsung's
19 innovations also have helped to create new demand.
20 Consumers are attracted by these new innovations and are
21 purchasing new models before their washers fail, which is a
22 departure from past practices of waiting until the washer
23 breaks.

24 Our research shows that 50 percent of consumers
25 who purchase Samsung washers purchase before their existing

1 washer failed. These innovations explain why. Thank you
2 for your consideration.

3 STATEMENT OF DANIEL KLETT

4 MR. KLETT: Good afternoon. My name is Daniel
5 Klett. I'm an economist with Capital Trade, testifying on
6 behalf of LG and Samsung. You should have a set of public
7 and business proprietary slides in front of you.

8 I will address three issues. First, why the
9 quarterly wholesale prices are unreliable for evaluating the
10 price effects of Subject Imports. Second, purchasers
11 questionnaires account for 90 percent of total Subject
12 Import volume and when properly weighted by purchase volume
13 show no adverse price or volume effects from Subject
14 Imports. Third, why Petitioners' price compression theory
15 attempting to show adverse price effects to its top-load
16 agitator washers is wrong.

17 For many reasons, the quarterly prices are
18 unreliable. Prices from U.S. Producers were supposed to be
19 reported on an FOV factory basis and they were not. Yes?

20 CHAIRMAN WILLIAMSON: I want to make sure we all
21 have proprietary view before you get too far into the
22 presentation.

23 MR. KLETT: Do you have it? Mr. Chairman, the
24 attorneys were supposed to have distributed those to you.
25 There should be two sets.

1 CHAIRMAN WILLIAMSON: I'm sorry. There's just
2 one set then?

3 MR. KLETT: No there should be two sets. Mr.
4 Chairman you should have two, very small BPI. I apologize
5 it's not on there but it is stamped. A larger set, which
6 will be public and will be on screen. Both of those were
7 delivered to the Secretary's table earlier today.

8 CHAIRMAN WILLIAMSON: Okay, good. Is everybody
9 squared away? I think it just helps to make sure that we
10 know --

11 MR. KLETT: I understand, Mr. Chairman. I'd
12 rather you had them in front of you while I speak so we can
13 get this cleared up.

14 CHAIRMAN WILLIAMSON: Wait just a second -- okay,
15 good. Is everybody squared away? Good. Thank you.\

16 MR. KLETT: Thank you. Slide 1 is from a
17 Brokeral presentation and it illustrates the U.S.
18 Distribution system which includes nine regional
19 distribution centers and ninety local distribution centers.
20 Note that only the red dot manufacturing site in Clyde, Ohio
21 is for washers.

22 To arrive at an FOV factory price, all U.S.
23 inland freight from the factory to these distribution
24 centers and between these distribution centers should have
25 been deducted and they were not. This omission is material

1 because a washer is empty, there is a large volume/weight
2 ratio. Per unit freight costs are high and their omission
3 severely compromised the quarterly price comparisons.

4 When shipping washers from their plants in China
5 to the United States, LG and Samsung use third party
6 shippers and its freight charge includes both ocean freight
7 and U.S. inland freight from either their regional
8 warehouses or to the customer.

9 The U.S. inland freight component of this total
10 freight cost is not maintained by Samsung and LG in their
11 records. However they estimated the U.S. inland freight to
12 deduct from their delivered prices to arrive at FOB port
13 prices to comply with the Commission's instructions and
14 these freight deductions were significant.

15 I heard MR. Levy say this morning that
16 Whirlpool's trade costs were verified and I can say is that
17 my reading of the verification report is that there were
18 significant portions of inland freight that were not, but I
19 don't have access to the numbers that he spoke about this
20 morning.

21 Slide two illustrates the difference between the
22 U.S. Distribution Systems for Whirlpool and GE as compared
23 to that of Samsung and LG. Neither LG nor Samsung have
24 invested in a local distribution network including
25 warehouses as do Whirlpool and GE. Thus, there is an

1 additional layer of warehouse costs associated with U.S.
2 Producers' distribution system that neither LG or Samsung
3 have.

4 Because these warehouse expenses were not
5 deducted from U.S. Producers' recorded net prices, the FOV
6 price comparisons will be distorted. I agree with Mr. Levy
7 that the instructions were that these should have not been
8 deducted so I'm not saying that they misreported but I am
9 saying that there is a significant difference in the nature
10 of the distribution system that will affect prices on a
11 delivered basis versus an FOV basis.

12 Other problems with the quarterly price data
13 include: one, the data are not representative with the very
14 low coverage for U.S. Producers. Two, product mixed within
15 categories, such as inclusion of OEM and branded products
16 together can distort comparisons and certain competing
17 low-value U.S. Models were excluded including belt-drive
18 models, models with LCD displays and GE models, particularly
19 with GE Models with infusers.

20 I also note this morning that Whirlpool said that
21 the agitator was just an aesthetic and there was no
22 difference essentially between an agitator model and an
23 impeller model so I don't understand why there were no data
24 collected for agitator models which we know are the lowest
25 price in the U.S. Market if essentially the only difference

1 between an agitator model and an impeller model is an
2 aesthetic feature that can be snapped off with no real
3 functional affect on the models.

4 MR. KLETT: So given the unreliability of the
5 wholesale price data, information from purchaser
6 questionnaires in my opinion is more probative. This
7 investigation is unusual in that the customer base is highly
8 concentrated. Just as important, the largest volume
9 purchasers buy from all major producers, so have the basis
10 to provide reliable comparisons.

11 Slide 3 shows the purchasers responding to
12 your questionnaires accounted for 90 percent of total
13 subject imported U.S. shipments, so they're very
14 representative of what they say about China versus the
15 United States. In the staff report, purchasers are given
16 equal weight in the reporting of their responses.

17 Business Proprietary Slide 1, which you should
18 have a hard copy of, shows the relative distribution of
19 purchase volume for the top six and bottom 24 purchasers,
20 and I'll note that the bottom 24 are a lot less than the 30
21 percent that was alluded to this morning by Mr. Levy. You
22 can see just how large the top six comparisons are to the
23 bottom 24 from this graphic.

24 It's not shown on the slide, but the bottom 14
25 purchasers accounted for less than one percent of total

1 Chinese washer volume imported by all purchasers. This is
2 one percent of the combined for the 14, not individually.
3 The responses of such tiny purchasers should not be given
4 equal weight as the responses of larger purchasers. I also
5 want to say that the fact that the Commission has not
6 weighted purchaser responses in past investigations is not a
7 valid reason for not doing it here, just from an analytical
8 perspective.

9 Also, the smallest purchasers rely much more
10 on domestic producers and yet some that rely on domestic
11 producers exclusively and do not buy subject imports
12 reported comparisons, even though they never purchased
13 imports from China. Business Proprietary Slide 2 summarizes
14 how a simple tally, and this is a hard copy you should have
15 in front of you. BPS Slide 2 summarizes how a simply tally
16 of purchaser questionnaires distorts the results for a key
17 price-related question.

18 That is, in total most purchasers reported
19 U.S. prices to be higher. However, the top six purchasers
20 do not support a finding of significant underselling.
21 Purchaser questionnaires also have the advantage of making
22 comparisons on the delivered price basis to the same
23 customer. The delivered price is what matters to retailers.

24 As shown, the same distortion of relying on a
25 simple tally of all purchaser questionnaires is evident for

1 two other price-related indicators, direct and indirect
2 rebates. Because of the degree of buyer concentration in
3 this industry, I developed a systematic way of weighting
4 purchaser questionnaires to arrive at a weighted average
5 index for some key questions related to the importance of
6 price and non-price factors, price comparisons, the extent
7 to which any volume shifts are related to underselling, and
8 the issue of price compression.

9 Slide 4 shows the weighting procedure, where I
10 converted qualitative, comparative measures into index
11 numbers. I then calculated weighted average indices with
12 each purchaser response weighted by its 2015 purchase
13 volume. Slide 5 summarizes the purchaser responses to the
14 question on the relative importance of purchase factors as
15 being very important, somewhat important or non-important.

16 Whirlpool's position is that price dominates
17 purchasers' decisions, so it would be close to a 3 on the
18 index scale. As shown, price is about 2.5 on the index
19 scale, but three other non-price factors, innovative
20 features, fit finish feel and design style were identified
21 as being more important than price, and large capacity as
22 being equally important.

23 I heard this morning in response to a question
24 specifically on fit finish feel, that it didn't matter. So
25 even purchaser questionnaires say that it does and that in

1 fact it matters more than price.

2 BPI Slide 3 shows how U.S. producers and
3 subject imports compare with respect to these same factors
4 on a weighted average index basis. For price, the index is
5 just over two for the top six purchasers, and then just
6 slight underselling by U.S. producers or overselling by
7 imports on average. However, U.S. producers are reported to
8 be inferior for design style, fit finish feel, innovative
9 features and large capacity, factors as or of equal
10 importance to price as you saw on Slide 5.

11 You heard a lot earlier today from both sides
12 on the innovative features they have introduced. The
13 purchaser questionnaires provide you with strong empirical
14 evidence that subject imports from LG and Samsung are
15 considered superior to Whirlpool and GE in innovation and
16 other non-price factors are important to retailers' purchase
17 decisions.

18 I note in the BPI slide in front of you that
19 this is not just for the top six, but even for the bottom
20 24. Generally, LG and Samsung were considered superior.
21 Question 3-30 of your purchaser questionnaires is
22 particularly useful. Slide 6 shows the series of questions
23 asked, and you can see why responses to these questions can
24 be useful to the Commission's causation analysis for both
25 volume and price.

1 First, it asks purchasers if they bought
2 washers from China instead of U.S. produced washers.
3 Second, it asked if such a switch occurred, if imports from
4 China were lower priced, and third it asked if price was the
5 primary reason for any shift and the estimated volume of any
6 such price-related shift. BPI Slide 4 has a breakout based
7 on purchase volumes. The first bar is total purchase
8 volumes reported in 2015 in the purchaser questionnaires.

9 The second bar is the purchase volume of
10 retailers who said they purchased U.S. -- their purchases of
11 Chinese washers replaced U.S. origin washers. The third bar
12 is the purchasers subject to this replacement volume, but
13 also reported to have undersold U.S. origin washers.
14 Purchasers also were asked to estimate the quantity of the
15 increase in their purchases subject to imports from 2013 to
16 2015, with the primary reason being price.

17 This volume is minimal in absolute terms and
18 accounts for only about eight percent of the total increase
19 in purchase volume of Chinese origin washers from 2013 to
20 2015. Purchasers' responses to these questions do not
21 support Whirlpool's contention of significant volume and
22 market share losses to subject imports on the basis of
23 price.

24 The last issue is Whirlpool's price
25 compression or line logic theory. There is no factual

1 dispute that (1) U.S. producers' top load washers with
2 agitators are a significant share of their U.S. production,
3 (2) that there are no subject imports of this washer
4 configuration in the U.S. market, and (3) that subject
5 import prices for their top load and front load washers are
6 higher than U.S. producers' prices for top load washers with
7 agitators.

8 Whirlpool claims that a reduction in price for
9 higher-priced front load and top load washers imported from
10 China cascades all the way down to putting downward
11 pressures on prices for U.S. producers' top load washers
12 with agitators, but they have provided no empirical support
13 for this theory.

14 There were two specific questions on price
15 compression in the purchaser questionnaires which are shown
16 on Slide 7. Question 326(b) asks the extent to which
17 higher-priced top load and front load washers from Samsung
18 and LG put downward pressure on the prices of top load with
19 agitator washers sold by Whirlpool and GE. Question 326(c)
20 asks the reverse, the extent to which lower-priced top load
21 with agitator washers from Whirlpool and GE pulled down
22 prices of Samsung and LG washers.

23 To both questions, purchasers could report
24 four possible answers, always, usually, sometimes or never.
25 To the extent price compression rather than price

1 suppression has occurred, there should be more purchasers
2 reporting always or usually to the first question and the
3 second, and any meaningful tabulation of these questions
4 must account for purchaser size.

5 Slide 8 shows the weighted average tabulations
6 on a scale of 1 to 4, with 4 being that higher-priced
7 washers from LG and Samsung pushed down the prices of
8 Whirlpool and GE top load washers with agitators. The
9 weighted average index is 1.6 or about halfway between never
10 and sometimes. Significantly, this index for the other
11 direction is almost identical to the 1.5, so there is no
12 support for a finding that higher prices pushed down lower
13 prices any more so than lower prices pulled down higher
14 prices, even if any such cross-product price linkages
15 existed at all. These data disprove Whirlpool's price
16 compression theory. Thank you.

17 MR. SHOR: This is Mike Shor again. I'd like
18 to return to what for Respondents is their most important
19 issue, which is the dryer profitability issue. Whirlpool
20 noted this morning that critical circumstances was its most
21 important issue. The difference between our two most
22 important issues is the Commission gathered the data for
23 Whirlpool to make its argument, and did not gather the data
24 for us to make our argument.

25 I want to thank the Commissioners for asking a

1 lot of good questions about dryers this morning, but you may
2 have noted that whenever you asked about dryers, Whirlpool
3 tried to blur the lines again. They kept bringing up other
4 products such as dishwashers and ranges, suggesting that
5 similarities in prices could be a coincidence.

6 They are not. Whirlpool's trying to confuse
7 the issue yet again. Washers are nowhere sold with
8 dishwashers or with ranges. Whirlpool also kept bringing up
9 gas dryers and how they are priced differently than washers.
10 This too is a red herring. Gas dryers are only a small
11 subset of dryer cells, and they are priced higher than
12 electric dryers. They start at the same base price, but if
13 you ever bought a gas dryer there's an upcharge for gas.

14 Gas dryers are even more profitable for
15 manufacturers than electric dryers because the premium they
16 get from selling -- from that upcharge is higher than the
17 cost of the additional features needed to use gas. Finally,
18 despite all of the questions, there still is one elephant in
19 the room. Just how high are Whirlpool's profits on dryers?

20 There is no reason the Commission should not
21 gather that data. Whirlpool states repeatedly that dryer
22 profits are wholly unrelated to washers, and that even if
23 dryer profits were extraordinary, it would not take this
24 into account at all in their business decisions about
25 washers. The Commission can help clear up this issue by

1 just asking for the dryer data.

2 The Commission would not be creating any broad
3 precedent. This case raises a unique condition of
4 competition, where the like product is sold and priced and
5 pairs with the related product. To my knowledge, that issue
6 has never been before the Commission, it's never been a
7 condition of competition in any other product and it's
8 unlikely to rise again. Thank you very much.

9 CHAIRMAN WILLIAMSON: Thank you. I want to
10 express appreciation for all the witnesses coming this
11 afternoon, and this afternoon we're going to begin our
12 questioning with Commissioner Schmidtlein.

13 COMMISSIONER SCHMIDTLEIN: All right, thank
14 you. Good afternoon. I'd also like to thank all the
15 witnesses for being here today, to help us understand this
16 case. I'm going to start with the issue that you just
17 stated was the most important issue to the Respondents,
18 which is this question of attachment pricing and the
19 relationship with sales of dryers.

20 And so this question, I guess, could be both
21 for Mr. Thompson and Mr. Muckracker -- Mittrucker, I'm
22 sorry. Has this practice been going on for a long time in
23 the industry? When exactly did the practice of pricing
24 washers and dryers at the same price start?

25 MR. THOMPSON: As long as I can recall. I

1 have not been in the industry that long to give you a
2 20-year perspective, however.

3 COMMISSIONER SCHMIDTLEIN: Ten years?

4 MR. MITTRUCKER: I think personally there was
5 -- I've been with LG for a little over nine years. Back in
6 2010 or 2011 roughly, we took a price increase on the
7 dryers, and that made the washer and dryers the same price.

8 COMMISSIONER SCHMIDTLEIN: So was it not being
9 -- because I thought I understood the argument to be that
10 retailers like to sell at the same price, and so this was
11 driving the practice of selling washers and dryers at the
12 same price, so that wasn't the impetus for LG to do this?

13 MR. MITTRUCKER: We looked at the whole
14 profitability between the washer and the dryer. So rather
15 than having a delta between the washer and the dryer in
16 print, for example, and I did make reference to retailers
17 prefer the same map price with the same price in print.
18 It's easier to merchandise that way versus having two
19 different prices in print. So but to answer your question,
20 it was around 2009 or '10 I believe.

21 COMMISSIONER SCHMIDTLEIN: Is when?

22 MR. MITTRUCKER: Is when the industry --

23 COMMISSIONER SCHMIDTLEIN: LG started this.

24 MR. MITTRUCKER: --not only LG but everyone
25 raised the prices of their dryers to match.

1 COMMISSIONER SCHMIDTLEIN: Okay, and Mr.
2 Thompson would you agree with that, Samsung started around
3 that same time, or was it some time earlier or later?

4 MR. THOMPSON: Greg Thompson. As far as I
5 know, it would have been at the similar time. I'd also add
6 that numerous retailers have indicated it's their preference
7 because they feel they need to price at the retail at the
8 same price, that they would prefer the cost to be the same.

9 COMMISSIONER SCHMIDTLEIN: Okay, and I think
10 you mentioned that Samsung assesses your own internal
11 performance based on a combination of how the washers are
12 doing and how dryers are doing?

13 MR. THOMPSON: Greg Thompson, correct. We
14 look at the profitability of the laundry business, which we
15 define as washers, dryers and then also accessories like
16 pedestals.

17 COMMISSIONER SCHMIDTLEIN: So do LG and
18 Samsung have internal documents such as a business plan or
19 internal memos that would discuss this strategy, where
20 you're willing to take a lower margin on washing machines
21 because dryers make more?

22 MR. MITTRUCKER: From a sales perspective, no.

23 MR. THOMPSON: We're basically given one
24 category, which is laundry, to sell washers, dryers, stack
25 kits and pedestals. When we set our bonuses in our

1 quarters, we assign our sales team different quotas for the
2 year, for example. We don't separate it out between washers
3 and dryers. It's one holistic number.

4 COMMISSIONER SCHMIDTLEIN: But you don't have
5 any internal memos that since this is a business strategy,
6 right? You're arguing it is -- this is an industry-wide
7 business strategy where a manufacturer of a washer is
8 willing to accept a lower margin because they're going to
9 make more money on the dryer. So they're going to price
10 them at a point that they think they can sell. You claim
11 that's a midpoint price.

12 But you don't have any internal documents
13 which discuss that business strategy and your adoption of
14 it, or your ongoing execution of it that you could put on
15 the record, since this is the most important issue for the
16 Respondents, right?

17 PT If I may, Commissioner if I may, of course
18 we will go back and get as much contemporaneous and company
19 documentation as possible. But I do want to kind of
20 emphasize a point, and I think there's a little bit of a
21 disconnect, or let's say perhaps a misunderstanding of your
22 question and how, why you're getting a little bit of blank
23 stares in the answer, and that is because as Greg said, LG
24 has their lowest business unit is laundry.

25 You have laundry, then you have whole

1 appliances, then you have sort of the corporate entity and
2 then you have sort of the grandparent in terms of how they
3 look at their business plans and their profitability.
4 Laundry is the lowest business unit. You don't get any
5 lower than that. So they look, they think of everything as
6 laundry.

7 So when you say why isn't there some evidence,
8 well this is just how they've always done it. It's a
9 laundry sort of --

10 COMMISSIONER SCHMIDTLEIN: Well, it doesn't
11 sound like it's how they've always done it.

12 MR. PORTER: I meant for the last -- since
13 2009.

14 COMMISSIONER SCHMIDTLEIN: Since 2009.

15 MR. PORTER: Right.

16 COMMISSIONER SCHMIDTLEIN: Right. So I just
17 would have thought there would be some type of
18 contemporaneous documentation showing this change in
19 strategy, given that it's such an accepted wide industry
20 practice.

21 MR. THOMPSON: Greg Thompson. If I could,
22 maybe this would offer some clarity. I can't think of any
23 current documentation since I've joined the organization
24 outlining that strategy, nor would I expect to because it's
25 just, in our minds it's a given that they're sold in pairs.

1 And so as we think about --

2 COMMISSIONER SCHMIDTLEIN: But I'm not really
3 talking about whether they're sold in pairs. I'm talking
4 about the intentional strategy to make less money on a
5 washing machine because you make more on a dryer. It's not
6 about them being sold in pairs; it's not even about them
7 being priced the same. It's about the manufacturer having
8 an intentional plan that they know, going in, you're going
9 to make less money on a washing machine than you are on a
10 dryer. That's what I'm talking about, that type of
11 strategy.

12 MR. SHOR: Perhaps the problem is in thinking
13 that it's a strategy. It's just the business model.

14 COMMISSIONER SCHMIDTLEIN: And usually
15 business models are reflected in business plans.

16 MR. SHOR: But everyone understands that a
17 washer and dryer costs different amounts to produce. So if
18 you price them the same, you don't need to create a document
19 that says the profit on one is going to be higher than the
20 profit on the other. It's just obvious. Everyone in the
21 industry knows that.

22 MR. DURLING: Commissioner Schmidtlein, this
23 is Jim Durling. We will, as you requested, we will look for
24 contemporaneous documentation to shed the maximum light on
25 this. But I think the way to understand it is this. It's

1 always been the laundry business unit. Prior to the change,
2 you would have prices for washers and dryers would be
3 different, and you would have a profit margin on each of
4 those.

5 The change was oh, we want to have the same
6 price. So one price has gone down, one price has gone up.
7 You're still evaluating the laundry unit. One has become
8 less profitable, one has become more profitable. At the end
9 of the day before the change, you thought about laundry
10 profit. After the change, you still about laundry profit.

11 If the overall laundry business is profitable
12 and making progress, the fact that the retailer asked for a
13 change hasn't really changed your basic business model, and
14 we will look for the contemporaneous documentation to show
15 that.

16 COMMISSIONER SCHMIDTLEIN: Okay.

17 MR. SHOR: We will certainly look for those
18 documents at Samsung as well, and we'd ask you also to make
19 the same request of Whirlpool, to ask them for the documents
20 when they were making these business decisions about the
21 investments they talk about. It would be useful to look at
22 those documents and see if they also talk about washers and
23 dryers in the same documents.

24 COMMISSIONER SCHMIDTLEIN: Okay. That's a
25 good point. I would invite Whirlpool to put any evidence on

1 the record in terms of when Whirlpool makes investment
2 decisions with regard to washing machines, what do you
3 consider? Are you considering dryers?

4 All right. Before my time runs out, I'd like
5 to ^^^^ well actually just before we leave this topic, one
6 question that I thought of when we were talking about all of
7 this, and this is really I think for you, Mr. Shor, is even
8 if we accept that there is this strategy where washing
9 machine manufacturers go in knowing they're going to make
10 less money, maybe even a loss, take a loss on a washing
11 machine because they're going to make so much money on the
12 companion dryer that's being sold together. Does it really
13 matter if the Commission also finds that there is a loss of
14 market share due to significant underselling from price
15 depression?

16 So in other words, you know, is that really
17 relevant legally if we find that the underselling, that
18 there is underselling demonstrated through the pricing
19 products and that that underselling has pushed down prices,
20 and that the volume has pushed down prices as well?

21 MR. SHOR: Yeah, it certainly matters because
22 the statute requires you to analyze three factors, volume
23 effect, price effect and other impact, and the profitability
24 is usually the main factor you look at and other impact.
25 You can give different weights to those different factors,

1 but you're still required to analyze all three, which is why
2 we are due to get the dryer data.

3 Moreover, the statute directs you to analyze
4 those performance indicators in light of the conditions of
5 competition of the industry and this is what we think is a
6 key condition of competition. So yes, the statute doesn't
7 allow you to just analyze two of the factors and forget
8 about the third. I guess that's my answer.

9 MR. DURLING: Commissioner Schmidtlein, Jim
10 Durling. I would just want to underscore the importance of
11 the statutory instruction, to consider all of the factors in
12 light of the conditions of competition, and I think it's --
13 this is precisely the kind of case for which that statutory
14 requirement is important, because you have a lot of unusual
15 things happening here.

16 You look at your market share, and your market
17 share data is basically market share from China, even though
18 you heard a lot of discussion this morning and the
19 underlying business is about brands. And so how you
20 evaluate an increase in market share from China, for
21 example, is different in a situation like this. We're not
22 saying you ignore it. We're just saying you evaluate it
23 differently.

24 Similarly, when you look at market share, you
25 need to take into account the segmentation of the market.

1 When you look at profitability, we think it's important to
2 also weigh the impact of this strong linkage, which again is
3 very unique. There are a number of unique features about
4 this particular case, and that's why we've been arguing that
5 you just need to take your existing data from the staff
6 report.

7 But you may need to think about it different
8 in this case than you do in many other cases.

9 COMMISSIONER SCHMIDTLEIN: Okay, all right.
10 Thank you. My time is up.

11 CHAIRMAN WILLIAMSON: Okay.

12 Okay, thank you. Commissioner Schmidtlein
13 sort of got at the kind of question I was going to ask, but
14 let me raise this. You're saying both, I think, both groups
15 of companies, producers and the subject products, the
16 companies that are doing, maybe doing the same thing in
17 terms of linking the relationship between dryers and washers
18 and how they sell them.

19 So if we have data, we see this underselling,
20 whether or not we can actually allocate between the dryer
21 and washer, but are we having the same kind of effect, that
22 the subject products are being sold that are undercutting
23 the prices of the domestic product?

24 MR. SHOR: It's possible for there to be
25 underselling but still no injury because the domestic

1 industry is performing well. Remember in this case, the
2 domestic industry has increased production over the period.
3 They have increased their shipments of subject washers.
4 Their argument is largely that we're pulling down their
5 prices, but there can be price suppression and depression
6 and still no injury because they're still making very
7 sizable profits. That's where we want the Commission to go.

8 CHAIRMAN WILLIAMSON: Okay. So the argument
9 is that okay, we might be underselling, but that doesn't
10 mean that we're hurting them?

11 MR. SHOR: Yeah. We don't think that the data
12 support a conclusion of underselling because of the reasons
13 that Mr. Klett mentioned. But if the Commission were to
14 conclude that there is still -- that there is underselling,
15 that doesn't in and of itself compel a finding of injury.

16 CHAIRMAN WILLIAMSON: Okay. I just want to
17 understand the -- what are you asking us to do with this
18 information about the linkage?

19 MR. SHOR: We're asking you -- yeah. We're
20 asking you, and there are alternative ways of asking for the
21 data, but either get the same types of data you get,
22 financial data on dryers or, to the extent it's easier for
23 the domestic industry, just to report their overall laundry
24 segment profitability because we believe they keep their
25 internal P&Ls on that basis, and that would be easy to

1 submit.

2 And then in assessing whether the industry's
3 performance is as it should be given the rise in demand, you
4 know, just look at that overall level of profitability and
5 see if it's high or low or whatever standard you internally
6 choose to use for analyzing profitability. But we think
7 it's misleading to just look at dryers in isolation, because
8 these products are not priced so that dryers really are
9 intended to sell in isolation.

10 MR. DURLING: And Commissioner Williamson,
11 this is Jim Durling. I would link that to the question that
12 Commissioner Pinkert raised in the morning session, which is
13 if in fact the washer business has been, you know, losing
14 money forever, how do you link that to the business
15 decisions to invest lots of money in Clyde, which is a
16 washing machine manufacturing factory?

17 I think all of these pieces need to come
18 together in a coherent way. Investment in the new facility
19 makes perfect sense in a business model where you're selling
20 washers and dryers and yes, the relative profitability may
21 change over time as retailers shift the way they want to
22 think about the pricing.

23 But if the laundry business is profitable and
24 if you need to offer both washers and dryers to play in that
25 laundry business, and if your profitability in the laundry

1 business is getting better and better, of course, you're
2 going to invest in Clyde, Ohio, because that's your ticket
3 to play in the laundry business.

4 CHAIRMAN WILLIAMSON: Okay. I think they
5 would have say -- they were assuming that there was going to
6 be fair competition in the washer business in terms of the
7 pricing. That's certainly the answer they probably would
8 give to that, which is another alternative.

9 MR. DURLING: Right. But again at the end of
10 the day, our hope is that you take all of the record
11 evidence and on that particular issue I think a key point is
12 what you've seen from the purchaser questionnaire responses
13 about who is higher and who is lower and who is putting top
14 price pressure on whom and who is the price leader. So in
15 terms of the economics and who is affecting the price level
16 in the market, we think the purchasers have given you a lot
17 of very valuable information on that issue.

18 CHAIRMAN WILLIAMSON: Okay, good. Well, I'm
19 sure they'll have some things to say post-hearing. Let's
20 turn to another question, and I guess this gets to the
21 marketing strategy of -- some of the comments Mr. Toohey
22 made. I was particularly curious about the comment about
23 old folks like me prefer to keep our agitators. So I
24 wondered what the basis for that was?

25 MR. TOOHEY: I think I said maybe your parents

1 would have had the agitator or washer.

2 CHAIRMAN WILLIAMSON: I'm sorry. I'll go with
3 that so -- but that does raise the question. I mean COSTCO,
4 of course, is you know, and I shop there all the time, so I
5 have an idea of what they're strategizing. But and we've
6 had this in other cases, where you have someone who comes in
7 saying okay, we have a hot new product that folks, you know,
8 a certain segment of folks don't want to pay more for.

9 I guess what I'm trying to figure out is how
10 large is that market compared to all of the other products
11 that you sell? You see what I'm saying? In other words,
12 all the stuff you're saying is the kind of stuff I would
13 expect if I was ^^^^ well, I actually did renovate a kitchen
14 and went to a kitchen supplier. They're going to give you a
15 top line thing with all those features.

16 MR. SHOR: Right.

17 CHAIRMAN WILLIAMSON: And but, you know,
18 that's -- the bulk of the market is not there, and I'm
19 trying to figure out how large is this market and do you
20 have anything to sort of justify what you might call the
21 attenuated competition?

22 MR. SHOR: Maybe I can answer that question
23 for you, Chairman Williamson. Looking at the Petitioners'
24 confidential exhibits on page Exhibit A, they provide you
25 the data for each of the different market segments. If you

1 look at top load agitator, they give you numbers. The
2 interesting thing about these numbers, I can't discuss the
3 actual numbers, but first it's relatively stable.

4 It's not bouncing up and down or it's
5 relatively stable. That's the segment of the market that
6 buys agitator models and but this is a key point to
7 understand. It is by far the largest segment of the market.
8 Look at the agitator numbers compared to the impeller
9 numbers compared to the front load numbers. That's the
10 largest segment of the market, and through Whirlpool's
11 strategy, you have no pricing data at all for that segment
12 of the market.

13 CHAIRMAN WILLIAMSON: Is there -- I mean to
14 what extent did the recent change in efficiency standards
15 sort of blur the distinction between agitator-based and
16 impeller-based top load washers?

17 MR. KLETT: Mr. Chairman --

18 CHAIRMAN WILLIAMSON: That also goes to when
19 they -- I don't know when they started the separating the
20 agitators.

21 MR. KLETT: Mr. Chairman, this is Dan Klett.
22 To follow up on Mike's point, I mean what struck me this
23 morning, because I hadn't heard it before, was when Mr.
24 Tubman basically said, you know, kind of just took off the
25 agitators and say all you need to do to change an agitator

1 model to an impeller model is just, you know, take off this
2 little piece of aesthetic plastic.

3 I think that goes to the issue of why then was
4 agitator versus impeller a product characteristic in your
5 pricing products, and why then didn't you get pricing data
6 for the agitator models if they're so close to the impeller
7 models? So if there is this blurring, you could actually
8 see what the effect on the U.S. producers' impeller part of
9 the market was these agitator models that were only differed
10 based on aesthetics.

11 So to the extent there's blurring, I think it
12 goes to the reliability of your pricing data, in terms of
13 not capturing a large part of the market that competes.

14 MR. SHOR: Let me try to answer the question
15 maybe this way. This might be helpful. So if you go into
16 any store selling washers, the lowest priced washer on the
17 floor, wholesale level, retail level, is going to be a
18 Whirlpool or a GE model with an agitator, in every store, in
19 every segment. So if you're a consumer that doesn't have
20 much money and you just want to go in and buy the cheapest
21 washer you can, you are going to end up with an agitator
22 model. It's the oldest technology. It's the cheapest
23 model on the floor.

24 So there is a segment of the market that
25 regardless of the change in energy efficiency standards is

1 going to prefer that technology because it's the cheapest.
2 The blurring of distinctions is largely with reference to
3 energy efficiency standards.

4 There is still a segment of the market that
5 wants the cheapest washer. There's still a segment of the
6 market, my parents, who never saw a washer that didn't have
7 an agitator in it, wouldn't know what to do with it, that's
8 what they're used to for 50 years. They're going to go shop
9 for that model.

10 So you can talk about the lines being blurred,
11 but one of the things we're trying to convey through our
12 testimony today is these are consumer products, and
13 consumers are sometimes rational, sometimes they're
14 irrational. They have preferences based on their
15 upbringing, based on whatever. When they go to a store,
16 they're going to look for the things that they want to see
17 or that they're familiar with.

18 So there is a segment of the market. I showed
19 you the numbers there. It's relatively stable. Those are
20 people that prefer that technology.

21 CHAIRMAN WILLIAMSON: Yeah. But I guess the
22 question is technology changes and sometimes impressions
23 don't change quite as rapidly as the technology. Is there
24 -- is there -- and so is that distinction really as
25 meaningful as it might once have been? I suppose they

1 sometimes do catch up, but that's my question.

2 (Simultaneous speaking.)

3 CHAIRMAN WILLIAMSON: And I'd also ask the
4 Petitioners too maybe to address that question. Did the
5 technology change and did the image not change as fast?

6 MR. SHOR: My suggestion would be to go look
7 at the machines, all right. You can look at the agitator
8 model that's over there. It's got the rotary dials. It's
9 got the big agitator in it. It looks like your parents'
10 washer, and then look at the other ones and see if you think
11 there's a difference. If you don't think there's a
12 difference then --

13 CHAIRMAN WILLIAMSON: Okay. I'm sorry. I'm
14 running out of time. Mr. Porter?

15 MR. PORTER: And just one point. The agitator
16 model there, go try and pull the agitator out. It doesn't
17 come off. The little display this morning, kind of the
18 glove fits moment "oh look, just take the agitator off," it
19 doesn't work. You can't take the agitator off.

20 CHAIRMAN WILLIAMSON: That's the model you
21 have.

22 MR. PORTER: No. On the Whirlpool model, we
23 bought a Whirlpool agitator model. You go and look at it.
24 You can see the LG model which has the impeller on the
25 bottom. You can see the Whirlpool model with the agitator.

1 The agitator doesn't come off.

2 CHAIRMAN WILLIAMSON: Okay. Well, I'll ask
3 them to address post-hearing this question of what
4 percentage of the agitators are the new kind that come off
5 and what percentage are the ones they sell are the old kind?
6 I take it that is the relevant question.

7 MR. KLETT: Yeah Commissioner, just 30 more --
8 I know your time is up and I apologize. 30 more seconds. I
9 just want to make a point. Your comment is exactly correct,
10 and that's what we want to convey and that is consumers have
11 their preferences. We said sometimes consumers, at least
12 for the young folks, aren't as up on the technology.

13 Well that's true, and so that partly explains
14 why there's still a very strong agitator, top load agitator
15 market which is by the way tracked by the industry. So it's
16 a very large portion, and it really -- from our standpoint,
17 whether you're called an old fuddy-duddy or you just happen
18 to like it, it doesn't matter why. The point is there is a
19 big portion of the market which LG and Samsung don't
20 compete, but that's favored by a lot of U.S. consumers.

21 CHAIRMAN WILLIAMSON: Okay, but also consumers
22 do respond to price though. In any case, who's next? Vice
23 Chairman Johanson.

24 VICE CHAIRMAN JOHANSON: Thank you Chairman
25 Williamson. I would like to thank all of you for being here

1 today, and also I failed to -- I would like to thank you
2 all, and also I failed to thank the Petitioners this morning
3 for bringing all these washers in here today. It's very
4 interesting to see them. It looks like it was a whole lot
5 of work to get them here. So thank you for doing that. It
6 does help us actually to see what is being discussed.

7 It's kind of interesting for me because I've
8 -- the only thing I know is the agitator. So other than
9 seeing these machines here before, I just know the old
10 technology myself. Petitioners make numerous arguments
11 about the importance of brand, design and innovation for
12 large residential washers.

13 Nonetheless at Table 2-8 of the staff report,
14 purchasers who include the top six largest producers, tend
15 to rate U.S. and subject imports as comparable in brand,
16 design style, innovative features and product range. Table
17 9 -- in Table 2-9 of the staff report, a majority of
18 purchasers, including all six largest purchasers, reported
19 that domestic product was always or frequently
20 interchangeable. How do these results fit with your
21 arguments?

22 MR. KLETT: Commissioner Johanson, this is Dan
23 Klett. I'll take the last part of your question first on
24 interchangeability. Interchangeability, I think, is a very
25 broad question that basically means can all washers wash

1 clothes.

2 So from that perspective, I would expect that,
3 you know, maybe a high degree said they were interchangeable
4 from that perspective, and I didn't -- I didn't tally those
5 questions on a weighted average basis, so I don't know when
6 we're to do the top six on a weighted average versus the
7 bottom 24, what it would show.

8 But going to the first part of your question
9 on that when you tally up and it's true the top 30 do
10 account for the top six, but a simple tally does not weight
11 the top six versus the bottom 24. My confidential Slide --
12 my confidential Slide 3 actually does show how subject
13 imports and U.S. producers compare, on a weighted average
14 index basis, for non-price factors including innovative
15 features, fit finish feel, design style.

16 And on that basis, U.S. -- for top six, the
17 U.S. was -- U.S. was rated inferior to -- I'm sorry. U.S.
18 producers were rated inferior with respect to subject
19 imports, fairly low on the scale. So on a -- when you take
20 the purchaser size into account, it actually does show that
21 subject imports are superior on those non-price factors.

22 MR. SHOR: I think that is basically right. I
23 think interchangeability -- Mike Shor. Interchangeability
24 at its most basic level means can they be used to perform a
25 comparable function and we agree with Whirlpool. All

1 washers can wash clothes. They can wash different amounts
2 of clothes. If you want to have the pretreatment sink on
3 top, you only can buy a Samsung. If you want to buy a
4 washer that integrates with your thermostat, you can only
5 buy a Whirlpool.

6 So yes, they all wash clothes, but if you have
7 a particular preference or want a particular feature, it may
8 not be interchangeable. But consider the broader picture.
9 They are all interchangeable. They all wash clothes but yet
10 they vary in price from \$300 to \$1,000. Now how do you
11 explain that price difference if there are all
12 interchangeable?

13 A Rolls Royce and a Volkswagen Beetle can both
14 be used to get you from Point A to Point B, but those are
15 very different types of vehicles and these, at the low end
16 and the high end there's very different types of washers.
17 The capacity is different, they can wash different amounts
18 of clothes, they have steam and other features to sanitize
19 that some don't so -- that doesn't mean there's not, there
20 aren't differentiated products.

21 VICE CHAIRMAN JOHANSON: Thank you Mr. Shor
22 and Mr. Klett, and sticking with the issue of quality,
23 Respondents highlight in their brief at page 53 that J.D.
24 Power has ranked Samsung's front load washer as number one
25 in overall customer satisfaction for eight consecutive

1 years. Given this number one ranking, why would our data
2 show underselling of the domestic product?

3 MR. SHOR: Because there are problems with the
4 product comparisons.

5 VICE CHAIRMAN JOHANSON: Could you elaborate a
6 little bit? I know I've read this in the briefs, but I'd
7 like to hear a bit more.

8 MR. SHOR: I don't know that I could elaborate
9 here. I'd have to elaborate a lot in the --

10 VICE CHAIRMAN JOHANSON: Okay, because I mean
11 this is -- this is at the heart of your argument.

12 MR. KLETT: Commissioner Johanson, this is Dan
13 Klett again. Some of the problems with the quarterly
14 pricing data I went through in my testimony, and I'll
15 elaborate a little bit. One has to do with the freight, the
16 freight differentials, and I know that Mr. Levy said that it
17 wasn't a big matter numerically. But when I looked at the
18 verification report, it did seem like it, at least
19 qualitatively, was a larger issue.

20 But there's other issues as well. One is that
21 your pricing data compared OEM prices to branded product
22 prices, and for a variety of reasons, OEM, which we all know
23 is essentially Sears, the vendor doesn't incur or Sears
24 incurs some of the cost that the vendor would otherwise
25 incur when selling a branded product. So that for that

1 reason, the OEM price tends to be lower than the branded
2 product.

3 So there's that, there's that distortion.
4 Another distortion is that without going into detail, the
5 coverage ^^^^ I mean the pricing product coverage for U.S.
6 producers was pretty low, but it was even lower for one of
7 the two, and one of the price -- some of the data you did
8 not get were top load data for washers with infusers,
9 because it was either -- you said impellers, and GE is a big
10 seller of top load washers with infusers, which I don't
11 think was captured in your pricing data.

12 So there's a coverage issue. There's the
13 product mix issue. There's the issue of capacity, and the
14 point Mr. Levy made this morning was that your capacity
15 ranges of .5 have been consistent through various
16 investigations. I agree, and but what we propose in our
17 questionnaire comments to control for that was to collect
18 the actual model-specific pricing behind each pricing
19 product category, so you could evaluate whether there were
20 capacity mix issues that might distort the aggregated
21 pricing.

22 We thought it would be relatively easy to
23 collect since companies would have to compile the data that
24 way anyway. So those are just a few, and the reason I think
25 the purchaser questionnaire data are superior are that

1 prices are normally charged on the invoice on the delivered
2 basis.

3 When purchasers are making their decisions as
4 to who is cheaper, who is higher-priced, they're looking at
5 it based on the delivered cost to them. They really don't
6 care what the FOB port price is versus the FOB factory
7 price, and it's to the same customer so you don't have
8 potential customer mix distortions. So those are just a
9 few.

10 MR. SHOR: Yeah, let me just highlight --
11 maybe this encapsulates one of the problems. Unlike
12 commodity products, where you can set criteria and
13 everything so it can be the same, your criteria for those
14 product categories don't cover all of the product
15 differences. There are several product categories, for
16 example, that have five or six different Samsung alone
17 models in the same product pricing category.

18 Now we don't intend to produce models that
19 compete with each other and cannibalize sales. These are
20 differentiated products in our mind. But yet your product
21 comparisons group large numbers of models in the same
22 product, and that's part of the problem.

23 VICE CHAIRMAN JOHANSON: Thank you. Mr.
24 Porter.

25 MR. PORTER: Yes. Just I don't want to beat a

1 dead horse, but just fundamentally, okay, pricing product
2 data and comparisons has an underlying assumption of apples
3 to apples comparison, and every once in a while you just
4 don't get that. There have been past Commission cases where
5 they said hey, because of differentiation, we just really
6 can't place a lot of value on the comparisons that we've
7 gotten, so we're going to look at other evidence.

8 There have been past cases in which the
9 Commission has done that, and we will provide those in our
10 post-hearing. But again, it is what it is. It's just
11 sometimes it doesn't work, and in this case it just didn't
12 work because you cannot do apples to apples comparisons in
13 the manner that was attempted.

14 VICE CHAIRMAN JOHANSON: All right. Thank you
15 for your responses. My time is expiring.

16 CHAIRMAN WILLIAMSON: Commissioner Pinkert.

17 COMMISSIONER PINKERT: Thank you, Mr. Chairman
18 and I thank all of you for being here today and for being
19 willing to help us understand these issues. I want to begin
20 with a proprietary exhibit, Mr. Klett, that was presented
21 this morning by Petitioners, and I'm looking at Exhibit B.
22 I know that everybody on the panel can't look at this, but
23 bear with me.

24 I'm going to try to just give you a general
25 sense of what I'm interested in hearings you comment on, and

1 then if you can't comment on it during the public hearing,
2 perhaps you can comment in the post-hearing. I think that
3 what one could observe in Exhibit B, and I understand that
4 you don't agree with the quarterly pricing comparisons. I
5 totally understand that argument.

6 But what it appears to show is that the role
7 of the China imports from 2013 to 2016, in terms of price,
8 is similar to the role played in the U.S. market by the
9 Korea imports from 2010 to 2012. Now what I'd like you to
10 tell me, and you can caveat about the price comparisons, I
11 understand that, but is that basic picture of the role of
12 the China price and the role of the Korea price correct?

13 MR. KLETT: Commissioner Pinkert, this is Dan
14 Klett. I think the argument we made--I was involved in the
15 prior case so I'm familiar with kind of the role of the
16 Korea price then versus the role of the China price now, or
17 LG and Samsung prices then or now as it may be.

18 And I think the dynamics then and the dynamics
19 now in terms of LG and Samsung pricing are the same in the
20 sense that we made the argument then and we're making the
21 argument now that the LG and the Samsung success in the
22 market was largely due to nonprice reasons, and that there
23 was no significant underselling when the data were
24 correctly calculated.

25 So I don't know if that answers your question,

1 but what I'm saying is I don't think--I think LG and
2 Samsung's participation in the market then on importing from
3 Korea, and the participation in the market now through
4 imports from China in terms of the competitive dynamics have
5 significantly
6 changed.

7 COMMISSIONER PINKERT: Thank you. Any other
8 comments on that question? I understand that you might want
9 to supplement in the post-hearing, being able to actually
10 grapple with the proprietary data, but any other comments
11 here? Mr. Shor?

12 MR. SHOR: We'll address it in the post-hearing
13 brief. I don't have the Korea data in front of me, and I
14 was not--I did not participate in that case.

15 COMMISSIONER PINKERT: Thank you.

16 There was a lot of discussion on this panel about
17 the, sort of the entry level when one goes into a H.H. Gregg
18 or a Lowes or a Home Depot, that the entry level is a
19 top-load when agitator. And the price is lower for that
20 entry-level product. Is that price lower because the cost
21 of producing that particular kind of machine is a lot lower?
22 Or is it a lot lower just because of the nature of the
23 customer that's looking for that particular kind of machine?

24 MR. SHOR: I'm not sure we can answer that
25 question, since we don't produce agitator models.

1 COMMISSIONER PINKERT: But you're in the market--
2 well, not you personally but folks on the panel are in the
3 market.

4 MR. THOMPSON: This is Greg Thompson. I can share
5 this. We did look at would we be potentially interested in
6 introducing an agitator model, and financially it didn't
7 appear to make sense to us because the cost was higher.

8 COMMISSIONER PINKERT: Higher than what?

9 MR. THOMPSON: Than where we needed to be to
10 compete.

11 COMMISSIONER PINKERT: So does that suggest an
12 answer to my question about why the entry-level price for
13 the top-loader with the agitator tends to be significantly
14 lower than the prices for the other machines on the floor?

15 MR. THOMPSON: Greg Thompson again. Trying to
16 shed what light I can, I'm not sure why Whirlpool's pricing,
17 or why they can price at that level. And since we're not
18 actively doing it, it's difficult for me to comment further.

19 COMMISSIONER PINKERT: I saw some, perhaps some
20 facial movement there. Does anybody else want to comment on
21 that?

22 MR. TOOHEY: I have no knowledge about the cost of
23 the agitator washers, but to me, you know, the washer
24 category, the washer market is a mature category and it
25 exhibits a range of price points. When we came to the

1 market, we came with a brand strategy that was targeted at
2 what we would call the mass premium portion of the market.

3 We weren't focused at all on the opening price
4 point products. And I think there would be serious internal
5 debate about whether we would even ever offer an
6 agitator-based product because it plays in the wrong part of
7 the market and might confuse the U.S. consumer that we have
8 cultivated a brand perception among.

9 So we play in a particular area. So that's why I
10 don't really know about the agitator piece.

11 COMMISSIONER PINKERT: Mr. Porter?

12 MR. PORTER: Yes, Commissioner Pinkert. The
13 reason you're getting a little bit of hesitation is because,
14 as Mr. Toohey said, none of the business folks at this table
15 could compete in that market. And there has been comment
16 about essentially what is a Whirlpool business company
17 strategy, because Whirlpool is the one who has the agitator
18 model.

19 But I would submit that what you sort of
20 hypothesized seems to be, you know, seems to be intuitively
21 correct. And that is, certain producers--everyone has to
22 offer a model, a range of models. You choose your models.
23 You offer them. But I think the important point is, you do
24 an evaluation of the unit, okay? And, yeah, of course if a
25 particular model is consistently perhaps not doing what, you

1 may reconsider, but as you know from your many years looking
2 at different industries there are a lot of times people say
3 I have to offer this no matter how much money I'm losing
4 because the customer requires that I offer, you know, the
5 full line.

6 You've heard that over and over again. I have to
7 offer the full line. So I think it's entirely plausible
8 that those customers--excuse me, those producers who want to
9 be in that segment of the market do so, but they're really
10 concerned more at a business unit is the entire laundry unit
11 doing well? And they're less concerned whether the
12 individual unit is doing well.

13 COMMISSIONER PINKERT: Thank you.

14 Now looking at Petitioners public Exhibit 13,
15 there's a discussion there of a Samsung product. And you
16 testified on this panel about the active wash and how it's
17 an innovation, and it's a desirable innovation.

18 And the argument on that Exhibit is that there
19 was a precipitous decline in the wholesale price of the unit
20 that included that Active Wash feature.

21 Can you respond here, or do you want to respond
22 in the post-hearing to that?

23 MR. THOMPSON: I think--Greg Thompson--I would add
24 that from launching the product there is a cycle of
25 promotional activities. We've talked about it and you heard

1 about it earlier this morning. You know, President's Day,
2 Martin Luther King Day, July 4th, Memorial Day, all our
3 different holidays. And so there is a different cadence
4 that the promotional prices do change throughout the course
5 of the year.

6 I'm not sure of the source of this, but I would
7 expect that as we go in and out of those promotion periods
8 that the price would fluctuate.

9 COMMISSIONER PINKERT: But looking at the issue a
10 little more generally, and I'll give you a chance to
11 respond, Mr. Shor, in a second, but looking at it more
12 generally would you agree that if there's an innovation that
13 is truly an innovation, then it should command some sort of
14 an additional price piece in the market?

15 MR. THOMPSON: Greg Thompson. Yeah, so it would
16 always be the goal to bring out innovation and to collect a
17 premium for that.

18 COMMISSIONER PINKERT: Thank you. Mr. Shor?

19 MR. SHOR: Just one thing that can be a little
20 misleading in comparing one washer to another. I think what
21 you're seeing here is, particularly between the second
22 quarter and the third quarter there's more promotional
23 activity in the third quarter. And manufacturers and
24 importers, they don't necessarily discount all of their
25 models for holidays.

1 They may feature some of their models. So I
2 think what you're seeing here is a comparison of a Samsung
3 model that was promoted heavily in the second quarter to
4 generate demand, and they're comparing it to a Whirlpool
5 model that for whatever reason was not promoted in that
6 quarter.

7 So you're just seeing some of that. It could be,
8 if you look two quarters later, the Whirlpool model is
9 cheaper because they're promoting it that quarter.

10 COMMISSIONER PINKERT: Thank you.

11 CHAIRMAN WILLIAMSON: Thank you. Commissioner
12 Broadbent?

13 COMMISSIONER BROADBENT: Okay. Let's see, in
14 these cases on residential washers we asked for specific
15 innovations that separate the different--your companies from
16 the competitors. And we have this huge, long list of
17 innovations and patented technologies that your firms have
18 introduced.

19 Do you have recommendations on how we can sort
20 through these innovations to get to the issue of how various
21 washer producers are differentiated? I guess what I'm
22 asking is whether there are key innovations that you would
23 recommend that we focus on?

24 MR. THOMPSON: Greg Thompson. For the Samsung
25 products I think the two key ones I would really take a

1 close look at is our Active Wash. That's the product I
2 talked a little bit about in our brief, where we have a
3 laundry sink built right in so that you can pre-wash,
4 pre-treat stains, rinse swimsuits, like if you do not have a
5 laundry tub. To my knowledge there's nothing comparable to
6 that in the marketplace.

7 And the second one of course would be the Add
8 Wash, which we also have on display here, where you can
9 pause the machine, open that smaller door without having
10 soap and water spill out onto your laundry room floor.

11 COMMISSIONER BROADBENT: Got it.

12 MR. TOOHEY: This is John Toohey. I highlighted
13 two key innovations in my materials, the Twin Wash Pedestal
14 system and--

15 COMMISSIONER BROADBENT: Yeah, I like that.
16 That's kind of cool.

17 MR. TOOHEY: And the front control configuration
18 on the top-load washers. We do think about innovation and
19 the effect that it has on our brand perception much more
20 broadly than just within a particular category.

21 We have innovations in televisions, and in
22 refrigerators, and other things that we think accrue to our
23 benefit in the minds of the consumer when they shop for any
24 LG product.

25 So there are other innovations that I would

1 highlight that I think had an impact on consumer perception
2 about our brand that are outside of washers, if that's
3 something that would be of interest.

4 MR. KLETT: Commissioner Broadbent, this is Dan
5 Klett. I mean in terms of sorting through all the
6 innovations you see, I mean you have 30 purchaser
7 questionnaires. There was a specific question on rating
8 U.S. versus imports in terms of innovative features.

9 So I think that helps you sort through, or
10 looking at those questionnaires and responses to those
11 questionnaires also helps you sort through what the
12 customers think about one versus the other.

13 COMMISSIONER BROADBENT: Okay. In your prehearing
14 brief, Respondents state that consumers mostly purchase
15 washers and dryers at the same time. Is there data on this?
16 I mean my just personal experience is I bought one set at
17 the beginning of my life, and they've been breaking at
18 different times and I haven't replaced both of them at the
19 same time.

20 MR. TOOHEY: This is John Toohey with LG. Yes,
21 there is data. We have some key customers for which we do
22 something called "vendor managed inventory," whereby we
23 maintain the stock. And when we do business that way with a
24 retailer, we get access to the consumer-level transactional
25 data.

1 So for example when a consumer purchases
2 something at Home Depot, Home Depot just notifies LG that
3 John Smith at such-and-such address just bought something,
4 and now we need you to take it out of your stock and get it
5 through the delivery process to this consumer's address.

6 So I just recently analyzed two months of Home
7 Depot transaction level data for laundry-related appliances
8 and found an attachment rate at the shopping cart level of
9 72 percent.

10 I can say that at Cosco, when we first launched,
11 we required that anybody who bought a washer also buy a
12 dryer as a way of managing our delivery costs. And so we
13 had a policy based 100 percent attachment rates at Cosco.

14 We relaxed that requirement sometime in 2015, but
15 it's another VMI customer, so we see the shopping cart level
16 transactional data. And in the period after we relaxed the
17 requirement, the attachment rate dropped to 88 percent.

18 MR. PORTER: Commissioner Broadbent?

19 MR. THOMPSON: Greg Thompson. From Samsung's
20 perspective we've seen similar results.

21 MR. PORTER: Commissioner Broadbent, we put up
22 this slide again just because it sort of indicates that the
23 attachment rate will differ among different types of
24 washers. This one, Whirlpool is admitting that the
25 attachment rate for this particular system is 98 percent.

1 And so, you know, we're not saying 100 percent of
2 the time people will always go out and replace them both
3 together, but we're saying that it happens so much that you
4 need to consider that.

5 Now we will give you the actual data--and this is
6 actual data. It's VMI, so it's really actual transaction
7 data to show that in fact for certain customers, and
8 particular models, there is a high attachment rate even at
9 the same time.

10 But I do want to reiterate a point that Mike Shor
11 made in the morning. And that is, our whole discussion is
12 not "at the same time." It's just in general and how you
13 should think about it.

14 So the point is that there is a high attachment
15 rate that is between washers and dryers in general, and you
16 need to consider that whether one particular model is 2
17 percent, or another model is 98 percent.

18 COMMISSIONER BROADBENT: Okay. Alright, let's
19 see. I found it really interesting that as a result of the
20 Orders on Korea and Mexico that LG and Samsung both set up
21 production in China.

22 Is there a reason why you decided effectively on
23 the same supply strategy?

24 MR. SHOR: I think those decisions are made at the
25 production level in headquarters. I don't know that there's

1 anybody here that--

2 COMMISSIONER BROADBENT: I was just asking the
3 witnesses from Samsung and LG.

4 MR. THOMPSON: Yeah, I'm not certain why that
5 particular location was chosen. I'm fairly confident,
6 though, that they were decisions made by each company
7 independently, though.

8 COMMISSIONER BROADBENT: Okay.

9 MR. TOOHEY: And for those of us at the table,
10 we're all in the U.S. operation for LG so we don't get
11 involved in the manufacturing footprint decisions in Asia.

12 COMMISSIONER BROADBENT: Okay. And have you all
13 made decisions--have your companies made decisions to start
14 producing in Thailand, or Vietnam at this point?

15 MR. THOMPSON: Greg Thompson. We are currently
16 manufacturing in Vietnam and Thailand for the U.S. market.

17 COMMISSIONER BROADBENT: And when did that start?

18 MR. THOMPSON: I want to say around June of this
19 year.

20 MR. MITTRUCKER: From the LG standpoint--this is
21 Doug Mittrucker--we also produce in Thailand and Vietnam.

22 COMMISSIONER BROADBENT: So you're going together
23 to the next set of countries?

24 MR. MITTRUCKER: No, actually we have existing
25 capabilities there that support other parts of the world.

1 So to my knowledge they weren't new factories. They support
2 other parts of the world in other regions.

3 COMMISSIONER BROADBENT: Okay.

4 MR. THOMPSON: Greg Thompson. That's also my
5 understanding is they were existing Samsung facilities.

6 COMMISSIONER BROADBENT: Sorry?

7 MR. THOMPSON: They were also, for Samsung, they
8 were also existing facilities is my understanding.

9 COMMISSIONER BROADBENT: In where?

10 MR. THOMPSON: In Thailand and in Vietnam.

11 COMMISSIONER BROADBENT: I thought you told me
12 they just started in June?

13 MR. THOMPSON: For the U.S. market production.

14 COMMISSIONER BROADBENT: Okay, got it. And then
15 how do your two companies compete together, as opposed to
16 how the two of you compete with Whirlpool? I mean, it seems
17 like you all are a little more in sync.

18 MR. PORTER: Oh, quite the contrary.

19 (Laughter.)

20 MR. PORTER: Absolutely not. I mean they are
21 barely talking to each other at this table. But I can tell
22 you that the competition between LG and Samsung, having
23 worked with LG intently over the last few years, the
24 competition between LG and Samsung is significantly more
25 than between LG and Whirlpool.

1 MR. SHOR: Let me just put it this way. So if I
2 do a draft of a submission to the Commission and it says LG
3 and Samsung X, it comes back to me and they say you need to
4 reverse it. It needs to say Samsung and LG.

5 (Laughter.)

6 MR. PORTER: And you can have proof. Our
7 post-conference brief said LG and Samsung because we
8 prepared the final/final version to be submitted, and the
9 prehearing brief says Samsung and LG because Arnold and
10 Porter prepared the final version to be submitted. So you
11 can see that's an indication right there.

12 COMMISSIONER BROADBENT: Okay.

13 MR. THOMPSON: I think I--Greg Thompson--if I
14 could just add, I think from a marketing competitive
15 standpoint, at least how I look at it, the customer
16 demographics that we're going after competing on innovation
17 and technology, I think I feel a bigger threat from LG
18 because I believe our customer demographics and our
19 strategies are closer. So I would consider them a more
20 dangerous competitor at this time.

21 COMMISSIONER BROADBENT: For LG, a more dangerous
22 competitor?

23 MR. THOMPSON: Yes.

24 COMMISSIONER BROADBENT: Okay. Okay, and then I
25 hate to bring this up, and I'm just kind of curious in terms

1 of, Mr. Thompson, the product recalls that you guys have
2 suffered recently, have you lowered any prices in order to
3 kind of maintain customer loyalty?

4 MR. THOMPSON: Anything around the recall, I would
5 prefer to answer in the post-brief.

6 COMMISSIONER BROADBENT: Sure. That would be
7 good. Oh, that's my time. Thank you very much.

8 CHAIRMAN WILLIAMSON: Commissioner Schmidtlein?

9 COMMISSIONER SCHMIDTLEIN: Okay. Thank you.

10 So we've heard a lot of testimony today about the
11 nonprice factors. And if I understand the position of the
12 Respondents it is that most sales, in your view, of LG and
13 Samsung are based on nonprice factors and not the price?
14 The features that are being offered by the various models.
15 Is that right? Did I summarize that accurately?

16 MR. KLETT: Commissioner Schmidtlein, I think the
17 position is that the success of LG and Samsung in the U.S.
18 market is due primarily to superior nonprice factors such as
19 innovation and finish feel, and that it's not due to
20 underselling.

21 Now we're not saying that price doesn't matter,
22 because price always matters. And based on one of my
23 slides, price is a very important factor. But your
24 purchasers also told you that there were three other
25 nonprice factors that were more important than price, and

1 one that was as important as price.

2 So I think that's our position.

3 COMMISSIONER SCHMIDTLEIN: Okay. And I guess
4 that's what we're trying to sort of separate here is, you
5 know, what kind of an impact is price, and what kind of an
6 impact is it having on these decisions.

7 So sort of in that context, and I understand you
8 dispute the reliability of the underselling margins for the
9 reasons that we've talked about, but when I look at the
10 pricing product data, and I just look at the prices that
11 were reported by LG and Samsung, right, for those 10
12 products, I guess it was, and specifically when you look at
13 starting at '14, and going into '15, through '15 where you
14 see we have a big jump in demand. Demand goes up overall,
15 but you see a pretty big jump in demand between '14 and '15.

16 So my question is, if your position is that LG
17 and Samsung have superior features, right, and that's
18 driving decisions, and we've got a market that's going up,
19 demand is strong and increasing, why do we see prices
20 dropping for LG and Samsung?

21 Why are prices--put aside the underselling
22 margin. I'm not talking about the comparison to U.S. price.
23 I'm just talking about your prices. Why are you lowering
24 your prices when demand is so strong in general for washers,
25 and you claim you have superior features?

1 MR. PORTER: Commissioner Schmidtlein, if I may
2 start, and I know my colleagues will want to chime in, but
3 again I know we keep coming back to this, but it's so
4 important that the pricing product data is a collection of
5 individual prices that are not an apples-to-apples
6 comparison.

7 COMMISSIONER SCHMIDTLEIN: I'm not comparing them.
8 I'm--

9 MR. PORTER: My point is, though, it's a
10 collection of pricing of individual models. And in fact in
11 our brief we documented for several of the pricing products
12 it happened to capture the end of a life product cycle. So
13 for that quarter, it would appear that the price is coming
14 down, but in fact it was just one model was phasing out
15 while another one was coming in. And it's the nature in
16 which the data was collected that is sort of presenting
17 these trends that we think are not reflective of the actual
18 pricing by LG and Samsung.

19 MR. KLETT: Commissioner Schmidtlein, this is Dan
20 Klett. There's some product mix issues even within the LG
21 and the Samsung data that could potentially cause price
22 declines, such as you've got OEM models. So that if the OEM
23 models have a greater weight later on, that could be pulling
24 down the average unit values. So there's a perception of a
25 price decline but it may reflect greater OEM model weights

1 which just tend to--which are lower priced than branded
2 models.

3 But what we can do in the post-hearing brief is
4 we can look at some of the individual products within each
5 category and try to explain why--you know, what's causing
6 the observed price declines, and if it's a product mix
7 issue, or an end-of-life-cycle product issue, or a greater
8 OEM weights in those products.

9 COMMISSIONER SCHMIDTLEIN: I mean that would be
10 helpful. I mean I was trying to look for it. I know I read
11 it in the staff report and I was trying to find it very
12 quickly, but I thought the purchaser questionnaires
13 indicated that end of life cycle does not affect the price
14 and I thought that was an overwhelming answer from the
15 purchasers that they do not see pricing being impacted by
16 product life cycle.

17 MR. KLETT: Commissioner Schmidtlein, this is
18 Dan Klett.

19 There may have been a definitional issue in
20 terms of interpreting that. When I spoke with our clients,
21 and they can confirm this, that what happens -- and you can
22 actually see this in the data for particular products.
23 There are some products where you see the volumes coming
24 down or falling off the cliff and you see prices falling off
25 the cliff at the same time and they characterize that as

1 closeout pricing, which we call it end of life cycle
2 pricing, but there definitely are closeout pricing affects
3 to the extent that as a product is being eliminated or
4 phased out with a new model and you want to liquidate that
5 inventory your pricing is going to be more aggressive, so I
6 think that definitely is a factor going on and it's apparent
7 from the data.

8 MR. THOMPSON: Greg Thompson, if I could add.

9 If you recall earlier, the team from LG showed a
10 slide that actually demonstrate that U.S. market produced
11 washer prices had dropped more aggressively on than the
12 other segments of the industry, so we're certainly seeing
13 price pressure from the domestic competitors. I would also
14 add that --

15 COMMISSIONER SCHMIDTLEIN: You mean at the low
16 end with the agitator?

17 MR. THOMPSON: It actually was all models, if I
18 recall correctly.

19 COMMISSIONER SCHMIDTLEIN: And that was a slide
20 in the slide deck, you think?

21 MR. THOMPSON: Yes.

22 COMMISSIONER SCHMIDTLEIN: Excuse me.

23 MR. THOMPSON: It says the U.S. market without
24 agitators has certainly come down and pulled down the
25 pricing earlier and stronger.

1 I would also add my observations coming out of
2 Presidents' Day this year we've seen aggressive competition
3 from the domestic manufacturers, especially in the top-load
4 segment of the marketplace that has put pressure on us
5 through this year.

6 COMMISSIONER SCHMIDTLEIN: Okay.

7 MR. PORTER: One last comment.

8 COMMISSIONER SCHMIDTLEIN: Mr. Porter, sure.

9 MR. PORTER: I think what would help to make our
10 point what we'll do in post-hearing we'll do this for the LG
11 data is we will give you the underlying model pricing that
12 went into the pricing products. And I know for a couple of
13 the pricing products you can see the phenomenon that Dan
14 Klett just talked about where LG has a particular policy.
15 If they decide to phase out a model there's like -- you know
16 obviously some of it's already produced, so they're just,
17 boom, we're stopping. Just get rid of it. They have a time
18 period which they do it. The price is struck and then a new
19 model comes in. And you can actually see that when you look
20 at it on an individual model basis. So we'll provide that
21 to you and we'll show you how that affected the pricing
22 product summary that was actually presented to the
23 Commission. I think that would help answer your question.

24 COMMISSIONER SCHMIDTLEIN: Okay.

25 Let me just ask a question about this particular

1 slide that you have up because it looks like the source is
2 the GAP database average price for all models in each
3 category. And so isn't one of your criticisms of the
4 pricing products that the description of the pricing product
5 is so broad that it's capturing models that aren't
6 necessarily comparable, for instance, because the capacity
7 is slightly different, so isn't this -- I mean this is just
8 an average of all models, so how useful or meaningful is
9 looking at this type of data, I mean given your criticism of
10 a pricing product. Isn't this even more of a product mix
11 issue?

12 MR. DURLING: There are two different issues.
13 If you're trying to capture broad trends for the category,
14 right, you can either just look at everything because then
15 you're capturing everything or you can look at specific
16 models.

17 Our concern with the pricing product categories
18 is that there is a bit of gerrymandering going on where the
19 particular configurations being captured were creating a
20 distorted comparison. So is it reasonable to look at an
21 overall category average to get a broad-brush view? Yes, we
22 think that's reasonable and that's the point of this slide.

23 We think it's also useful to look at individual models.

24 Our point is when you're combining different
25 models into a category you need to be sensitive to, okay, is

1 the category, in fact, constructed in a way where it's not
2 giving me a distorted impression of what's happening in the
3 trend. So you can better understand the pricing products by
4 going broader to understand the overall category where
5 everything is being averaged out, right, new models coming
6 in, old models going out, high capacity, low capacity. It's
7 all being captured in on average. It's giving you a
8 reasonable broad picture, but if you want to draw more
9 granular conclusions then you need to look at model specific
10 and use that as a reality check on the categories that
11 you're looking at.

12 MR. KLETT: Commissioner Schmidtlein, this is
13 Dan Klett.

14 Also, this slide was -- the discussion had to do
15 with price compression and we did not have any data from
16 your questionnaires on quarterly prices for agitator models,
17 so this was the best we had in terms of looking at what with
18 happening with top-load with agitators overall with the
19 other parts of the market.

20 COMMISSIONER SCHMIDTLEIN: Okay, alright thank
21 you.

22 CHAIRMAN WILLIAMSON: Thank you.

23 What prevents one manufacturer from copying new
24 features introduced by another manufacturer, and is
25 intellectual property important in this regard?

1 MR. TOOHEY: There's over 400 patents behind the
2 sidekick pedestal washer. It was eight years of R&D. That
3 may be an extreme example, but yes, there is IP that
4 protects some of our innovations. Other innovations are
5 probably less protected like we did well with a red --
6 cherry red front-load washing machine and obviously that's
7 something that can be imitated very quickly.

8 CHAIRMAN WILLIAMSON: Okay, thank you.

9 MR. THOMPSON: Greg Thompson.

10 I'd agree with that, patents and the ability to
11 produce it, the technology.

12 CHAIRMAN WILLIAMSON: Okay.

13 You argue that you know purchasers -- the
14 consumers purchase washers to obtain new capabilities. And
15 I was wondering is there any outside data, literature, or
16 articles that you could place on the record that indicate
17 purchasers are driven by these new capabilities. I know one
18 study pointed out I guess a couple years ago that maybe half
19 washers were replaced because of a need because it broke
20 down.

21 MR. PORTER: Both LG and Samsung have lots of
22 data that track why and how people chose different washers.
23 And I know from the LG side, we'll look and try to get as
24 much as we can on this point for you.

25 MR. SHOR: For Samsung, we'll do the same.

1 CHAIRMAN WILLIAMSON: Okay, thank you.

2 I don't know if you have any idea, but during
3 those sales in a year what percentage is made during
4 promotional periods and has this changed over the years or
5 has promotional periods just gotten longer?

6 MR. THOMPSON: Greg Thompson.

7 I would agree that over the years promotional
8 periods certainly have gotten longer. The specific ratios I
9 don't have that data with me, but we could provide it.

10 CHAIRMAN WILLIAMSON: Okay, good.

11 MR. TOOHEY: Same for LG.

12 CHAIRMAN WILLIAMSON: Okay. I asked the
13 question this morning. They don't just break down on
14 holidays, but okay. You also heard there is increase
15 between these interim periods for both domestic product and
16 subject imports. What might explain this and is it
17 customary for inventories to build in anticipation of
18 promotional sales later in the year?

19 MR. THOMPSON: Greg Thompson.

20 Yes, we would typically do a pre-bill before a
21 promotional period.

22 CHAIRMAN WILLIAMSON: Okay, good.

23 MR. MITTRUCKER: Doug Mittrucker.

24 I think it depends upon also the customer
25 because when promotions happens not all customers purchase

1 inventory before the promotion, such as what we referred to
2 earlier as the VMI customer, Vendor Manage Inventory. Our
3 sale to our retail partner doesn't occur until after this
4 sale has occurred with the end consumer. So for example,
5 Home Depot runs a promotion, a customer purchases a washer
6 on July 4th. That transaction is sent over to us. We would
7 make that sale end after July 4th, right, because that's
8 when the product is shipped to Home Depot. So I think it
9 depends upon the customer, the VMI, which there's certainly
10 two or three that John had mentioned earlier, whether it's
11 J.C. Penny, Costco, or Home Depot.

12 MR. TOOHEY: And I think the point is somebody
13 has to build up the inventory to support the promotional
14 sales lift, so in the case of a VMI account we would be the
15 ones building up our inventory, but in the case of maybe
16 Lowe's they would buy it directly and beef up their own
17 inventory in advance of the promotion.

18 CHAIRMAN WILLIAMSON: Okay. So is the promotion
19 ore driven by kind of the time of year as opposed to how
20 much inventory you might have sitting around? That's what
21 it sounds like.

22 MR. MITTRUCKER: That's correct, yes. Correct.

23 CHAIRMAN WILLIAMSON: Thank you.

24 Petitioners argue for finding of critical
25 circumstances and their argument is based on the increase in

1 subject import inventories. Can you address that issue
2 either here or post-hearing?

3 MR. SHOR: Hopefully, after Friday we won't have
4 to address -- maybe we won't have to address the issue, but
5 if necessary we will certainly address it. The data are
6 confidential. We'll address it in our post-hearing brief,
7 okay?

8 Just to highlight here, you know the statute is
9 saying that an increase in imports between the petition and
10 preliminary there was no great build up in imports over that
11 period, that the increase was less than 15 percent.

12 CHAIRMAN WILLIAMSON: Good, okay. Thank you.

13 Because of some of things you said I was
14 wondering do both Samsung and LG sort of have products that
15 they might consider entry level. I mean not all of the
16 Millennials are going to be able to buy the top line.

17 MR. TOOHEY: You know, interestingly enough, one
18 of the models we heard about from Samsung this morning was
19 the 3000 and that would be our lowest price point washing
20 machine in our current line up. The interesting part was
21 there was some discussion around Home Depot specifically and
22 their view of it. I wanted to share with the Committee that
23 actually the Home Depot buyer told us that they decided to
24 take it off the floor and it was not because of pricing on
25 that model. It was because they had felt that the

1 consumers were not responding to it well enough because of
2 the features that were offered on it.

3 MR. MITTRUCKER: This is Doug Mittrucker.

4 From LG's standpoint, the lowest top-loader that
5 we have is 749 and the lowest front-load washer is 799 and
6 those are MAP pricing.

7 CHAIRMAN WILLIAMSON: What kind of pricing?

8 MR. MITTRUCKER: Minimum Advertised Price or MAP
9 pricing.

10 CHAIRMAN WILLIAMSON: Okay, thanks. That
11 doesn't sound like entry level to me.

12 MR. MITTRUCKER: Correct. It's our lowest entry
13 level, but you're right, in the scheme of things where you
14 look at the market it doesn't attack a large portion of the
15 market.

16 MR. TOOHEY: It's where the price coverage for
17 our brand begins, but it's not the entry level of the
18 overall market.

19 CHAIRMAN WILLIAMSON: Okay. Okay, thank you.
20 Those are all the questions I have for now. Vice Chairman
21 Johanson.

22 VICE CHAIRMAN JOHANSON: Thank you, Chairman
23 Williamson.

24 I want to return to the issue of quality.
25 Nationwide submitted a statement and in its statement

1 Nationwide said "While some manufacturers may market certain
2 features prominently, all large residential washer
3 manufacturers offer comparable core features and no
4 manufacturer has any material advantage in terms of product
5 quality, features, or esthetics."

6 How do you all respond to this statement of a
7 different party and this is not something that was put
8 together by the ITC with our data, but this is a third
9 party.

10 MR. SHOR: Sounds like something written by
11 Whirlpool and quite frankly, we wouldn't be surprised if it
12 was. It's just not the way -- again, Whirlpool's main
13 theory of the case is that everyone innovates. Every washer
14 has different features, but somehow they all cancel out.
15 That's really the theory and it just comes down to price.

16 If that were true, there wouldn't be in the
17 store washers from 399 to \$1,000. When you go into the
18 store -- and manufacturers wouldn't offer different
19 features. The fact is consumers who don't have a sink in
20 their laundry room may like and be attracted to the active
21 wash model. Consumers that like technology and have nest
22 thermostats might like Whirlpool's feature of the
23 integration with the nest thermostat. I have a nest
24 thermostat. I don't understand the feature, so I wouldn't
25 be interested in it, but that doesn't mean there isn't a

1 subset of consumers out there who do.

2 I was intrigued by Whirlpool's technology, which
3 I haven't seen before, of putting in enough detergent to
4 last for two weeks so other family members can wash clothes.
5 Each feature set is going to attract different consumers.
6 This is not about cancelling out. The whole purpose of
7 innovation is to appeal to different consumers. We don't
8 have the same innovations they do. We don't have the same
9 price strategy they do. We don't appeal in all the same
10 segment of the markets they do because each company has its
11 own brand and is trying to perpetuate its own consumers its
12 trying to attract and to say that everything cancels out
13 when you can just see the differences doesn't make sense.

14 Consumers buy what they want. They don't go
15 into the store and just buy the cheapest model because
16 they're told that all the features cancel out.

17 VICE CHAIRMAN JOHANSON: Thanks, Mr. Shor.

18 This morning I asked the Petitioners about the
19 new Department of Energy efficiency standards. I want to
20 ask you the same question. What impact have the new DOE
21 energy efficiency standards for large, residential washers,
22 which went into effect in March 2015, have on competitive
23 conditions in the U.S. market? Have distinctions between
24 front-load and top-load washers become less pronounced
25 because of these new standards?

1 MR. THOMPSON: Greg Thompson.

2 I don't know that the consumer completely
3 understand all those differences. I think some of that came
4 out today. I think there's still very much a desire and
5 need from certain consumers to want the latest innovation
6 and to prefer the impellor versus the agitator models.
7 Likewise, we talked earlier; there are certain consumers out
8 there who would prefer to keep the agitator models because
9 that's what they're used to.

10 As far as front-load and top-load, I think very
11 much it's just a personal preference and not necessarily
12 just tied to the energy ratings.

13 VICE CHAIRMAN JOHANSON: Alright, well, thank
14 you for your responses. That concludes my questions.

15 CHAIRMAN WILLIAMSON: Thank you. Commissioner
16 Pinkert.

17 COMMISSIONER PINKERT: Thank you.

18 Now you've answered a number questions about
19 critical circumstances, but you may recall that this morning
20 there was a discussion of the increase in the import
21 inventories immediately after the petition was filed in the
22 case. And I want you to have a chance to tell me what
23 impact that had on the marketplace here, if any.

24 MR. THOMPSON: Greg Thompson from Samsung.

25 I would say more so than the inventories at the

1 time I think the aggressiveness of some of our competitors
2 in their price and promotion had a bigger impact on the
3 industry.

4 MR. PORTER: We'll address it further in our
5 post-hearing brief because the data are confidential, but if
6 you look at the inventory level as a percentage of U.S.
7 consumption it's very small. It was not enough to move the
8 market and it wasn't as if that inventory was all sold the
9 day after the preliminary determination was out and flooded
10 the market.

11 COMMISSIONER PINKERT: And what about a delayed
12 impact? Is it possible there was this build up that was
13 only released much later and had an impact on the market in
14 a delayed manner?

15 MR. PORTER: Again, to the extent this is even
16 an issue after Friday, we'll address it in our post-hearing
17 brief.

18 COMMISSIONER PINKERT: Thank you.

19 MR. POERTER: Normally, we get this information
20 before the hearing, but the holiday schedule, I think, this
21 is the first time I've been at a final ITC hearing that
22 occurs before the DOC final, so that's some of the problem
23 here.

24 COMMISSIONER PINKERT: Thank you. And you did
25 talk about the inclusion of certain parts in the same like

1 product with the rest of the washers that are under
2 consideration here. Should we use the semi-finished
3 products analysis in making that determination?

4 MR. PORTER: As I tried to outline in our
5 pre-hearing brief and in my statement this morning, if you
6 do we think the test is not met because the parts are not
7 dedicated exclusively for use in producing finished washers
8 nor do they convey the essential characteristics of a
9 finished washer. The semi-finished products analysis
10 typically used by the Commission where there's a continuous
11 line of production in producing a finishing product and
12 you're just capturing an intermediate stage good. These are
13 finished components that are sold to the repairmen to fix
14 washers.

15 COMMISSIONER PINKERT: Thank you, Mr. Porter.

16 MR. PORTER: Mr. Commissioner, just to add, only
17 certain component parts are covered by the scope and I just
18 want to kind of emphasis that point. It's just a few kind
19 of categories of parts. Why they picked those you have to
20 ask Petitioners, but it's certainly not all parts like you
21 often have or even the predominant part. It's just a couple
22 of categories of parts that are included in the scope.

23 COMMISSIONER PINKERT: And would you say, Mr.
24 Porter or Mr. Shor, that those parts have their own markets
25 out there in addition to perhaps becoming part of the

1 finished product is there any independent market for those
2 parts?

3 MR. SHOR: They are independently sold through
4 what I call the repair channel of distribution, so that is
5 when your washer breaks and a repairman comes out to fix it
6 and he needs parts he will buy those parts from our repair
7 center and some of those may be covered by a warranty. Some
8 may not, but yes, unlike some of the other products, this is
9 a consumer product. There are warranty issues, so there are
10 parts distributed through the repair channel of distribution
11 to fix existing washers, not to make new washers.

12 COMMISSIONER PINKERT: Mr. Porter?

13 MR. PORTER: Just add, although it's a very
14 limited market because LG parts can only go in an LG washer
15 and Samsung parts can only go in a Samsung washer. So
16 you'll never have one part going to the other washer.

17 MR. SHOR: They're different parts. The parts
18 of different manufacturers do not compete.

19 COMMISSIONER PINKERT: Thank you very much.

20 CHAIRMAN WILLIAMSON: Okay, Commissioner
21 Broadbent.

22 COMMISSIONER BROADBENT: No questions.

23 CHAIRMAN WILLIAMSON: Commissioner Schmidtlein.

24 COMMISSIONER SCHMIDTLEIN: I have a few more
25 questions.

1 Can I just follow up on that statement you just
2 made, Mr. Porter, about you know Samsung parts will not go
3 in an LG washer and vice versus. Doesn't that make the case
4 stronger that this isn't a separate like product because
5 these particular parts are only going to go into the very
6 specific finished product that are part of the scope?

7 MR. PORTER: Commissioner, I'm sorry if there
8 was a misunderstanding. I believe in the semi-finish
9 product analysis it's something that goes into producing the
10 part. Here, it goes into producing the part, but it's also
11 sold in a whole sort of separate channel, which is the
12 repair channel and we're saying that's what distinguishes or
13 that's why it fails the semi-finished like product test.

14 COMMISSIONER SCHMIDTLEIN: But I was correct in
15 the way I understood your statement in that that component
16 that is part of the scope can ultimately only end up in the
17 finished product that is also part of the scope that it was
18 made for. In other words, whether it was made in the
19 beginning when the machine was built or later when it breaks
20 it still is only going to one particular machine.

21 MR. PORTER: That's correct, but that
22 distinction matters. Under the semi-finished product
23 analysis, these covered parts are not used just to produce
24 finished washers. That's the analysis. They are also used
25 in a separate channel of distribution to fix washers.

1 COMMISSIONER SCHMIDTLEIN: Mm-hmm, okay.

2 MR. PORTER: And that matters for the
3 semi-finished product analysis.

4 COMMISSIONER SCHMIDTLEIN: Okay.

5 MR. PORTER: You are correct. Samsung parts can
6 only be used in Samsung washer.

7 COMMISSIONER SCHMIDTLEIN: Okay. Okay, alright.
8 So before we move on from the slide that we were discussing
9 before I wanted to ask the Petitioners -- the pages numbers
10 aren't actually numbered here, but it was the price
11 compression. If you could also respond as to when you look
12 at this that the U.S. value average price, I guess it is,
13 according to this chart is running below LG and Samsung for
14 the models without agitators, which is all you know other
15 front-load and top-load models. If you could do that in
16 post-hearing brief I'd like to hear your response to that.

17 MR. LEVY: Commissioner Schmidtlein, we're happy
18 to do so, but we'd need to understand the data inputs. We
19 don't know what models they're looking at. It's obviously
20 an array of models and we don't know what source data
21 they're using. GAP intelligence, I think, just refers
22 generally to maybe advertised prices of models at retail.
23 So I think they'd have to share with us the source database
24 for us to provide intelligent commentary.

25 COMMISSIONER SCHMIDTLEIN: I guess I would also

1 be interested to hear exactly what the source of the prices
2 are and what models are these, every single model that was
3 sold during that time period by the U.S.

4 MR. KLETT: I can explain the database a little
5 bit.

6 COMMISSIONER SCHMIDTLEIN: Okay.

7 MR. KLETT: These are retail prices.

8 COMMISSIONER SCHMIDTLEIN: These are retail
9 prices.

10 MR. KLETT: Retail prices, that's correct.
11 They're not wholesale. GAP database does have
12 model-specific information, but they also have product
13 characteristics so that you can identify if it's a top-load
14 with agitator or top-load without agitator. You can also
15 identify the brand. You can also identify the ultimate
16 retailer, but we didn't want to go that far. So our
17 aggregation was basically to take, for example, the blue
18 line, the bottom line that aggregation is a simple average
19 of all the GE and Whirlpool models that were identified as
20 top-load models with agitators.

21 COMMISSIONER SCHMIDTLEIN: And so is this a
22 survey? How do they collect this information on retail
23 prices? Is this a survey of retailers?

24 MR. KLETT: I can answer that.

25 COMMISSIONER SCHMIDTLEIN: Okay.

1 MR. KLETT: We send people into stores.

2 COMMISSIONER SCHMIDTLEIN: And write down what
3 they see on the price tag?

4 MR. KLETT: Yes, whatever they can see and
5 whatever the price is.

6 COMMISSIONER SCHMIDTLEIN: Okay.

7 MR. KLETT: It does pick up in-store only type
8 of price offers that the retailers may have.

9 COMMISSIONER SCHMIDTLEIN: I see. Okay, okay,
10 alright.

11 Alright, let me turn to a slightly different
12 topic here. In the Petitioner's they had presented some
13 excerpts from some emails in their morning presentation and
14 these excerpts had to do with Home Depot and -- mostly Home
15 Depot. This was Exhibit 14 and I believe -- well, we can
16 find them here in a second, but my question for you is how
17 do you all respond to this? And also, I'd invite the
18 Petitioners to put the full email on the record, the full
19 exchange so we don't just have the excerpt so we can put it
20 into context; but how do you respond to this because it
21 looks as if Home Depot is using subject product to leverage
22 down prices?

23 MR. KLETT: Commissioner Schmidtlein, I would
24 just like to say that these are anecdotal excerpts and you
25 also have -- you also have purchaser questionnaires which I

1 think give a more comprehensive view of what is going on
2 overall rather than anecdotal excerpts. So one way to
3 resolve the email disputes if you will, would be to look at
4 what is said in the purchaser questionnaires.

5 I would also say at least with respect to one
6 customer -- Sears, there was reference in Petitioner's
7 Pre-Hearing Brief to bids before the POI. And I think there
8 may be -- if there is information in the record in the prior
9 investigation with regard to Sears, I think it would be
10 useful to put that on the record in this investigation as
11 well which I think will help inform you on at least
12 competition at Sears. Others may have --

13 MR. THOMPSON: Greg Thompson -- I think the most
14 interesting one was the slide from Home Depot mentioning our
15 3000 Model which sort of -- I think the gist of the slide
16 was to try to say that the 3000 was causing -- was being
17 used to negotiate better prices from Whirlpool.

18 But the interesting part is that at the same time
19 that's happening the buyer was taking that piece off the
20 floor because it wasn't selling well enough in their minds
21 and so I think it is a good lesson that you know,
22 negotiation tactics may not necessarily reflect what's
23 really going on in that case.

24 COMMISSIONER SCHMIDTLEIN: The Samsung 3000.

25 MR. THOMPSON: Correct.

1 COMMISSIONER SCHMIDTLEIN: You were saying Home
2 Depot was taking --

3 MR. THOMPSON: Home Depot has taken it off the
4 floor and their feedback to us was the reason they were
5 taking it off the floor is that consumers were not
6 responding well enough to the features.

7 COMMISSIONER SCHMIDTLEIN: And when did they take
8 it off the floor?

9 MR. THOMPSON: I believe it was this summer. We
10 can get a better date for you.

11 COMMISSIONER SCHMIDTLEIN: This summer okay.
12 Okay.

13 MR. MITTRUCKER: This is Doug Mittrucker with LG.
14 Specifically on the Petitioner's Exhibit 5 it references the
15 WFW-72. Actually it is just the 72 but there is a full
16 model there and I confirmed since this morning that we did
17 not offer 25 points of margin which is what the patron
18 insinuates or says.

19 COMMISSIONER SCHMIDTLEIN: According to this what
20 Home Depot was saying?

21 MR. MITTRUCKER: Correct versus our comparable
22 model -- both of the maps read 799 it would be in our
23 WM-3170 our product that we did not offer 25 points.

24 COMMISSIONER SCHMDITLEIN: Okay. Well again if
25 you would like to expand on this in the Post-Hearing I would

1 invite you to do that and you know for the Petitioners the
2 same invitation and if there are any other contemporaneous
3 documents you have that relate to this type of competition
4 then I would invite you to put those in the record if you
5 have them.

6 So that's actually a little bit of a segue into
7 my last question which has to do with this competition at
8 the low end of the market -- so in Exhibit 3 where they had
9 put that on the record that this Samsung 3000 is competing
10 with the Maytag agitator, the top-loader with an agitator
11 and then the Petitioners also point out in their Brief that
12 during the Staff Conference a representative from both LG
13 and Samsung seemed to concede that there are products in
14 that price band now -- and specifically I'm looking at page
15 63 of the Petitioner's Brief and they site a Mr. Herring of
16 LG and a Mr. Brindle from Samsung.

17 So I was wondering if you could respond to that?

18 MR. THOMPSON: Greg Thompson, in regards to the
19 3000 being compared to the Whirlpool 415 I think it is
20 interesting two points of it -- my understanding is the 415
21 is unlimited floor so I don't know that it is a fair apples
22 to apples comparison from a distribution standpoint.

23 COMMISSIONER SCHMIDTLEIN: I'm sorry what did you
24 say, is a what?

25 MR. THOMPSON: It is not necessarily sold at the

1 same retailers. I'm not certain -- we will need to do some
2 more research or maybe the Petitioners can provide some
3 additional clarity on that because I don't know that it is
4 an apples-to-apples comparison.

5 The other piece of that I think that's important
6 is that if we are going to include this one particular
7 agitator model, I think it would be helpful to include all
8 of the agitator models as we have tried to do on this slide
9 that shows if you are really going in and looking for a
10 low-priced model, Samsung is not really even playing into
11 those categories with the agitator models that are
12 domestically produced.

13 MR. SHOR: It's a very selective comparison.

14 COMMISSIONER SCHMIDTLEIN: Um-hum, but you can
15 respond to the statements that were made at the Staff
16 Conference though where the quote was, "Mr. Herring of LG
17 conceded that approximately 25% of LG's business would dip
18 below the price line they consider a ceiling for agitator
19 models and Mr. Brindle of Samsung acknowledged that Samsung
20 would have a product or two in that price band."

21 MR. THOMPSON: I'm sorry I'm not familiar with
22 what price band that is.

23 COMMISSIONER SCHMIDTLEIN: For the price band for
24 agitator, for a top-loader with an agitator?

25 MR. THOMPSON: Well I would comment that -- and

1 the team this morning actually made a comment that they are
2 actually adding agitator models to the higher price points
3 so I think it's probably a combination of agitators being
4 offered at higher price points than they have been
5 historically in the past.

6 COMMISSIONER SCHMIDTLEIN: Okay. Mr. Mittrucker
7 would you like to respond -- oh I'm sorry Mr. Toohey?

8 MR. TOOHEY: I was just going to say I was at
9 that hearing. I don't remember any specific number being
10 referred to as the ceiling for agitators but this is an
11 average line so maybe if you looked at individual models you
12 would see agitator top-loaders at price points that do
13 overlap with 25% or higher pipeline but I can't really
14 verify that without knowing specifically what the price
15 level was -- and as Greg said if the highest agitator
16 top-loader is 800 bucks or something then that's possible.

17 COMMISSIONER SCHMIDTLEIN: So would you say that
18 for models that are in the same price band that they do
19 compete head-to-head? Somebody may decide to purchase the
20 one with the more features but if they are in the same price
21 band are they competing?

22 MR. THOMPSON: Yeah, Greg Thompson -- I think
23 they may -- it's hard to speak of generalities with
24 consumers, there is always going to be outliers. I think
25 there is also as we have talked earlier there is going to be

1 very specific consumers who are going to walk into a
2 retailer and say I want an agitator model because that's
3 what a washing machine is supposed to look like regardless
4 of its performance capabilities.

5 On the other hand, I think especially for the LG
6 and Samsung customers, there's a lot of consumers out there
7 that say I want the more innovated, more modern technology,
8 I want to move forward not necessarily backwards and those
9 would gravitate more towards the Impeller.

10 COMMISSIONER SCHMIDTLEIN: So they could compete
11 maybe with both if you are looking at a highly featured unit
12 that happens to be priced in a brand that also includes a
13 lesser featured unit it could be competing both with the one
14 that has other -- you know a highly featured unit and one
15 that is similarly priced but maybe less features?

16 MR. THOMPSON: For some consumers, yes.

17 MR. TOOHEY: I think it would be a rare consumer
18 that would have zero brand preference and zero feature
19 preference.

20 COMMISSIONER SCHMIDTLEIN: Right.

21 MR. TOOHEY: And who would just make a decision
22 based on I don't know, flipping a coin.

23 COMMISSIONER SCHMIDTLEIN: Right or just based on
24 price.

25 MR. TOOHEY: Or price, yeah.

1 MR. THOMPSON: Greg Thompson here but I would add
2 -- I can't imagine and I have never observed a retailer
3 floor where the lowest priced model was not an agitator
4 domestically produced product and so if it is literally all
5 about that lowest price point then you know I think this
6 slide demonstrates that well.

7 We would be struggling as a manufacturer.

8 COMMISSIONER SCHMIDTLEIN: Okay, alright. I
9 don't have any further questions thank you.

10 CHAIRMAN WILLIAMSON: I don't think any other
11 Commissioners have questions so if there are no further
12 questions from Commissioners, does staff have any questions
13 for this panel?

14 MR. ANDERSON: Chairman the staff has no
15 questions, thank you.

16 CHAIRMAN WILLIAMSON: Okay do Petitioners have
17 any questions for this panel?

18 MR. LEVY: No questions Mr. Commissioner.

19 CHAIRMAN WILLIAMSON: Okay fine. Thank you. I
20 want to thank this panel for their testimony and for
21 spending the afternoon with us. It is now time for closing
22 statements. And Petitioners have 10 minutes from direct and
23 5 from closing for a total of 15 minutes. Respondents have
24 5 minutes from closing for a total of 5 minutes and we will
25 of course combine that time so I would ask the panel to take

1 their seats and then we will have our closing statements.

2 Mr. Levy you may begin when ready.

3 CLOSING REMARKS OF JACK A. LEVY

4 MR. LEVY: Thank you Mr. Commissioner. I would
5 like to begin my closing remarks by thanking the staff for a
6 terrific job in this case. This is a complicated industry
7 and I think that they did a thorough and excellent job in
8 compiling a Pre-Hearing report for your consideration.

9 The Respondents have gone to great lengths to try
10 to argue that that Pre-Hearing report should be all but
11 shredded. That the quarterly pricing data are not reliable,
12 that the purchaser questionnaire responses need to be
13 re-tabulated, but we respectfully submit that the record
14 before you is robust and reliable.

15 I think I will first comment on conditions of
16 competition generally. I believe in response to a question
17 from Commissioner Pinkert Mr. Klett admitted that the
18 fundamental competitive dynamics in this case are very much
19 the same -- I think he said in comparison to the Korea case.

20 I think that to the extent he is right and if you
21 believe their narrative about the conditions of competition
22 you have to conclude that you got it wrong in the
23 Korea-Mexico investigation, that the Court of International
24 Trade got it wrong when they affirmed you and that you also
25 got it wrong in the preliminary phase in your preliminary

1 determination when you focused your analysis on competition
2 at the wholesale level -- sales between manufacturers and
3 retailers, manufacturers competing with each other on the
4 basis of wholesale price.

5 They would have you undo those prior decisions,
6 disregard the Staff Report and instead focus primarily on a
7 different level of trade which is the retail level of trade.
8 We saw a lot of slides here this morning focusing on retail
9 prices and I am not going to pretend to rebut an analysis
10 based on retail prices because that is not the level at
11 which Whirlpool and other U.S. producers compete.

12 Nor am I going to respond to data that are
13 aggregations -- average unit values, because this Commission
14 has previously found that AUV's are not particularly
15 prohibitive in this industry given product mix issues.

16 I think I'll next turn to the issue of washers
17 and dryers which Respondents characterized as their most
18 important issue. Interestingly I don't know that we heard
19 the word dryer in the Korea-Mexico investigation. I don't
20 know that anyone ever uttered the word dryer, it never came
21 up and it was a robust investigation with -- you know a lot
22 of adversarial litigation.

23 The first time we heard the word dryer was in the
24 preliminary phase of this investigation at the Staff
25 Conference. And someone from the Commission staff asked the

1 Respondents you know, "Why are we hearing this now for the
2 first time in this case?" And Mr. Shor at the time bear in
3 mind, he was likening washer and dryer sales to razors and
4 razor blades and he said, "You know it is perfectly normal
5 to lose money on washers, that's just the way of the world
6 and you make it up on dryers the same way you sell razors
7 and razor blades."

8 And the staff asked him, "Why are we hearing this
9 argument for the first time in this investigation?" And Mr.
10 Shor said I think in a moment of candor, "Because Samsung
11 has a more-clever lawyer this time." That was his answer --
12 I'm paraphrasing but you could find it in the transcript.

13 Look Whirlpool makes washers, they make dryers.
14 They want to make money in both business segments and they
15 want to sell dryers as often as possible, they want to sell
16 washers as often as possible. You have heard testimony that
17 depending upon the particular model you might have dryers
18 selling in proportion to washers as low as 20%, as high as
19 130%. Whirlpool would love it if the ratio were 130% all
20 the time.

21 But at the end of the day what you heard from Mr.
22 Fettig, Whirlpool's CEO, is that these are separate
23 businesses in the sense that when they make investment
24 decisions -- when you invest hundreds of millions of dollars
25 in a washer plant, you have to earn a return on that

1 investment. It otherwise makes no sense. The notion that
2 the whole purpose of the Clyde plant, that all those people
3 at Clyde, the 3,000 plus workers -- they exist to lose money
4 is preposterous.

5 This is not the way the industry works and your
6 definition of the domestic-like product requires as a matter
7 of law that you focus singularly on domestic production of
8 large residential washers. No one is arguing that dryers
9 are part of the domestic-like product. I think that's
10 dispositive of this issue.

11 But while we are on the subject of dryers -- we
12 have Bill Staber in the audience and he is from a smaller
13 operation in Ohio. He doesn't make dryers -- he just makes
14 washers. I think Respondents would have him make it up on
15 tennis ball machines which he also produces. That would be
16 I suppose their theory of the case.

17 Or take another example -- Kenmore. Whirlpool
18 produces top-load washers for the Kenmore label. They have
19 Kenmore top-load washers where the aesthetically matching
20 dryer is produced by LG. I suppose after the hearing today
21 LG is going to write Whirlpool a check for its dryer profits
22 because Whirlpool of course should be expected to be made
23 whole.

24 This is their theory of the industry and it is
25 preposterous. Now let's turn to this issue of agitators --

1 you know it is a tired argument that they tried and they
2 failed with it in the last investigation you rejected it.
3 They argued attenuated competition with the AGI segment and
4 you rejected this.

5 The notion that this is a discreet segment is it
6 is no more discreet than white washers or steam washers or
7 heater washers, this is just a feature. And in that context
8 I think there was a moment of clarify for Mr. Tooley where
9 when he really got down to brass tax he characterized it not
10 as the AGI segment, but the value segment -- the low end.

11 And I think what we heard the quote was, "LG and
12 Samsung do not compete at all in the value segment." And on
13 that point I would like to turn your attention to one of our
14 confidential exhibits -- it is Exhibit letter E. Now, this
15 exhibit -- something we created for your reference -- what
16 we did was we looked at wholesale prices and we created
17 buckets in \$50.00 bucket ranges beginning at \$250.00 and
18 going up to \$850.00 wholesale.

19 And we looked at the quarterly pricing data and
20 we tabulated whether or not for front-load and top-load
21 pricing products we saw subject imports or domestic-like
22 product in those price ranges in any of the pricing buckets.
23 And so what you can see there if you look at the buckets at
24 the low end I would ask you to observe to what extent do you
25 see D's which would be domestic producers, and to what

1 extent are the domestic producers playing in the lower
2 buckets?

3 And then to what extent do you see S's where
4 subject imports are playing in the lower buckets? And I
5 think this is a very telling chart and corroborates the
6 testimony from Samsung and LG in the Staff Conference. It
7 speaks to the fact that they most certainly in terms of
8 price are crashing the value segment.

9 I think -- let me talk for a moment about
10 innovation. You know their theory is on some level that
11 price doesn't much matter -- that it's all about innovation.
12 And I think they were pressed today to cite their top
13 innovations and why they differentiate themselves so much
14 that that is an alternate explanation for why they are
15 winning in the marketplace.

16 Let me just briefly touch on these innovations.
17 One we heard was Active Wash. But as you saw from Exhibit
18 13 Active Wash prices were crashed within 90 days of
19 launching this so-called innovation.

20 And Mr. Shor admitted that the relevant Whirlpool
21 model was not promoted. He essentially said that they
22 undercut us on price. You are not supposed to do that with
23 innovation. It is just pure and simple dumping, that's
24 their innovation. Add Wash -- they talked a lot about that
25 add a sock feature, it is basically a remake of the

1 Whirlpool pause button -- that launched in the second
2 quarter of 2016, the last quarter of the POI. Is that
3 supposed to you know break the cause and effect nexus here
4 in this case? I don't think so.

5 The same thing with LG's Twin Wash -- we can show
6 you data that shows that you know that pedestal washer, the
7 actual spark of genius for that was a Whirlpool patent which
8 they then further developed. But be that as it may, that
9 has only been on the market for I think the last three
10 quarters of the POI, it doesn't explain the lion's share of
11 causation by any measure because it didn't exist.

12 And then finally LG cited their front control
13 product. Well they have front control, God bless -- so does
14 Whirlpool, they had it in 2015. I would argue a more
15 innovative execution with capacitive touch. The bottom line
16 is everyone has their innovations. Everyone touts them but
17 what you see in the purchaser questionnaire responses is
18 that as far as these things are concerned innovation, brand,
19 features, this is table sticks and we are all just
20 fundamentally comparable in the eyes of retailers.

21 And because of that the competition boils down to
22 the net wholesale price. So then when we turn to the net
23 wholesale pricing data -- the quarterly pricing data that
24 you have collected, Mr. Klett again wants to throw it out.
25 He wants you to note this issue about OEM pricing. This was

1 an argument raised in the last case -- you rejected it. It
2 was raised in comments on the questionnaire, you disregarded
3 it and for good reason.

4 We will repeat those good reasons in our
5 Post-Conference Brief but at the end of the day that
6 argument is a red herring. When you defined your pricing
7 products for this final phase you started with the pricing
8 products from the prelim. In the prelim you had 7 products
9 and you found that there was robust coverage and
10 apples-to-apples comparisons.

11 Now for the final phase you are using the same
12 criteria, still apples-to-apples comparisons, now you have
13 got 10 products, according to the Staff Report 5 of those 10
14 are a reflection of Respondent's recommendations. So it is
15 as much their wishes as anyone and now they want to run away
16 from the results because they simply don't like the answer.

17 You know the final point I will make because I am
18 running short on time. I'll turn you to Exhibit D of our
19 pink paper here. And I think that Respondents say you have
20 no pricing data at all for that segment of the market. What
21 they are saying is you don't have any AGI prices. Well I
22 don't know that they are reading the record very clearly
23 because we actually -- if you look at product number 9 on
24 this sheet, we reported our less featured agitator washers
25 in this pricing bucket.

1 Exactly the same as the Samsung 3000 and Product
2 9 except smaller capacity and an agitator and you could see
3 what is going on between those two prices. Who is the
4 low-price leader? Who is underselling whom? We think this
5 is dispositive of what's going on in the so-called value
6 segment of the market.

7 There is direct head-to-head competition where
8 subject imports are undercutting Whirlpool and GE and others
9 at the lowest of the low end and they are doing so on the
10 basis of price every single day. You know at the end of the
11 day this should be seen as a simple case. You have
12 manufacturers competing at the wholesale level on the basis
13 of price.

14 If they don't have the lowest price they are not
15 going to get the flooring they need and if they don't get
16 the flooring they need they are not going to sell in volume,
17 that's what you have heard. So what happens? Well
18 producers have to meet competition. They have to reduce
19 their net wholesale price in order to gain or defend
20 flooring.

21 And what we see at the end of the day is a record
22 of pervasive underselling where Samsung and LG are on a
23 mission to grow share and they do so through dumping and
24 through low price leadership. And if their innovations were
25 so special they wouldn't give it away, they wouldn't have to

1 undersell particularly in an environment of rising demand.
2 There is no other explanation for the injury -- the hundreds
3 of millions of dollars of operating losses of U.S. producers
4 other than just dumping, plain and simple -- Samsung and LG
5 dumping.

6 Dumping that injured U.S. producers during the
7 POI and because of the stockpile that Samsung accumulated in
8 the first half of 2016, dumping that continues to injure the
9 U.S. industry to this day. You need to not only issue an
10 affirmative determination in this case but send a signal to
11 Samsung and LG for that matter that this kind of
12 circumvention, this stockpiling behavior shall be met with a
13 remedy under U.S. law. I thank you very much for your
14 attention and we know you will do the right thing as you
15 consider the record.

16 CHAIRMAN WILLIAMSON: Thank you.

17 Thank you. Mr. Porter, you can begin when you're
18 ready.

19 CLOSING REMARKS OF DANIEL L. PORTER

20 MR. PORTER: Mr. Chairman, members of the
21 Commission, it's been a long day. And because I know all of
22 you want some extra time to check out this super-cool twin
23 wash a few yards behind me, I'm going to try my best to be
24 very brief.

25 This morning, and then just a couple of minutes

1 ago, Whirlpool's counsel, Mr. Levy, said that brand and
2 innovation are considered merely table stakes in the market
3 and by the retailer.

4 Now I've never actually played cards with Mr.
5 Levy, so I don't really know his limit, but he made it sound
6 that such table takes are inconsequential. Members of the
7 Commission, LG and Samsung could not disagree more with Mr.
8 Levy's claim about the competitive dynamics of the market.

9 Contrary to Mr. Levy's statement, in the washers
10 market brand and innovation are extremely important.
11 Indeed, brand and innovation are everything to the
12 suppliers, including Whirlpool.

13 As an aside, I note that barely 20 minutes after
14 Mr. Levy disparaged the importance of brand and innovation
15 this morning, his own client got up on his feet and, with
16 very apparent pride in his voice, touted the features of the
17 Whirlpool washers.

18 And so, respectfully, Mr. Levy is just wrong. In
19 fact, brand and innovation, which are nonprice factors, are
20 what drives the decision to purchase a washer.

21 Now let me talk a little bit about price and
22 product data. We fully recognize that the Commission has a
23 long-standing practice of attempting to obtain product
24 specific data in order to undertake pricing comparisons.
25 However, sometimes, despite best attempts, this just doesn't

1 work.

2 Such a situation, while not frequent, is not
3 unprecedented. For example, in an earlier case the
4 Commission explicitly referenced the high degree of product
5 differentiation and concluded, and I quote, "point-to-point
6 price comparisons such as those most frequently relied upon
7 in other Commission investigations are of limited probative
8 value in this investigation."

9 I will provide the full cite and discussion of
10 the case in the post-hearing. The point is, sometimes it
11 doesn't work. And that's all we're asking in this case.

12 There are many, many issues in the pricing
13 product data compiled by the Commission staff. All we're
14 asking that you do is to do what you've done in other cases
15 and recognize that, given all these issues, the pricing
16 product data has limited probative value.

17 There's been a tremendous amount of discussion
18 about washers and dryers. And I think you've heard a lot
19 from our side. I do just want to have one quick rebuttal to
20 Mr. Levy's concluding remarks.

21 He mentioned, well Staber, you know, is different
22 because they don't produce washers. Well in the few minutes
23 between when he said that and when I came up here, a
24 colleague showed me Staber's website in which they offer
25 dryers with their washers. Why? Because that's what the

1 market requires.

2 The market requires washers and dryers be sold
3 together.

4 Finally, I want to conclude by talking about the
5 evidence before you. I recognize that the Commission
6 investigation process allows Petitioners to come to the
7 hearing and display snippets of purported emails that
8 retailers may or may not have sent. And of course at some
9 level such email snippets constitute some form of evidence.

10 However, I ask you to remember that you also have
11 detailed questionnaire responses from the largest retailers.
12 What is important is the Commission staff asked rather
13 detailed questions about pricing dynamics in this market.
14 And what do these questionnaire responses tell you?

15 First, just a handful of customers, the largest
16 customers, account for 90 percent of all retail purchases.

17 Second, the largest customers accounting for 90
18 percent of all purchasers have rejected Whirlpool's claim
19 that price is the single most important factor in purchasing
20 decisions.

21 And finally, the largest customers accounting for
22 90 percent of all purchasers have rejected Whirlpool's claim
23 of price compression. The largest customers, accounting for
24 90 percent of all purchasers, refuted Whirlpool's claim that
25 changes in the prices of LG and Samsung's higher, more fully

1 featured washers somehow affect Whirlpool's price for lower
2 priced washers with agitators. We ask you to focus on this
3 evidence when you do your analysis.

4 Thank you, very much.

5 CHAIRMAN WILLIAMSON: Thank you. And I again want
6 to thank everyone who participated in today's hearing
7 closing statements.

8 Post-hearing briefs, statements responsive to
9 questions, and requests of the Commission and corrections to
10 the transcript must be filed by December 14, 2016. Closing
11 of the record and final release of data to parties is
12 January 3rd, 2017. Final comments are due January 5th,
13 2017.

14 And with that, this hearing is adjourned.

15 (Whereupon, at 4:52 p.m., Wednesday, December 9,
16 2016, the hearing in the above-entitled matter was
17 adjourned.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Large Residential Washers from China

INVESTIGATION NO.: 731-TA-1306

HEARING DATE: 12-7-16

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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.

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