Bottom Mount Combination Refrigerator-Freezers from Mexico
ITC Prehearing Staff Report.

1. Good morning Chairman Okun and members of the Commission. The Government of Mexico thanks you for the opportunity to express its views on this case.

2. For the record, I am Salvador Behar, Legal Counsel for International Trade at the Embassy of Mexico.

3. First of all, I would like to emphasize the concerns the Mexican Government has regarding this investigation, and want to say that we have been closely following the developments. The United States is Mexico's closest and most important trading partner. The free flow of trade between our two countries is essential in order to continue recovering from the crippling global economic recession.

4. Therefore, the Mexican Government is deeply concerned about the severe impact on the industry and our citizens that would result if the United States imposes duties on our exports of bottom mount refrigerators.

5. Now, I would like to address some of the merits of this case and, in particular, the following five points.

6. First, it is very important to highlight that "a refrigerator is not a refrigerator." As your Staff Report correctly observes, BMRs are available in a different range of depths, capacities and configurations. It varies from a two-door;, a three door, French door and a four-door, French door configurations.[1] BMRs are available in an array of different features, including LED lighting, LCD displays, stainless steel exteriors[2], and external ice and water dispensers.[3]

7. The diversity of BMRs makes it difficult to consider them as a unique product when evaluating the competitive conditions in the U.S. market. Therefore, we respectfully ask the Commission to ensure that its analyses of import behavior, prices, and the financial condition of the U.S. industry compare domestic refrigerators with only those imported products that have the same characteristics, including capacity and other features.

8. In doing so, the Commission will find that the increase in demand for Mexican BMRs can be attributed to the differences in features and style, which play a key role in consumer decisions concerning this kind of refrigerators. Most importers and purchasers have agreed that consumers' decisions are driven by innovative features and style, and not the lowest price.[4]

9. Second, the Commission's preliminary finding stated that the profits associated with U.S. producers' production decreased in 2011. We noticed that this decrease was due partly to the increase of raw material and factory overhead costs, which

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[1] At I-10 Pre Hearing Staff Report (PUBLIC).
[2] Ibid at II-1.
[3] Ibid at I-11 to I-17
[4] Ibid. at II-18

increased significantly in 2011.[5] We consider that the increase in costs reflects problems of U.S. producers' own cost inefficiencies for BMRs, which has nothing to do with Mexican imports. These cost inefficiencies are similar to those that led one of the domestic producers to close its manufacturing facility in Evansville, Indiana, and then transfer their production assets to Mexico.[6]

10. Third, when the Commission analyzes all of the factors mentioned in Article 3.5 of the Antidumping Agreement, it is clear that Mexican imports are not the cause of the alleged injury. For example, the Commission's report states that the cycle of innovation in the BMR market is very short. The U.S. petitioner has been unable to introduce competitive products in the domestic market in a timely fashion, facing a disadvantage vis a vis imported BMRs when considering the importance of new features and style to U.S. consumers.[7]

11. Also, in the United States, it is a common commercial practice for manufacturers and retailers of different kinds of products to offer discounts on their sales of specific products during certain promotional periods, such as President's Day, Memorial Day, Labor Day, and Black Friday.[8] This is also the case for all home appliances, including refrigerators.[9] Even though discounts are offered during these promotional periods, purchasing decisions for BMRs are still driven by consumer preferences, and not solely or primarily by discounted prices.

12. Fourth, the Commission must consider that most suppliers follow the petitioner's lead in making price changes, including for promotional periods. Purchasers stated that the petitioner is the lead driver in the U.S. market for price increases and decreases, setting price discounts on obsolete products, and offering rebates to end users.[10]

13. Finally, our comments on the merits of this case are necessarily limited because under the Commission's rules we are only permitted to review the public versions of the preliminary determination and prehearing staff report. We are conscious of the confidentiality provisions in the statute that require the Commission to classify as and restrict access to Business Proprietary Information (BPI) provided in antidumping investigations.

14. In spite of that, Article 12.2.1 of the Antidumping Agreement provides that "[A] public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected.".

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[5] Ibid at VI-1, 5 and 8.
[6] Ibid at III-4
[7] Ibid at II-16
[8] Ibid
[9] Ibid at II-17 and II-18.
[10] Ibid at V-14

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15. We respectfully submit that the preliminary determination and prehearing staff report contained excessive treatment of information as confidential. Several critical figures such as the apparent U.S. consumption, U.S. market shares, price trends, and U.S. employment trends were all redacted from the public versions of these documents. The Commission also treated the perceptions of producers, purchasers, and importers regarding the conditions of the U.S. market as confidential.[11]

16. We want to express that we don't understand the reasons for treating certain trends and opinions as mentioned as confidential.[12] The misapplication of BPI in this case has limited the possibility to fully review the case and express further views of the Mexican Government in order to support its industry.

17. Mexico would encourage the Commission to justify its assessment of the facts and evidence in the record and reconsider the treatment given to the information.

18. Mexico respectfully requests that the Commission takes this Testimony into consideration and further concludes that imports of BMR´s from Mexico are not the source of injury, or threat thereof, in this investigation.

19. Thank you very much.

[11] At I-3, I-22, I-25 III-2, IV-4 and IV-13.
[12] Ibid