Large Residential Washers from Korea and Mexico

Investigation Nos. 701-TA-488 and 731-TA-1199-1200 (Preliminary)

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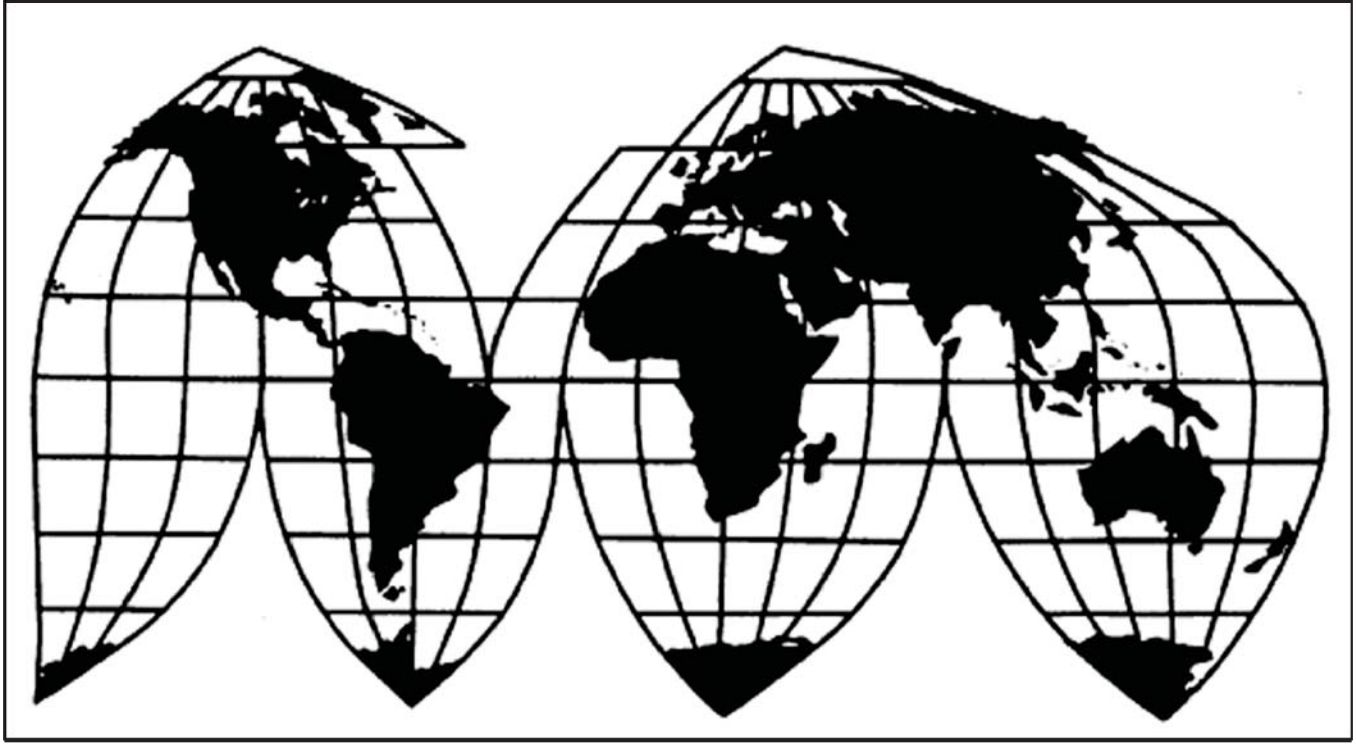
U.S. International Trade Commission



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U.S. International Trade Commission

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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-488 and 731-TA-1199-1200 (Preliminary)

LARGE RESIDENTIAL WASHERS FROM KOREA AND MEXICO

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[2] [3] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of large residential washers that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of Korea. The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry is materially injured by reason of imports from Mexico of large residential washers that are alleged to be sold in the United States at LTFV. The products subject to these investigations are provided for in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States, and imported under statistical reporting number 8450.20.0090. Products subject to these investigations may also be imported under HTS subheadings 8450.11.00, 8450.90.20 or 8450.90.60.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On December 30, 2011, a petition was filed with the Commission and Commerce by Whirlpool Corporation, Benton Harbor, MI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of large residential washers from Korea and LTFV imports of large residential washers from Mexico. Accordingly, effective December 30, 2011, the Commission instituted countervailing duty investigation No. 701-TA-488 and antidumping duty investigation Nos. 731-TA-1199-1200 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 9, 2012 (*77 F.R. 1082*). The conference was held in Washington, DC, on January, 20, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Deanna Tanner Okun not participating.

[3] Commissioner Daniel R. Pearson dissenting.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of large residential washers ("LRWs") from Korea that are allegedly subsidized by the Government of Korea and sold in the United States at less than fair value ("LTFV") and imports of LRWs from Mexico that are allegedly sold in the United States at LTFV.[1] [2]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[3] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[4]

II. BACKGROUND

The petitions in these investigations were filed on December 30, 2011 by Whirlpool Corporation ("Whirlpool"), which accounts for the vast majority of domestic production of LRWs.[5] Respondents that participated in the staff conference and filed post-conference briefs in these preliminary investigations include importer LG Electronics U.S.A., Inc., Korean producer LG Electronics, Inc., and Mexican producer LG Electronics Monterrey Mexico, S.A. de C.V. (collectively, "LG"); and importer Samsung Electronics America, Inc., Korean producer Samsung Electronics Co., Ltd., and Mexican producer Samsung Electronics Mexico, S.A. de C.V. (collectively, "Samsung"). Home Depot, Inc., a major purchaser of domestically produced and subject imported LRWs, also filed a postconference brief.[6]

The Commission received U.S. producers' questionnaire responses from six U.S. producers accounting for virtually all U.S. production of LRWs during the period examined.[7] It received importers' questionnaire responses from nine firms accounting for virtually all subject imports from Korea and

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[1] Chairman Okun has recused herself from participating in these investigations.

[2] Commissioner Pearson dissenting. He joins the majority with respect to sections I (Legal Standard for Preliminary Determinations), II (Background), III (Domestic Like Product), IV (Domestic Industry), V (Cumulation), VI.A (Legal Standard for Reasonable Indication of Material Injury by Reason of Subject Imports), and VI.B (Conditions of Competition and the Business Cycle).

[3] 19 U.S.C. § 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

[4] American Lamb Co., 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[5] Confidential Staff Report ("CR")/Public Staff Report ("PR") at III-1.

[6] Throughout the opinion, we use the term "purchasers" to refer to retailers and not consumers.

[7] CR/PR at III-1. A seventh domestic producer, Electrolux, completed a questionnaire response, but its data were missing or incomplete and were therefore not included in the report. Id.

Mexico.[8] It received foreign producers' responses from two Korean producers accounting for the vast majority of LRW production in Korea and virtually all Korean exports of LRWs to the United States.[9] It also received foreign producers' questionnaire responses from four Mexican producers believed to account for all LRW production in Mexico and all Mexican exports of LRWs to the United States.[10]

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[11] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Tariff Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[12] In turn, the Tariff Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... ."[13]

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of the investigations as follows:[14]

> The products covered by these investigations are all large residential washers and certain subassemblies thereof from Korea and Mexico. For purposes of these investigations, the term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).
>
> Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper; (b) a base; and (c) a drive hub; and (4) any combination of the foregoing subassemblies.

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[8] CR/PR at IV-1.

[9] CR/PR at VII-2.

[10] CR at VII-5; PR at VII-3-4.

[11] 19 U.S.C. § 1677(4)(A).

[12] 19 U.S.C. § 1677(4)(A).

[13] 19 U.S.C. § 1677(10).

[14] Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations, 77 Fed. Reg. 4007, 4012-13 (Jan. 26, 2012).

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer.

The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" market meeting either of the following two definitions:

(1)(a) It contains payment system electronics; (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; or

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation, the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to these investigations are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these investigations may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

LRWs are automatic clothes washing appliances capable of cleansing fabrics using water and detergent in conjunction with wash, rinse, and spin cycles typically programmed into the unit.[15] They are produced in either top load or front load configurations.[16] Top load LRWs possess drums that spin on a vertical axis and are loaded with soiled clothing through a door on the top of the unit.[17] Front load LRWs possess drums that spin on a horizontal or tilted axis and are loaded with soiled clothing through a door in the front of the unit.[18] All LRWs are typically purchased by households for use in single family dwellings.[19]

LRWs can be categorized as conventional top load ("CTL"), high efficiency top load ("HETL"), and high efficiency front load ("HEFL"). CTL LRWs are characterized by their use of a pole-shaped

[15] CR at I-7; PR at I-6.

[16] CR at I-7; PR at I-6.

[17] CR at I-7; PR at I-6.

[18] CR at I-7; PR at I-6.

[19] CR at I-7; PR at I-6.

agitator inside the drum, which cleans clothes by swirling them through detergent and water.[20] Due to the interior volume occupied by the agitator, CTL LRWs generally offer less capacity than other types of LRWs.[21] CTL LRWs often qualify for an Energy Star efficiency rating under U.S. Department of Energy Guidelines but consume too much water and energy to qualify as Tier III high efficiency machines under the guidelines promulgated by the Consortium for Energy Efficiency ("CEE").[22]

HETL LRWs load from the top like CTL LRWs but qualify as Tier III high efficiency machines under CEE guidelines because they use less water and energy.[23] They use less water by washing clothes with an impeller rather than an agitator, which lifts and drops clothes into a smaller quantity of water and specially formulated HE detergent.[24] They reduce energy consumption by spinning clothes at high speed, thereby extracting more water and leaving clothes in need of less time in an electric dryer.[25]

HEFL LRWs qualify as Tier III high efficiency machines like HETL LRWs but load from the front.[26] They use less water by lifting clothes with a baffle as the drum spins on a horizontal or tilted axis and dropping them into a smaller quantity of water and HE detergent.[27] Like HETL LRWs, they reduce energy consumption by spinning clothes at high speeds that extract more water and reduce drying time. [28] HEFL LRWs typically clean clothes better and more efficiently than HETL LRWs but have been reported to develop mold and odor problems.[29]

C. Arguments of the Parties

Petitioner argues that the Commission should define a single domestic like product encompassing all LRWs within the scope because, in its view, there are no clear dividing lines separating CTL, HETL, and HEFL LRWs in terms of the Commission's like product factors.[30] Samsung and LG argued at the conference, however, that the Commission should define three domestic like products corresponding to

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[20] CR at I-11; PR at I-9.

[21] CR at I-11; PR at I-9.

[22] CR at I-11; PR at I-9. Energy Star and Tier III high efficiency ratings are administered by different organizations and involve different standards. The Energy Star rating is awarded based on a model specific analysis administered by the U.S. Department of Energy and the Environmental Protection Agency, and based on regulations that describe how to properly measure water and energy consumption. See Petitioner's Postconference Brief at 4 n.6; 10 C.F.R. Part 430. The Tier III high efficiency rating is awarded by the CEE, which is a non-governmental organization that promulgates its own water and energy efficiency standards. Petitioner's Posthearing Brief at 4 n.6, Exhibit 1. There are three tiers within the CEE's rating system, with Tier I equivalent to an Energy Star rating and Tier III covering "high efficiency" LRWs. CR at I-11 n.41; PR at I-9 n.41.

[23] CR at I-9; PR at I-8.

[24] CR at I-9-10; PR at I-8; Petitioner's Postconference Brief at 6.

[25] CR at I-10; PR at I-8.

[26] CR at I-8; PR at I-7.

[27] CR at I-8; PR at I-7.

[28] CR at I-8; PR at I-7.

[29] CR at I-8-9; PR at I-7.

[30] See Petitioner's Postconference Brief at 4-11.

CTL, HETL, and HEFL LRWs based on an analysis of the Commission's six like product factors, although only Samsung has advanced a detailed like product argument.[31]

D. Like Product Analysis

For purposes of the preliminary phase of these investigations, and based on the following analysis,[32] we define a single domestic like product that is coextensive with the scope of these investigations. We intend to re-examine this issue closely in any final phase investigations.

Physical characteristics and uses

All three types of LRWs have the same use, which is to wash clothes using water and a detergent in conjunction with wash, rinse, and spin cycles typically programmed into the unit.[33] There is substantial overlap among the three types of LRWs in terms of capacity, although HE LRWs tend to have larger capacities than CTL LRWs, and all qualify for an Energy Star efficiency rating from the U.S. Department of Energy.[34]

Two or more of the three types of LRWs also share certain physical attributes. Both CTL and HETL LRWs load from the top and have drums that generally spin on a vertical axis, although Staber's HETL LRWs spin on a horizontal axis like HEFL LRWs.[35] Both HETL and HEFL LRWs qualify for a Tier III high efficiency rating under CEE guidelines, using less water and energy to wash clothes than CTL LRWs.[36] Both HETL and HEFL LRWs work most effectively with the use of low-foaming high-efficiency detergent.[37]

Each type of LRW also possesses certain unique physical characteristics. Each type of LRW uses a different drum design to wash clothes, with CTL LRWs using an agitator, HETL LRWs using an

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[31] See Conference Tr. at 11-12 (Connelly) (speaking on behalf of LG and Samsung), 121-124 (Dexter); Samsung's Postconference Brief at 3-11. LG did not articulate a position on the appropriate domestic like product definition in its postconference brief.

[32] Contrary to the thrust of some of the parties' arguments, the Commission's findings from previous investigations do not bind the Commission here, as all Commission investigations are sui generis. See Nippon Steel Corp. v. United States, 19 CIT 450, 454-55 (1995); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075,1087-88 (CIT 1988); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1669 n.5 (1988). The Commission must independently define the appropriate like product depending on the record of these current investigations. Moreover, because in many instances the record may rationally support one or more different conclusions, a subsequent decision may permissibly be different from a previous decision even if the factual records are very similar. That being said, the Commission can and does draw upon previous determinations in addressing pertinent like product issues. See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000).

[33] CR at I-7; PR at I-6.

[34] Petitioner's Response to Commission Question 8; Petition at Exhibit 15.

[35] Conference Tr. at 22 (Bitzer); Petitioner's Postconference Brief at Ex. 3. HEFL LRWs can also spin on a tilted axis. Conference Tr. at 21 (Bitzer).

[36] CR at I-11; PR at I-9; Conference Tr. at 61-62 (Bitzer). There is evidence that the standards for achieving a high efficiency rating under CEE guidelines are strengthened over time, which could potentially downgrade HETL LRWs into CTL LRWs in terms of energy efficiency. CR at I-19; PR at I-14.

[37] CR at I-8, 10; PR at I-7-8.

impeller, and HEFL LRWs using a baffle.[38] Only HEFL LRWs load from the front, requiring a pedestal for improved ergonomics, and possess drums that spin on a horizontal or tilted axis.[39]

Interchangeability

All three types of LRWs are interchangeable insofar as all can be used to wash clothes.[40] Whirlpool and Samsung provided survey data indicating that a significant proportion of consumers cross-shop HETL and HEFL LRWs, suggesting that HETL and HEFL LRWs are used interchangeably, while a smaller proportion of consumers cross-shop CTL LRWs with HETL and HEFL LRWs.[41]

Common manufacturing facilities, production processes, and production employees

Whirlpool produces all three types of LRWs in the same factory in Clyde, Ohio.[42] Although each type is generally produced on a separate assembly line,[43] certain CTL and HETL LRW models share the same assembly line in some instances.[44] Moreover, all three types of LRWs share certain production processes, including the press room, test labs, plastic forming shop, paint shops, and materials receiving, inventory, and distribution areas.[45] According to Whirlpool, half of the production workers at its plant are engaged in the production of all three types of LRWs, and one "flex crew" is trained to produce either HETL or CTL LRWs, while a second "flex crew" is trained to produce either HETL or HEFL LRWs.[46]

Channels of distribution

All LRWs are shipped primarily to retailers for delivery to consumers.[47]

Customer and producer perceptions

Whirlpool perceives the three types of LRWs as part of a continuum of LRW products, while LG and Samsung regard each type of LRW as a distinct product.[48] Nevertheless, LG refers to a unified "high efficiency LRW market" in its postconference brief, suggesting that LG perceives HEFL and HETL LRWs as occupying the same market segment.[49] Survey data provided by Whirlpool and Samsung indicate that consumers frequently cross-shop HETL and HEFL LRWs, and sometimes cross-shop CTL and HEFL LRWs. These data suggest that consumers perceive different types of LRWs as interchangeable and belonging to the same category of product.

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[38] CR at I-11; PR at I-9; Petitioner's Postconference Brief at 6.

[39] Conference Tr. at 21 (Bitzer).

[40] CR at I-7; PR at I-6..

[41] See Petitioner's Posconference Brief at 8; Samsung's Postconference Brief at 5.

[42] Conference Tr. at 56 (Bitzer). Samsung is incorrect that the Commission's like product analysis focuses only on production processes and employees. The Commission also considers shared manufacturing facilities. See, e.g., Certain Frozen or Canned Warmwater Shrimp, USITC Pub. 3748 at 9.

[43] Conference Tr. at 57 (Bitzer).

[44] Petitioner's Postconference Brief at 9.

[45] Petitioner's Postconference Brief at 9.

[46] Petitioner's Postconference Brief at 9.

[47] CR at I-21; PR at I-15; CR/PR at Table II-1.

[48] CR at I-21; PR at I-15.

[49] See LG's Postconference Brief at 16.

Price

The average unit values of domestic industry U.S. shipments of CTL LRWs, HETL LRWs, and HEFL LRWs differed significantly during the period examined, with CTL LRWs at the low end, HETL LRWs in the middle, and HEFL LRWs at the high end.[50] Nevertheless, there is some overlap in the manufacturer's suggested retail price ranges of the three types of LRWs and frequent sales or promotions can reduce price differences between different categories of LRWs.[51]

Conclusion

The record indicates that there are both similarities and differences among CTL, HETL, and HEFL LRWs. All three types of LRWs are similar in terms of their use; manufacturing facilities, processes, and employees; and channels of distribution. The record also indicates that all three types of LRWs overlap substantially in terms of their physical characteristics, although each type of LRWs possesses certain unique physical attributes as well.

Similarly, the evidence suggests that LRWs in all three segments are interchangeable, for the most part and are perceived as such by customers and producers. All three types of LRWs are interchangeable for the same end use (washing clothes). In addition, HETL and HEFL LRWs are frequently cross-shopped, suggesting a high degree of interchangeability between these two types of LRWs, while CTL LRWs are sometimes cross-shopped with HETL and HEFL LRWs. The record also indicates that HETL and HEFL LRWs overlap substantially in terms of customer and producer perceptions, while CTL LRWs overlap to a more limited extent with HETL and HEFL LRWs.

Finally, although CTL, HETL, and HEFL LRWs generally differ in terms of price, there is some overlap in manufacturer's suggested retail prices.

Based on the evidence on the record of the preliminary phase of these investigations, we find that, on balance, the preponderance of similarities over differences among CTL, HETL, and HEFL LRWs supports the definition of a single domestic like product that is coextensive with the scope of the investigations. All three types of LRWs overlap significantly in terms of their physical characteristics and uses; manufacturing facilities, processes, and employees; and channels of distribution. HETL and HEFL LRWs also overlap significantly in terms of interchangeability and customer and producer perceptions. Price is the factor that might suggest three domestic like products, but even with respect to price there is some overlap. For these reasons, we define a single domestic like product encompassing all LRWs within the scope of the investigations for purposes of the preliminary phase of the investigations. We intend to further examine the like product issue in any final phase of the investigations.[52]

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[50] See CR/PR at Tables C-2-4. During the period examined, the average unit value of domestic industry U.S. shipments of CTL LRWs ranged from $*** to $***, that of HETL LRWs ranged from $*** to $***, and that of HEFL LRWs ranged from $*** to $***. Id.

[51] CR at I-21; PR at I-16.

[52] Commissioner Pinkert notes that no party has advocated in the preliminary phase of the investigations that, in defining the domestic like product, the Commission should find a clear dividing line between conventional LRWs and high-efficiency LRWs (both front-load and top-load). He finds, however, largely as a result of distinctions in customer expectations and pricing (particularly as evidenced by the manufacturers' suggested retail price ranges, CR at I-21; PR at I-16), that further consideration is warranted on this issue. In addition, he notes that, if the Commission had found such a dividing line here, the pricing of subject imports of high-efficiency LRWs would suggest injury to domestic producers of high-efficiency LRWs. Substantial underselling of those imports is associated with declining unit values, a sustained increase in the ratio of cost of goods sold to net sales (which is evidence of price suppression), and deteriorating profit margins for the domestic producers. CR/PR at Table C-5.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[53] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our definition of the domestic like product, we define the domestic industry as all domestic producers of LRWs, including Alliance, GE, Staber, and Whirlpool.[54]

A. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[55] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation. No party has commented on the related party issue in the preliminary phase of these investigations.

The record indicates that *** and Whirlpool qualify as related parties because *** during the period examined and Whirlpool imported LRWs from *** and Mexico and is related to Whirlpool Overseas Manufacturing Sarl, a Mexican producer of subject merchandise.[56] We find, however, that appropriate circumstances do not exist to exclude either producer from the domestic industry.

1. ***

*** primary interest was in domestic production rather than the importation of subject merchandise during the period examined, with a ratio of subject import purchases to domestic production ranging from *** to *** percent.[57] There also is no evidence that *** domestic LRW operations

[53] 19 U.S.C. § 1677(4)(A).

[54] CR/PR at Table III-1.

[55] 19 U.S.C. § 1677(4)(B).

[56] CR at III-10; PR at III-4; CR/PR at Table III-5.

[57] CR/PR at Table III-5.

benefitted financially from its importation of subject merchandise.[58] [59] *** suffered operating losses ranging from *** to *** percent of net sales during the period examined, ***.[60] Finally, because *** was the *** domestic producer in 2010, accounting for *** percent of total domestic production that year, its exclusion from the domestic industry would *** on the domestic industry's trade or financial data.[61] For all of these reasons, we find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party.

2. Whirlpool

Whirlpool's primary interest was in domestic production rather than the importation of subject merchandise during the period examined, with a ratio of subject imports to domestic production ranging from *** to *** percent.[62] Indeed, Whirlpool's ratio of subject imports to domestic production declined during the period examined, from *** percent in 2008 to *** percent in 2010 and *** percent in January-September 2011,[63] as Whirlpool "repatriated" production of certain HEFL LRWs from Mexico to the United States.[64] There also is no evidence that Whirlpool's domestic LRW operations benefitted financially from its importation of subject merchandise. Whirlpool suffered operating losses throughout the period examined, ranging from *** to *** percent of net sales.[65] Finally, because Whirlpool was the *** domestic producer in 2010, accounting for *** percent of total domestic production that year, its exclusion from the domestic industry would *** on the domestic industry's trade or financial data.[66] In addition, Whirlpool is the petitioner. For all of these reasons, we find that appropriate circumstances do not exist to exclude Whirlpool from the domestic industry as a related party.

Accordingly, we define the domestic industry to include all domestic producers of LRWs.

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[58] Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

[59] For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon the related parties' financial performance as a factor in determining whether there are appropriate circumstances to exclude them from the domestic industry and relies instead on other information relevant to this issue. The present record is not sufficient to link the related parties' profitability on U.S. operations to any specific benefit they receive or derive from importing. See Allied Mineral Products v. United States, 28 CIT 1861, 1865-67 (2004). For any final phase of the investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to this issue.

[60] CR/PR at Table VI-2.

[61] CR/PR at Table III-1.

[62] CR/PR at Table III-5.

[63] CR/PR at Table III-5.

[64] CR at VII-7; PR at VII-5.

[65] CR/PR at Table VI-2.

[66] CR/PR at Table III-1.

V. CUMULATION

A. Background

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.[67] In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[68]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[69] Only a "reasonable overlap" of competition is required.[70]

The statutory threshold for cumulation is satisfied in these investigations because petitioner filed the antidumping duty petitions with respect to both countries and the countervailing duty petition with

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[67] 19 U.S.C. § 1677(7)(G)(i).

[68] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[69] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[70] The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 848 (1994) ("SAA") expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

respect to Korea on the same day, December 30, 2011.[71] No party argues that cumulation is inappropriate in the preliminary phase of these investigations.[72]

B. Analysis

Based on the record of the preliminary phase of these investigations, we find a reasonable overlap of competition between subject imports from Korea and Mexico and between subject imports from each source and the domestic like product. First, the record indicates that there is a moderately high degree of substitutability between subject imports from Korea and Mexico and between subject imports from each country and the domestic like product.[73] All responding domestic producers reported that subject imports from Korea and Mexico are "frequently" or "sometimes" used interchangeably with each other and with the domestic like product, while most responding importers reported that subject imports from Korea and Mexico are "always" or "frequently" used interchangeably with each other and with the domestic like product.[74] Three responding importers reported that subject imports from Korea and Mexico are "sometimes" used interchangeably with the domestic like product, and two responding importers reported that subject imports from Korea and Mexico are "sometimes" used interchangeably with each other.[75] When asked whether differences other than price are ever significant to purchasers in choosing between LRWs produced in Korea, Mexico, and the United States, one responding domestic producer reported "frequently" and one reported "sometimes."[76] Responding importers were divided on the question, with a slight plurality reporting that differences other than price are sometimes or never important.[77]

Second, the record indicates that LRWs from all sources served a nationwide market during the period examined.[78] Although subject imports from Korea and Mexico entered the United States through different regions, domestic producers and importers reported distributing their LRWs throughout the United States.[79] Thus, subject imports from both sources and the domestic like product serve all regions of the United States.

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[71] None of the statutory exceptions to cumulation is applicable.

[72] See Petition at 157; Samsung's Postconference Brief at 11.

[73] CR at II-9.; PR at II-6

[74] CR/PR at Table II-2. No responding domestic producer or importer reported that subject imports from Korea and Mexico are never used interchangeably with each other and the domestic like product. Id.

[75] CR/PR at Table II-3.

[76] CR/PR at Table II-3.

[77] CR/PR at Table II-3. Specifically, when comparing U.S. and Korean LRWs, two responding importers reported that differences other than price are always or frequently important and two reported that such differences are sometimes or never important. Id. When comparing U.S. and Mexican LRWs, one responding importer reported that differences other than price are always important and two reported that such differences are sometimes or never important. Id. When comparing Korean and Mexican LRWs, two responding importers reported that differences other than price are always or frequently important and two reported that such differences are sometimes or never important. Id.

[78] CR at II-2, IV-6; PR at II-1, IV-3.

[79] CR at II-2, IV-6; PR at II-1, IV-3.

Third, subject imports from Korea and Mexico and the domestic like product shared the same general channels of distribution. During the period examined, the vast majority of domestically produced and subject imported LRWs were sold to appliance retailers.[80]

Finally, LRWs from all sources were simultaneously present in the U.S. market, given that subject imports from Korea and Mexico entered the United States in every month of the period examined.[81]

Based on these factors, we conclude that there is a reasonable overlap of competition between and among subject imports and the domestic like product and, therefore, cumulate subject imports from Korea and Mexico for our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS[82]

A. Legal Standard

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[83] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[84] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[85] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[86] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[87]

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[80] CR/PR at II-1, Table II-1.

[81] CR at IV-6; PR at IV-3.

[82] Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. Based on official Commerce statistics, subject imports from Korea accounted for 54.8 percent of all imports of LRWs and subject imports from Mexico accounted for 38.1 percent of such imports during the most recent 12-month period preceding the filing of the petition for which data are available. CR at IV-5; PR at IV-3.

[83] 19 U.S.C. §§ 1671b(a), 1673b(a).

[84] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each {such} factor ... {a}nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[85] 19 U.S.C. § 1677(7)(A).

[86] 19 U.S.C. § 1677(7)(C)(iii).

[87] 19 U.S.C. § 1677(7)(C)(iii).

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is "materially injured by reason of" unfairly traded imports,[88] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[89] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[90]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[91] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[92] Nor does the

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[88] 19 U.S.C. §§ 1671b(a), 1673b(a).

[89] Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), aff'g 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[90] The Federal Circuit, in addressing the causation standard of the statute, observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

[91] Statement of Administrative Action ("SAA") on Uruguay Round Agreements Act ("URAA"), H.R. Rep. 103-316, Vol. I at 851-52 (1994) ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); accord Mittal Steel, 542 F.3d at 877.

[92] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject

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"by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[93] It is clear that the existence of injury caused by other factors does not compel a negative determination.[94]

Assessment of whether material injury to the domestic industry is "by reason of" subject imports "does not require the Commission to address the causation issue in any particular way" as long as "the injury to the domestic industry can reasonably be attributed to the subject imports" and the Commission "ensure{s} that it is not attributing injury from other sources to the subject imports."[95] [96] Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."

The Federal Circuit's decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant "other factor" was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit's guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports. The additional "replacement/benefit" test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific

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[92] (...continued)
imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[93] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[94] See Nippon Steel Corp., 345 F.3d at 1381 ("an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury.").

[95] Mittal Steel, 542 F.3d at 877-78; see also id. at 873 ("While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured 'by reason of' subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.") citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

[96] Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance on presumptions or rigid formulas. Mittal explains as follows:

> What Bratsk held is that "where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market," the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission's interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have "evidence in the record 'to show that the harm occurred 'by reason of' the LTFV imports,'" and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports. Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.[97]

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[98]

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

1. Demand Conditions

Apparent U.S. consumption of LRWs declined from *** units in 2008 to *** units in 2009 before increasing to *** units in 2010, a level *** percent higher than in 2008.[99] Apparent U.S. consumption of LRWs was *** in January-September 2011, down *** percent from *** units in January-September 2010.[100] Demand for LRWs was not greatly affected by the economic downturn, because over 90 percent of LRWs purchased are to replace LRWs that are at or close to the end of their product lives, which are

[97] To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

[98] Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

[99] CR/PR at Table IV-3.

[100] CR/PR at Table IV-3.

typically 7 to 10 years.[101] LRWs have few, if any, substitutes, and breakdowns occur at a relatively steady rate, further insulating LRW demand from fluctuations in general economic activity.[102]

Each of the three segments of the LRW market discussed above -- CTL LRWs, HETL LRWs, and HEFL LRWs – exhibited distinct demand trends during the period examined. Apparent U.S. consumption of CTL LRWs declined *** during the period, from *** units in 2008 to *** units in 2009 and *** units in 2010, a level *** percent lower than in 2008.[103] Apparent U.S. consumption of CTL LRWs was *** units in January-September 2011, down *** percent from *** units in January-September 2010.[104] The decline in CTL LRWs was reportedly caused by a shift in consumer preferences toward high efficiency LRWs, and HETL LRWs in particular.[105]

Apparent U.S. consumption of HEFL LRWs increased *** percent between 2008 and 2010, from *** units in 2008 to *** units in 2009 and *** units in 2010, but was *** percent lower in January-September 2011, at *** units, than in January-September 2010, at *** units.[106] Although parties have not directly addressed why demand for HEFL LRWs was lower in January-September 2011 than in January-September 2010, the record indicates that HEFL LRWs have been reported to develop mold and odors,[107] and related litigation is ongoing.[108]

Apparent U.S. consumption of HETL LRWs increased throughout the period examined, from *** units in 2008 to *** units in 2009 and *** units in 2010, a level *** percent higher than in 2008.[109] Apparent U.S. consumption of HETL LRWs was *** units in January-September 2011, up *** percent from *** units in January-September 2010. According to Home Depot, Whirlpool responded to the mold and vibration problems endemic to HEFL LRWs by developing and introducing HETL LRWs, which offer nearly the same efficiency as HEFL LRWs with none of the drawbacks.[110]

The distribution of LRWs is dominated by five appliance retailers -- Lowe's, Home Depot, Sears, Best Buy, and HH Gregg -- which together account for 65 to 70 percent of LRW sales in the U.S. market.[111] Retailers offer consumers a full range of LRW options at different price points to appeal to a variety of consumers.[112] LRW producers and importers compete for a limited number of "floor spots" at retailers on the basis of price, size, energy efficiency, color, front versus top load, and other features.[113] According to petitioner, Whirlpool lost significant floor spots to low priced subject imports during the period examined, with Whirlpool's share of total floor spots declining from *** percent in the first half of

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[101] CR at II-6; PR at II-4.

[102] CR at II-6; PR at II-4.

[103] CR/PR at Table C-4.

[104] CR/PR at Table C-4.

[105] Conference Tr. at 23-24, 68-69 (Bitzer).

[106] CR/PR at Table C-2.

[107] CR at I-8-9; PR at I-7; Conference Tr. at 124 (Dexter).

[108] CR at I-9 n.27; PR at I-7 n.27.

[109] CR/PR at Table C-3.

[110] Home Depot's Postconference Brief at 4.

[111] CR/PR at II-1.

[112] CR at I-21; PR at I-16; Petitioner's Postconference Brief at 14.

[113] CR/PR at II-1.

2008 to *** percent in the second half of 2010, while LG and Samsung's share of floor spots increased from *** percent to *** percent during the same period.[114]

Original equipment manufacturer ("OEM") customers, which purchase large volumes of LRWs from domestic producers or importers for sale under their own brand names, are another important source of demand in the LRW market.[115] OEM customers select suppliers through a formal bidding process in which bids are typically requested on a full line of LRWs.[116] They make decisions based on specific resale price points determined by producer prices relative to their own distribution and selling expenses.[117]

2. Supply Conditions

There are currently four known U.S. producers of LRWs – Alliance, GE, Staber, and Whirlpool -- with Whirlpool alone accounting for *** percent of reported domestic production in 2010.[118] Three additional domestic producers, Bosch, Electrolux, and Fisher & Paykel, shuttered their U.S. LRW production facilities during the period examined.[119] Bosch and Electrolux ceased U.S. production in 2011 and Fisher & Paykel in 2009.[120] Bosch reported that it closed its U.S. plant ***.[121] The domestic industry's share of apparent U.S. consumption declined from *** percent in 2008 to *** percent in 2009 and *** percent in 2010, and was *** percent in January-September 2011, up from *** percent in January-September 2010.[122]

Not all domestic producers produced all types of LRWs during the period examined.[123] ***.[124] ***.[125] ***.[126] ***[127] ***.[128] Finally, Whirlpool produced CTL and HETL LRWs throughout the period,

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[114] Petitioner's Postconference Brief at 19.

[115] Petitioner's Postconference Brief at 20.

[116] Petitioner's Postconference Brief at 20.

[117] Petitioner's Postconference Brief at 20.

[118] CR/PR at Table III-1.

[119] CR/PR at Table III-2.

[120] CR/PR at Table III-2.

[121] CR at VI-13; PR at VI-4.

[122] CR/PR at Table IV-3.

[123] Electrolux did not report the types of LRWs that it produced domestically before closing its U.S. factory in 2011. At the conference, a witness for Whirlpool testified that Electrolux had produced HEFL LRWs in the United States. Conference Tr. at 35 (Bitzer).

[124] Domestic Producers' Questionnaire of *** at Questions II-9-11.

[125] Domestic Producers' Questionnaire of *** at Questions II-9-11.

[126] Domestic Producers' Questionnaire of *** at Questions II-9-11.

[127] Domestic Producers' Questionnaire of *** at Questions II-9-11.

[128] Domestic Producers' Questionnaire of *** at Questions II-9-11.

and commenced production of HEFL LRWs in 2010, shifting production of HEFL LRWs for the U.S. market from Germany and Mexico to the United States.[129]

Most subject imports from Korea were imported by LG and Samsung during the period examined, while GE and Whirlpool accounted for a relatively small share -- less than *** percent of such imports in 2010.[130] Subject imports from Korea consisted of HEFL LRWs and, beginning in 2010, HETL LRWs.[131]

*** subject imports from Mexico were imported by *** in 2008 and 2009 and by *** and *** in 2010.[132] Samsung began importing LRWs from Mexico in 2011 in accordance with its intention to shift *** LRW production from Korea to Mexico and accounted for *** percent of such imports in January-September 2011.[133] Whirlpool reports that its subject imports from Mexico will cease at the end of July 2012 pursuant to its decision to produce all LRWs for the U.S. market exclusively in the United States.[134] Subject imports from Mexico consisted entirely of HEFL LRWs during the period examined.[135]

Cumulated subject imports increased their share of apparent U.S. consumption from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[136] Cumulated subject imports as a share of apparent U.S. consumption were *** percent in January-September 2011, down from *** percent in January-September 2010.[137]

Nonsubject imports accounted for a decreasing share of apparent U.S. consumption during the period examined, declining from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[138] Nonsubject imports as a share of apparent U.S. consumption were *** percent in January-September 2011, down from *** percent in January-September 2010.[139] The sources of reported nonsubject imports were ***.[140] A large proportion of nonsubject imports consisted of HEFL LRWs imported from Germany by Whirlpool, which intends to discontinue such imports by the third quarter of 2012 and shift all LRW production for the U.S. market to the United States.[141]

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[129] Domestic Producers' Questionnaire of Whirlpool at Questions II-9-11; Conference Tr. at 32 (Bitzer).

[130] CR/PR at Table IV-1.

[131] See Importers' Questionnaire of *** at Questions II-8, 11, 14; Importers' Questionnaire of *** at Questions II-8, 11, 14.

[132] CR/PR at Table IV-1; EDIS Document No. 471926, Supplemental Table 1.

[133] CR/PR at VII-4-6 & n.14; EDIS Document No. 471926, Supplemental Table 1.

[134] CR/PR at VII-4-5.

[135] See CR at VII-6-7& n.14; PR at VII-5 n.14.

[136] CR/PR at Table IV-3.

[137] CR/PR at Table IV-3.

[138] CR/PR at Table IV-3.

[139] CR/PR at Table IV-3

[140] CR at IV-3; PR at IV-2.

[141] CR at III-10 n.10; PR at III-4 n.10; CR/PR at Table III-5; Conference Tr. at 27 (Bitzer).

3. Substitutability

As detailed in section V.B. above, we have found that there is a moderately high degree of substitutability between subject imports and the domestic like product.[142] All responding domestic producers reported that subject imports from Korea and Mexico are "frequently" or "sometimes" used interchangeably with each other and with the domestic like product, while most responding importers reported that subject imports from Korea and Mexico are "always" or "frequently" used interchangeably with each other and with the domestic like product.[143] Three responding importers reported that subject imports from Korea and Mexico are "sometimes" used interchangeably with the domestic like product, and two responding importers reported that subject imports from Korea and Mexico are "sometimes" used interchangeably with each other.[144]

We further find that price is an important factor in the LRW market, although non-price factors are also important.[145] When asked whether differences other than price are ever significant to purchasers in choosing between LRWs produced in Korea, Mexico, and the United States, one responding domestic producer reported "frequently" and one reported "sometimes." Responding importers were divided on the question, with a slight plurality reporting that differences other than price are sometimes or never important.[146] Important non-price factors cited by questionnaire respondents include quality, transportation network, technical support, ease of use, warranty, style, performance, and reliability.[147] Energy efficiency is another important non-price factor.

Domestic producer and importer pricing practices and the prevalence of discounting constitute further evidence that price is an important factor in the LRW market. Domestic producers and importers of LRWs influence retail prices by establishing model-specific minimum advertised prices ("MAPs") that are the same for all retailers.[148] Domestic producers and importers offer cooperative advertising funds as an incentive for retailers to advertise LRW models at prices no lower than the relevant MAPs, though

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[142] CR at II-9; PR at II-6.

[143] CR/PR at Table II-2. No responding domestic producer or importer reported that subject imports from Korea and Mexico are never used interchangeably with each other and the domestic like product. Id.

[144] CR/PR at Table II-3.

[145] Evidence of the importance of price includes conference testimony by a witness for the respondents that LG introduced lower priced LRWs with fewer features "to appeal to a different price segment" of the market. Conference Tr. at 163 (Herring). Another witness for the respondents testified that Whirlpool's low prices on HETL LRWs were luring consumers away from HEFL LRWs. Id. at 127 (Dexter). LG presented survey data indicating that "competitive price" was a decisive factor for 46.6 percent and 49.9 percent of consumers purchasing LG and Whirlpool LRWs, respectively. LG Conference Exhibit 8. Samsung argues that Whirlpool has encouraged consumers to switch from CTL LRWs to HETL LRWs by offering aggressive pricing on HETL LRWs. See Samsung's Postconference Brief at 1, 20.

[146] CR/PR at Table II-3. Specifically, when comparing U.S. and Korean LRWs, two responding importers reported that differences other than price are always or frequently important, and two reported that such differences are sometimes or never important. Id. When comparing U.S. and Mexican LRWs, one responding importer reported that differences other than price are always important, and two reported that such differences are sometimes or never important. Id. When comparing Korean and Mexican LRWs, two responding importers reported that differences other than price are always or frequently important and two reported that such differences are sometimes or never important. Id.

[147] CR at II-11; PR at II-7.

[148] CR at V-2; PR at V-1.

retailers maintain the discretion to set their own prices.[149] According to Whirlpool, MAPs are the starting point for prices and discounts, and retailer margins are calculated based on MAPs.[150] When a domestic producer or importer wants to discount a particular model, as during a Black Friday promotion, it will lower both the model's MAP and the price it charges retailers for the model through either an up front price reduction or a post-sale rebate, to help the retailer preserve its margin to some extent.[151]

Discounting by domestic producers and importers is commonplace in the LRW market and can be direct or indirect.[152] Direct discounts are discounts, incentives, rebates, and other price adjustments that are tied to the specific products being sold.[153] Indirect discounts are not tied to a specific product, but can be allocated discounts, incentives, allowances and rebates tied to some broad sales performance measure or volume discounts based on the sale of multiple products, such as different types of white goods and electronic products. During the period examined, ***.[154] Based on pricing data collected on specific products, the average direct and indirect discounts reported on sales of subject imports from Korea and Mexico were always higher than the average direct and indirect discounts reported on sales of comparable domestically produced products.[155]

LRW discounting is concentrated during annual promotional events coinciding with holidays, including Columbus Day, Independence Day, Earth Day, and especially Black Friday, which is the day after Thanksgiving.[156] Petitioner claims that LG and Samsung offered unusually steep discounts on LRWs during Black Friday 2011, which lasted throughout November 2011, and that these discounts significantly reduced the domestic industry's market share for the month.[157] ***.[158] Respondents argue that Whirlpool discounted its LRWs just as aggressively as LG and Samsung during Black Friday 2011 and accuse Whirlpool of obfuscating the full extent of its discounting.[159] The record indicates that in November 2011, U.S. importers sold or offered to retailers *** units at discounted prices, including ***, while domestic producers sold or offered to retailers *** units at discounted prices, including ***.[160] Although this evidence suggests that a larger volume of subject imports was discounted during Black Friday 2011, we cannot fully assess the impact of such discounting on the domestic industry because Black Friday 2011 was after the period for which complete data were collected in these investigations.

A significant proportion of domestic industry U.S. shipments faced no competition from subject imports of the same type of LRW during the period of investigation. The domestic industry's U.S. shipments of CTL LRWs, which accounted for *** percent of domestic industry U.S. shipments during

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[149] CR at V-2; PR at V-1.

[150] CR at V-2; PR at V-1; Conference Tr. at 28 (Bitzer).

[151] CR at V-2; PR at V-1; Conference Tr. at 28 (Bitzer).

[152] CR at V-3; PR at V-2.

[153] CR at V-3; PR at V-2.

[154] CR/PR at Table V-3.

[155] CR/PR at Table V-4. We note that the extent to which these discounts translated into subject import underselling is unclear because the size of the discounts relative to the prices of specific models is unknown.

[156] Conference Tr. at 102-3 (Bitzer).

[157] CR at V-3-4; PR at V-2; Petitioner's Postconference Brief at 34.

[158] CR at V-4; PR at V-2; Domestic Producers' Questionnaire Response of *** at Question IV-22.

[159] Samsung's Postconference Brief at 18; LG's Postconference Brief at 28-29.

[160] CR/PR at Table V-2.

the period examined, faced no competition from subject imported CTL LRWs because there were none.[161] Subject imports of HETL LRWs from LG and Samsung only began in 2010 and were largely limited to models with a capacity of 4.5 cubic feet or greater, whereas *** percent of Whirlpool's HETL LRW sales in January-September 2011 consisted of models with capacity of under 4.5 cubic feet according to NPD data.[162]

Nevertheless, we do not find that these factors attenuated subject import competition to the point where domestic producers faced no competitive pressure from subject imports over a significant portion of the market. The parties agree that lower HETL LRW prices adversely affected sales of CTL LRWs during the period examined, suggesting that the domestic industry's U.S. shipments of CTL LRWs were not entirely insulated from subject import competition.[163] The record also indicates that a significant proportion of consumers, around 30 percent according to Samsung, cross-shop HETL and HEFL LRWs, suggesting that domestic production of HETL LRWs was not insulated from subject import competition before the introduction of subject imported HETL LRWs from LG and Samsung in 2010.[164] There is also evidence in the record that subject imported HETL LRWs with a capacity of 4.5 cubic feet or greater compete to some extent with domestically produced HETL LRWs with a capacity of less than 4.5 cubic feet. Indeed, petitioners defined product 5 to include HETL LRWs with a capacity that is greater than or equal to 4.2 cubic feet, and there were both domestic and subject imported sales of product 5 in 2010 and 2011.[165] Subject imports of HETL LRWs also would compete with domestically produced HEFL LRWs to some extent. We intend to examine further the competitive dynamics between different types of LRWs in any final phase of the investigations.

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[166]

We find that the volume and increase in volume of cumulated subject imports from Korea and Mexico are significant, both absolutely and relative to apparent U.S. consumption and production, over the period examined.[167] Cumulated subject imports increased *** percent between 2008 and 2010, from

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[161] See CR/PR at Tables C-1, 4.

[162] CR/PR at Table C-3; Capital Trade Conference Exhibit 3.

[163] See Petitioner's Postconference Brief at 14; Conference Tr. at 37-38 (Bitzer); Samsung Postconference Brief at 1, 20.

[164] Samsung's Postconference Brief at 5; Conference Tr. at 127 (Dexter) ("Thus, about 25 to 30 percent of consumers are willing to consider both HE front-load and top-load models at the same time . . . .").

[165] CR at V-6; PR at V-3; CR/PR at Tables V-13-14.

[166] 19 U.S.C. § 1677(7)(C)(i).

[167] Respondents have argued that the increase in subject import volume and market share was not significant when considered in the context of what they view as different segments of the LRW market. See Samsung's Postconference Brief at 20-23; LG's Postconference Brief at 16. We have defined a single domestic like product that is coextensive with the scope and a single domestic industry consisting of all domestic producers of LRWs. We have also found evidence that subject imports of one type of LRW affect the domestic industry's U.S. shipments of (continued...)

*** units in 2008 to *** units in 2009 and *** units in 2010.[168] Cumulated subject imports were *** units in January-September 2011, down *** percent from *** units in January-September 2010.[169] U.S. shipments of cumulated subject imports increased *** percent between 2008 and 2010, from *** units in 2008 to *** units in 2009 and *** units in 2010.[170] U.S. shipments of cumulated subject imports were *** units in January-September 2011, down *** percent from *** units in January-September 2010.[171]

U.S. shipments of subject imports increased their share of apparent U.S. consumption from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[172] U.S. shipments of subject imports accounted for *** percent of apparent U.S. consumption in January-September 2011, down from *** percent in January-September 2010.[173] The ratio of subject imports to domestic industry production increased from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[174] The ratio of subject imports to domestic industry production was *** percent in January-September 2011, down from *** percent in January-September 2010.[175] Thus, although both subject import volume and U.S. shipments were lower in January-September 2011 than in January-September 2010, subject import market share and the ratio of subject imports to domestic industry production remained at elevated levels.

We conclude that the volume of cumulated subject imports and the increase in that volume are significant both in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports,

> the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[176]

As addressed in section VI.B.3 above, the record indicates that there is a moderately high degree of substitutability in demand between subject imports and the domestic like product and that price is an important consideration in purchasing decisions.

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[167] (...continued)
other types of LRWs. We therefore examine the significance of subject import volume with reference to all subject imports for purposes of the preliminary phase of the investigations. We intend to examine further the competitive dynamics between different types of LRWs in any final phase of the investigations.

[168] CR/PR at Table IV-2.

[169] CR/PR at Table IV-2.

[170] CR/PR at Tables IV-3.

[171] CR/PR at Tables IV-3.

[172] CR/PR at Table IV-3.

[173] CR/PR at Table IV-3.

[174] CR/PR at Table IV-4.

[175] CR/PR at Table IV-4.

[176] 19 U.S.C. § 1677(7)(C)(ii).

Two domestic producers and four importers of subject imports from Korea and Mexico provided usable quarterly net U.S. f.o.b. selling price data for five products, although not all firms reported pricing for all products for all quarters.[177] With respect to each product, the Commission requested pricing data for all sales satisfying the definition of the product (the "A" products) and for sales of the top-selling stock-keeping unit ("SKU") satisfying the definition of that product (the "B" products).[178] The Commission collected pricing data net of both direct and indirect discounts.[179] Reported pricing data accounted for approximately *** percent of U.S. producers' U.S. shipments of LRWs, *** percent of U.S. shipments of subject imports from Korea, and *** percent of U.S. shipments of subject imports from Mexico in 2010.[180]

The sales price data on the record indicate a mixed pattern of overselling and underselling by subject imports, although average underselling margins were generally greater than average overselling margins.[181] Between January 2008 and December 2010, subject imports undersold the domestic like product in *** of *** quarterly comparisons, or *** percent of the time, with respect to all sales satisfying the product definitions (i.e., the "A" products), at margins ranging from *** to *** percent.[182] Over the same period, subject imports oversold the domestic like product in *** of *** quarterly comparisons, or *** percent of the time, with respect to sales of the top-selling SKUs satisfying the product definitions (i.e., the "B" products), at margins ranging from *** to *** percent.[183]

We place relatively little weight on these pricing data for the following reasons. Coverage of domestic industry sales, at *** percent, is low despite petitioner's claim that it defined the pricing products to provide "major examples of head-to-head competition between subject imports and the domestic like product."[184] We obtained no reported domestic producer sales of product 2.[185]

Only *** reported domestic sales price data for product 3, and respondents presented evidence that several *** models for which data were reported may possess capacities too large to satisfy the definition of product 3, which is limited to HEFL LRWs with capacity greater than or equal to 3.2 cubic feet but less than 3.7 cubic feet.[186] Commission staff confirmed that several of the disputed models fall within the definition of product 3 based on official U.S. Department of Energy capacity data, but *** has not responded to the Commission's request for clarification on several other disputed models.[187] Even if *** sales price data were entirely accurate, *** subject imports from Mexico accounted for a substantial proportion of the quarterly comparisons in which subject imports undersold the domestic like product –

[177] CR at V-7; PR at V-4.

[178] CR at V-7; PR at V-4. An SKU is a number or code corresponding to a specific model.

[179] CR at V-8; PR at V-4.

[180] CR at V-7; PR at V-4.

[181] CR/PR at Table V-16.

[182] CR/PR at Table V-16.

[183] CR/PR at Table V-18

[184] Petition at 170. All pricing products used in the questionnaires were defined by petitioner Whirlpool. CR at V-7; PR at V-4.

[185] CR at V-7; PR at V-4.

[186] CR at V-7 n.1; PR at V-4 n.1.

[187] CR at V-7 n.1; PR at V-4 n.1.

*** of *** quarterly comparisons with respect to product 3A and *** of *** quarterly comparisons with respect to product 3B.[188]

We invite the parties to review the pricing product definitions utilized in the preliminary phase of these investigations and propose new or revised product definitions that might yield better coverage and a greater number of quarterly comparisons in their written comments on draft questionnaires in any final phase of the investigations.

We find no evidence that subject imports depressed domestic like product prices to a significant degree. Although domestic like product prices declined between the first and last quarters for which data were collected with respect to products ***, we cannot conclude that the declines resulted to a significant degree from subject import competition.[189] With respect to products ***, *** subject imports from Mexico accounted for a significant proportion of the quarterly comparisons in which subject imports undersold the domestic like product, as detailed above.[190] With respect to products ***, subject import sale price data were reported only for ***, and much of the decline in domestic like product prices occurred between ***.[191] With respect to products ***, the decline in domestic like product prices was accompanied by subject import overselling in every quarterly comparison.[192] We therefore cannot conclude on this evidence that subject imports depressed domestic like product prices to a significant degree.

We do find some evidence that subject imports suppressed domestic like product prices.[193] Although the domestic industry's ratio of cost of goods sold to net sales declined from *** percent in 2008 to *** percent in 2010,[194] the domestic industry was not able to raise its prices to a level that would allow it to make a profit despite a *** percent increase in apparent consumption during this period.[195] This occurred in the presence of rising subject imports that took market share from the domestic industry.[196] The domestic industry's losses were greater in January-September 2011 than in January-September 2010 because the industry's ratio of cost of goods sold to net sales was higher in January-September 2011, at *** percent, than in January-September 2010, at *** percent.[197]

We find additional evidence that low priced subject import competition adversely impacted the domestic industry in the significant number and magnitude of confirmed lost sales and revenue

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[188] CR at V-7; PR at V-4 (*** provided sales price data on subject imports from Mexico satisfying the definition of product 3 for only 2011); CR/PR at Tables V-9-10.

[189] CR/PR at Table V-15.

[190] See CR at V-7; PR at V-4; CR/PR at Tables V-9-10.

[191] CR/PR at Tables V-11-12.

[192] CR/PR at Tables V-13-14.

[193] Commissioner Pinkert finds some evidence of price suppression based solely on trends in the COGS/net sales ratio.

[194] CR/PR at Table VI-1.

[195] See CR/PR at Tables IV-3, VI-1.

[196] CR/PR at Table IV-3.

[197] CR/PR at Table VI-1.

allegations made by Whirlpool.[198] In particular, ***.[199] ***.[200] ***.[201] Whirlpool estimates that the loss of these contracts resulted in lost revenue of approximately $***, $***, and $*** over the lives of the respective contracts.[202] These confirmed lost sales allegations provide evidence that low priced subject import competition had an adverse impact on the domestic industry during the period examined.

Retailers *** confirmed lost sales allegations 5-9 and lost revenue allegations 2-4, although not all retailers confirmed all allegations, and the impact of the confirmed allegations on the domestic industry is unclear.[203] *** alleged that ***"[204] and was ***[205] in response to discounting by *** on specific models during specific time periods. Retailers confirmed that the alleged discounting by LG and Samsung took place, but did not specify the impact such discounting had on *** sales or revenues.[206] In most instances, retailers commented that they had not stocked the *** models at issue or that any lost sales or revenues suffered by *** were by reason of non-price factors.[207] We intend to further investigate the significance of these lost sales and revenue allegations and the relative roles of price and non-price factors in any final phase of the investigations.

E. Impact of the Subject Imports[208]

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[209] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment,

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[198] See CR/PR at Tables V-17-18.

[199] CR/PR at Table V-17.

[200] CR/PR at Table V-17.

[201] CR/PR at Table V-17.

[202] CR/PR at Table V-17.

[203] See CR/PR at Tables V-17-18. Specifically, *** agreed and *** disagreed with lost sales allegation 5; *** agreed with lost sales allegation 6; *** agreed with lost sales allegation 7; *** agreed and *** disagreed with lost sales allegation 8; and *** agreed and *** disagreed with lost sales allegation 9. Id. at Table V-17. *** agreed and *** disagreed with lost revenue allegation 2; *** agreed and *** disagreed with lost sales allegation 3; and *** agreed and *** disagreed with lost revenue allegation 4. Id. at Table V-18.

[204] See CR/PR at Table V-17.

[205] See CR/PR at Table V-18.

[206] See CR/PR at Tables V-17-18.

[207] See CR/PR at Tables V-17-18. For example, *** agreed with lost sales allegation 8, concerning discounts offered by ***, but *** commented that ***. Id. at Table V-17. ***. Id. ***. Id. ***. Id.

[208] Commerce initiated antidumping duty investigations based on estimated dumping margins of 31.03 to 82.41 percent for LRWs from Korea and 27.21 to 72.41 percent for LRWs from Mexico. See Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations, 77 Fed. Reg. 4007 (Jan. 26, 2012).

[209] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[210]

The domestic industry performed poorly during the period examined according to many measures, and its performance was *** worse in January-September 2011 than in January-September 2010.[211] Electrolux, Bosch, and Fisher & Paykel shuttered their U.S. LRW production facilities during the period examined, and ***.[212] We note that the domestic industry's performance during the period was likely weaker than indicated by the record given the absence of Electrolux's data.[213]

Although domestic industry capacity increased during the period examined due in part to Whirlpool's decision to shift production of HEFL LRWs from Germany and Mexico to the United States beginning in 2010,[214] the domestic industry's production and rate of capacity utilization were *** lower in January-September 2011 than in January-September 2010.[215] Domestic industry capacity increased from *** units in 2008 to *** units in 2009 before declining to *** units in 2010, a level still *** percent higher than in 2008.[216] Domestic industry capacity was *** units in January-September 2011, up *** percent from *** units in January-September 2010.[217] Domestic industry production declined from *** units in 2008 to *** units in 2009 before increasing to *** units in 2010, a level *** percent higher than in 2008.[218] Domestic industry production was *** units in January-September 2011, down *** percent from *** units in January-September 2010.[219] Domestic industry capacity utilization declined from *** percent in 2008 to *** percent in 2009 before increasing to *** percent in 2010.[220] Domestic industry capacity utilization was *** percent in January-September 2011, down from *** percent in January-September 2010.[221]

Domestic industry employment exhibited a similar trend. The domestic industry's average number of production and related workers ("PRWs") declined from *** in 2008 to *** in 2009 before increasing to *** in 2010, a level *** percent higher than in 2008.[222] The domestic industry's average number of PRWs was *** in January-September 2011, down *** percent from *** in January-September

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[210] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[211] See, e.g., CR/PR at Tables III-3, 7, and VI-1.

[212] CR/PR at Table III-2; CR at VI-13.

[213] CR/PR at III-1.

[214] CR at III-3; PR at III-2; Compare CR/PR at Table III-3 with id. at C-2.

[215] CR/PR at Table III-3.

[216] CR/PR at Tables III-3, C-1.

[217] CR/PR at Tables III-3, C-1.

[218] CR/PR at Tables III-3, C-1.

[219] CR/PR at Tables III-3, C-1.

[220] CR/PR at Tables III-3, C-1.

[221] CR/PR at Tables III-3, C-1.

[222] CR/PR at Tables III-7, C-1.

2010 and ***.[223] This decline would have been greater had the layoffs associated with Electrolux's plant closure in 2011 been included.[224]

Although apparent U.S. consumption increased *** percent between 2008 and 2010, domestic industry U.S. shipments declined *** percent during the period, from *** units in 2008 to *** units in 2009 and *** units in 2010.[225] Consequently, the domestic industry's share of apparent U.S. consumption declined from *** percent in 2008 to *** percent in 2009 and *** percent in 2010.[226] The industry's U.S. shipments were *** percent higher in January-September 2011, at *** units, than in January-September 2010, at *** units, but its market share remained *** depressed in January-September 2011, at *** percent, although up from *** percent in January-September 2010.[227]

Domestic industry end-of-period inventories increased *** percent between 2008 and 2010 in absolute terms and also increased as a share of production, U.S. shipments, and total shipments.[228] Although domestic industry end-of-period inventories were *** percent lower in January-September 2011 than in January-September, they remained *** elevated as a share of production, U.S. shipments, and total shipments.[229]

The domestic industry's net sales value was $*** in 2008 and 2009 but increased to $*** in 2010 and was $*** in January-September 2011, up from $*** in January-September 2010.[230] This positive trend was driven not by increased domestic industry shipments or higher domestic like product prices,[231]

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[223] CR/PR at Tables III-7, C-1. Hours worked declined from *** in 2008 to *** in 2009 but increased to *** in 2010. Id. at Table III-7. Hours worked were *** in January-September 2011, down from *** in January-September 2010. Id. Productivity in units per 1,000 hours was flat at *** units in 2008 and *** units in 2009 before declining to *** units in 2010. Id. It was *** units in January-September 2011, up from *** units in January-September 2010. Id.

[224] CR/PR at Table III-2.

[225] CR/PR at Table IV-3.

[226] CR/PR at Table IV-3.

[227] CR/PR at Table IV-3.

[228] CR/PR at Table III-6. Domestic industry end-of-period inventories increased from *** units in 2008 to *** units in 2009 and *** units in 2010. Id. Domestic industry end-of-period inventories as a share of production increased from *** percent in 2008 to *** percent in 2009 and *** percent in 2010. Id. Domestic industry end-of-period inventories as a share of U.S. shipments increased from *** percent in 2008 to *** percent in 2009 and *** percent in 2010. Id. Domestic industry end-of-period inventories as a share of total shipments increased from *** percent in 2008 to *** percent in 2009 and *** percent in 2010. Id.

[229] CR/PR at Table III-6. Domestic industry end-of-period inventories were *** units in January-September 2011, down from *** units in January-September 2010. Id. Domestic industry end-of-period inventories as a share of production were *** percent in January-September 2011, down from *** percent in January-September 2010. Id. Domestic industry end-of-period inventories as a share of U.S. shipments were *** percent in January-September 2011, down from *** percent in January-September 2010. Id. Domestic industry end-of-period inventories as a share of total shipments were *** percent in January-September 2011, down from *** percent in January-September 2010. Id.

[230] CR/PR at Table VI-1. The value of domestic industry U.S. shipments exhibited a similar trend, increasing from $*** in 2008 and 2009 to $*** in 2010. CR/PR at Table IV-3. The value of domestic industry U.S. shipments was $*** in January-September 2011, up *** from $*** in January-September 2010. Id.

[231] The domestic prices of three of the four pricing products for which data were reported declined between the first and last quarters for which data were reported. Between the first and last quarters for which pricing data are

(continued...)

however, but by a change in the product mix of domestic industry shipments toward higher value LRWs.[232] The share of the domestic industry's net sales quantity represented by lower value CTL LRWs declined from *** percent in 2008 to *** percent in 2009, *** percent in 2010, and *** percent in January-September 2011, down from *** percent in January-September 2010.[233]

The domestic industry suffered operating losses of $*** in 2008, equivalent to *** percent of net sales, $*** in 2009, equivalent to *** percent of net sales, and $*** in 2010, equivalent to *** percent of net sales.[234] The domestic industry's operating loss of $*** in January-September 2011, equivalent to *** percent of net sales, was up *** from its loss of $*** in January-September 2010, equivalent to *** percent of net sales.[235] The industry's greater loss in January-September 2011 primarily stemmed not from any increase in SG&A expenses,[236] as Samsung claims, but from a *** increase in the industry's ratio of COGS to net sales as unit raw material costs increased by more than the average unit value of net sales.[237]

We recognize that the domestic industry's capital and research and development expenditures remained substantial during the period examined.[238] Nevertheless, the increase in domestic industry capital expenditures in 2010 reflects Whirlpool's investment to move HEFL LRW production from Germany and Mexico to the United States, and this investment has not proven economical according to Whirlpool.[239]

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[231] (...continued)
available, the domestic prices of products 1A and 1B increased by *** and *** percent, respectively; the domestic prices of products 3A and 3B declined by *** and *** percent, respectively; the domestic prices of products 4A and 4B declined by *** and *** percent, respectively; and the domestic prices of products 5A and 5B declined by *** and *** percent, respectively. CR/PR at Table V-14.

[232] During the period examined, the average unit value of domestic industry net sales of CTL LRWs ranged from $*** to $***, the average unit value of domestic industry net sales of HETL LRWs ranged from $*** to $***, and the average unit value of domestic industry net sales of HEFL LRWs ranged from $*** to $***. CR/PR at Tables C-2-4.

[233] CR/PR at Tables C-1, 4.

[234] CR/PR at Table VI-1.

[235] CR/PR at Table VI-1.

[236] Samsung requested that the Commission inquire about possible deficiencies in Whirlpool's reporting of SG&A expenses. Samsung's Postconference Brief at 44.

[237] CR at VI-8; PR at VI-2; CR/PR at Tables VI-1, 3. The industry's ratio of SG&A to net sales was only *** of a percentage point higher in January-September 2011 than in January-September 2010, while the industry's ratio of cost of goods sold to net sales was *** percentage points higher. CR/PR at Table VI-1. We find no evidence that *** accounted for the domestic industry's increased operating losses in January-September 2011, as Samsung argues. Samsung's Postconference Brief at 39. ***. See CR/PR at Table VI-2.

[238] Domestic industry capital expenditures declined from $*** in 2008 to $*** in 2009 before increasing to $*** in 2010, and were $*** in January-September 2011, down from $*** in January-September 2010. CR at Table VI-5. Domestic industry R&D expenses increased from $*** in 2008 to $*** in 2009 and $*** in 2010. Id. They were $*** in January-September 2011, up from $*** in January-September 2010. Id.

[239] CR at VI-11; PR at VI-3; Conference Tr. at 34 (Bitzer). The domestic industry's return on investment improved from *** percent in 2008 to *** percent in 2008 but worsened to *** percent in 2010. CR/PR at Table VI-7.

For purposes of the preliminary phase of these investigations, we find that there is a causal nexus between subject imports and the weak and deteriorating condition of the domestic industry.[240] Subject imports captured significant market share from the domestic industry during the period examined, and low priced subject import competition had an adverse impact on the domestic industry. There also is some evidence that subject imports suppressed domestic like product prices.

We have considered whether there are other factors that may have had an adverse impact on the domestic industry during the period examined to ensure that we are not attributing injury from such other factors to the subject imports. The economic recession in 2009 cannot explain the domestic industry's weak performance during the period examined, given that apparent U.S. consumption increased *** percent between 2008 and 2010.[241] Although apparent U.S. consumption was *** percent lower in January-September 2011 than in January-September 2010, the domestic industry's U.S. shipments were *** percent higher.[242]

Nonsubject imports had a declining presence in the U.S. market during the period examined and declined as a share of apparent U.S. consumption from *** percent in 2008 to *** percent in 2009, and *** percent in 2010.[243] Nonsubject imports as a share of apparent U.S. consumption were *** percent in January-September 2011, down from *** percent in January-September 2010.[244] [245] In addition, a substantial share of nonsubject imports during the period consisted of Whirlpool's imports of HEFL LRWs from Germany, which will reportedly cease in the third quarter of 2012 pursuant to Whirlpool's decision to shift HEFL LRW production to the United States.[246]

In sum, based on the limited record in the preliminary phase of these investigations showing that subject import volume and market share increased significantly during the period examined, and low priced subject import competition adversely impacted the domestic industry, leading to significant

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[240] The evidence of record does not confirm Samsung's claim that the Energy Efficient Appliance Tax Credits that Whirlpool earned during the period examined are the functional equivalent of cash. See Samsung's Postconference Brief at 40-41. Instead, the evidence indicates that Whirlpool was unable to use the tax credits accrued during the period examined. CR at VI-11 & n.6; PR at VI-3 & n.6. We intend to investigate this issue in any final phase of the investigations.

We are unpersuaded by Samsung's argument that the domestic industry's operating losses stemmed from Whirlpool's "dismal" export performance. Samsung's Postconference Brief at 45. ***. CR/PR at VI-1 n.2.

[241] CR/PR at Table IV-3, C-1.

[242] CR/PR at Table IV-3, C-1.

[243] CR/PR at Table IV-3.

[244] CR/PR at Table IV-3.

[245] Based on the record evidence in the preliminary phase of these investigations, Commissioner Pinkert finds that nonsubject imports of LRWs were a significant, although relatively minor, factor in the U.S. market during the period under examination. It is unclear in his view, however, whether such imports were price-competitive -- no pricing data were collected on nonsubject imports -- and whether LRWs constitute a commodity product. Notwithstanding those threshold issues, Commissioner Pinkert finds that nonsubject imports would not have replaced the subject imports without benefit to the domestic industry had the subject imports exited the market during the period. The quantity and market share of nonsubject imports were well below the quantity and market share of subject imports and declined steadily throughout the period. CR/PR at Table IV-3. Moreover, there is little record information to support any notion that nonsubject imports could have increased sufficiently to replace the subject imports. CR at VII-13-16; PR at VII-9-11.

[246] CR at III-3, VII-13; PR at III-2, VII-9. The ratio of Whirlpool's nonsubject imports to total nonsubject imports was *** percent in 2008, *** percent in 2009, and *** percent in 2010. CR/PR at Tables III-5, IV-3. It was *** percent in January-September 2011, up from *** percent in January-September 2010. Id.

declines in key indicators of domestic industry performance, particularly in January-September 2011 relative to January-September 2010, we cannot conclude there is no clear and convincing evidence of no material injury.[247] Therefore, for purposes of the preliminary phase of these investigations, we conclude that subject imports had a significant adverse impact on the domestic industry.

CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports from Korea that are allegedly subsidized and sold at LTFV and by reason of subject imports from Mexico that are allegedly sold at LTFV.

[247] American Lamb Co., 785 F.2d at 1001.

DISSENTING VIEWS OF COMMISSIONER DANIEL R. PEARSON

I. INTRODUCTION

Based on the record in the preliminary phase of these investigations, I find that there is no reasonable indication that an industry in the United States is either materially injured or threatened with material injury by reason of imports of large residential washers (LRWs) from Korea and Mexico that are allegedly sold at LTFV and by reason of imports of LRWs that are allegedly subsidized by the Government of Korea.

I join the Commission's Views with respect to background, domestic like product, domestic industry, cumulation, legal standards, and conditions of competition. I write separately, however, with respect to my analysis of material injury and threat of material injury by reason of the subject imports.

II. AMERICAN LAMB NOTE

I preface my findings by noting that the Commission received largely complete responses from all segments of the market, both from domestic and subject foreign producers and from U.S. importers. All seven identified U.S. producers responded to the Commission's questionnaire (six of which were usable responses),[1] two of three identified Korean producers responded to the Commission's questionnaire (both providing usable responses),[2] and all four identified Mexican producers responded to the questionnaire (all with usable responses).[3] Of the 24 identified firms that were sent an importer questionnaire, 18 responded, with 9 replying that they did not import, and 8 of the other 9 providing usable responses; "virtually all" U.S. imports were accounted for by these importer responses.[4] The completeness of this record leads me to conclude that "no likelihood exists that contrary evidence will arise in a final investigation."[5]

III. ATTENUATED COMPETITION

As discussed in the Commission's Views on substitutability, there is attenuated competition between the three market segments defined by conventional top load (CTL) washers, high-efficiency front load (HEFL) washers, and high-efficiency top load (HETL) washers. I differ from the Commission

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[1] CR/PR at III-1. The questionnaire response of Electrolux was not a usable response.

[2] CR at VII-2 to -3, PR at VII-2. Daewoo, a Korean producer that has exported to the U.S. market, did not respond to the questionnaire. There has been, however, no indication of U.S. imports of Daewoo products during the period of investigation. Petitioner did not mention imports from Daewoo as having an impact on the domestic industry. See, e.g., Conf. Tr. at 18 (Mr. Bitzer) ("I will . . . describe the impact that imports from Samsung and LG are having on our financial performance . . . ."); at 27 ("we see some volume from Daewoo"); at 148 (Mr. Cunningham) ("This case is about Samsung and LG by Whirlpool's own statement.").

[3] CR at VII-5,PR at VII-3-4.

[4] CR/PR at IV-1 & n.1. When given the opportunity during the preliminary conference, petitioner did not raise specific objections to the use of the questionnaire data gathered by the Commission. Conf. Tr. at 47 (Mr. Greenwald) ("I think our view would be the questionnaire response data, to the extent that it is there, is the best source of what's going on.").

[5] American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

majority by determining that the degree of attenuated competition is significant enough to warrant disaggregating the LRW market into three separate market segments in order to analyze the various statutory factors necessary to determine whether a domestic industry is materially injured or threatened with material injury.

The first indicator of attenuated competition is on the supply side: over the period, the domestic industry was specialized in the CTL washer segment, with *** percent of its total U.S. LRW shipments devoted to CTL washers.[6] Competition in this market segment was further attenuated by the fact that there were ***.[7] Likewise, until October 2010, when Whirlpool began producing HEFL washers at its new facility in Ohio, there was little domestic production of HEFL washers; in 2010, *** percent of HEFL washers sold in the United States were imported, the *** majority from subject Korean and Mexican producers.[8] In the HETL washer market segment, we see the reverse trend: in 2009, *** percent of the HETL washers sold in the United States were produced by the domestic industry.[9]

The second indicator of attenuated competition is reflected in demand, which shows divergent trends in U.S. consumption for the various market segments. Changing consumer preferences are apparent from the plunging popularity of CTL washers, which fell steadily *** over the period.[10] Conversely, there has been robust growth in demand for HETL washers, which began the period as a niche product, but then ended with higher consumption, on a value basis, than the CTL washers.[11] In between are the HEFL washers, which initially increased in popularity (2008-2010), but then dropped *** in the interim period as consumers appeared to become more aware of purported problems with mold[12] and found the HETL washer a preferred high-efficiency alternative.[13] Different consumers with individual purchasing criteria will come to different conclusions about which of the three types of washers is best for them, but there are well-known attributes of the three types that distinguish them.[14] For instance, it is generally accepted that HEFL washers are the most expensive, that HETL are the next most expensive, and that CTL washers are the least expensive to purchase.[15] HEFL washers are known to

[6] CR/PR at Tables C-1 and C-4.

[7] CR/PR at Table C-4.

[8] CR/PR at Table C-2.

[9] CR/PR at Table C-3.

[10] CR/PR at Table C-4.

[11] CR/PR at Table C-3.

[12] CR at I-8 to I-9, PR at I-7.

[13] CR/PR at Table C-2. While it is true, as the majority states, that around 30 percent of consumers cross-shop HEFL and HETL models, petitioner stated that they see the market as moving "more . . . from conventional into top load HE." Conf. Tr. at 69 (Mr. Bitzer).

[14] Conf. Tr. at 126-27 (Mr. Dexter).

[15] CR at I-9 n.28, PR at I-8 n.28.

be the most effective at cleaning clothes,[16] whereas CTL washers can be harsh on fabrics and have operating costs that may offset their less expensive purchase price.[17]

IV. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM KOREA AND MEXICO

A. Volume of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(I) of the Tariff Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[18]

Volume–Entire Domestic Industry: The volume of U.S. shipments of cumulated subject imports of all LRWs increased steadily by *** percent over the three full years of the period, but was *** percent lower in interim 2011 than in interim 2010.[19] As a share of apparent U.S. consumption, cumulated subject imports steadily increased by *** percentage points over the three full years, but were *** percentage points lower in interim 2011 than in interim 2010.[20] As a ratio to U.S. production, cumulated subject import volumes increased by *** percentage points over the three full years, but were *** percentage points lower in interim 2011 than in interim 2010.[21]

While such volumes and market shares appear at first glance to be significant, an important caveat is that petitioner Whirlpool was itself responsible for *** imports, *** from Mexico. Whirlpool imported *** percent of subject imports from Mexico in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011. Whirlpool was ***.[22] While the Commission is instructed to take into account the "volume of imports of merchandise,"[23] typically without reference to the identity of the importer,[24] the Commission has discounted the significance of subject import volumes in certain circumstances when the domestic industry was importing a particular product for which it was only able

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[16] CR at I-8, PR at I-7.

[17] CR at I-11, PR at I-9.

[18] 19 U.S.C. § 1677(7)(C)(i).

[19] CR/PR at Table C-1. U.S. shipments of cumulated subject imports of all LRWs were *** units in 2008, *** units in 2009, *** units in 2010, and were *** in interim 2011, as compared to *** units in interim 2010.

[20] CR/PR at Table C-1. The market share held by subject imports of all LRWs in apparent U.S. consumption was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[21] CR/PR at Table IV-4. The ratio of cumulated subject imports to U.S. production was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared with *** percent in interim 2010.

[22] CR/PR at Table C-1 and Whirlpool importer questionnaire.

[23] 19 U.S.C. § 1677(7)(C)(I).

[24] Certain Lined Paper School Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final), USITC Pub. 3884 at 30 (Sept. 2006); Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand, Inv. Nos. 731-TA-1043-1045 (Final), USITC Pub. 3710 at 27 (Aug. 2004).

to supply a limited quantity.[25] I believe that such circumstances are present in this case and warrant discounting subject import volumes by that portion for which the domestic industry is responsible. To elaborate my position will require a discussion of the role of subject imports in what I see as three distinct market segments, with attenuated competition between them, within the single domestic like product definition.

Volume–Conventional Top Load (CTL): Despite the increasing popularity of high-efficiency washers, the CTL is still the most popular type of washer in the U.S. market, accounting for *** percent of U.S. apparent consumption of all LRWs in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010.[26] Within this segment of the market for washers, however, there are no subject imports and only an insignificant volume of non-subject imports.[27] Therefore, in the market segment in which the domestic industry was heavily specialized, there was no competition at all from subject imports.[28]

Volume–High-Efficiency Front Load (HEFL): Domestic production played a *** role in this segment of the U.S. washer market for most of the period, with total import shares (both subject and non-subject) increasing steadily, but slightly, over the full years of the period, from *** percent in 2008, to *** percent in 2009, and to *** percent in 2010, before declining to a *** percent share in interim 2011, as compared to the *** percent share in interim 2010.[29] Subject imports, a majority of total imports in the HEFL washer segment, steadily increased their market share in U.S. apparent consumption by *** percentage points over the three full years of the period, but were *** percentage points lower in interim 2011 than in interim 2010.[30] The volume, by quantity, of subject imports increased by *** percent over the three full years, but was *** percent lower in interim 2011 than in interim 2010.[31]

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[25] Outboard Engines from Japan, Inv. No. 731-TA-1069 (Final), USITC Pub. 3752 at 25-27 (Feb. 2005). The Commission found that the "increase in market share was concentrated in imports of four-stroke engines above 115 horsepower that were not produced in the United States until the end of the period of investigation." Id. at 25. Although U.S. producers did make four-stroke engines, they were "in only a limited number of horsepower models" and "Japanese producers had more extensive four-stroke engine offerings than the U.S. producers . . . ." Id. at 26.

[26] CR/PR at Tables C-1 and C-4.

[27] CR/PR at Table C-4.

[28] Although the share of CTL washers in total domestic production of LRWs fell steadily over the period, they constituted the majority of U.S. producers' U.S. shipments of LRWs in every period. U.S. producers' U.S. shipments of CTL washers, by quantity, were *** percent of total domestic LRW shipments in 2008, *** percent in 2009, *** percent in 2010, and were *** percent in interim 2011, as compared with *** percent in interim 2010. CR/PR at Tables C-1 and C-4. Respondents state that they are "completely absent from this market and have no intent on entering this market." Conf. Tr. at 142 (Mr. Klett). Respondents do make conventional washers in India. Conf. Tr. at 154 (Mr. Dexter).

[29] CR/PR at Table C-2.

[30] CR/PR at Table C-2. The market share of shipments of subject imports in the HEFL washer segment was *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010.

[31] CR/PR at Table C-2. The volume of cumulated shipments of subject imports was *** units in 2008, *** units in 2009, *** units in 2010, and was *** units in interim 2011, as compared with *** units in interim 2010.

Petitioner Whirlpool imported *** units from *** Mexico in 2008, *** units in 2009, *** units in 2010, and *** units in interim 2011, as compared to *** units in interim 2010.[32] Subject imports of HEFL washers controlled by the petitioner amounted to *** percent of total subject imports of HEFL washers in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010.[33] Petitioner Whirlpool was also responsible for *** non-subject imports of HEFL washers in each year of the period.[34]

The *** volume of domestic production of HEFL washers over the period was performed by ***;[35] the *** of production in the three full years was performed by Bosch, which has since closed its domestic production facilities;[36] *** annual production of HEFL washers never exceeded *** units and was less than *** percent of *** production for the three full years. Whirlpool only began significant domestic production of HEFL washers in the last quarter of 2010,[37] initiating production in its newly expanded facility in Clyde, Ohio, as part of its corporate strategy of eventually ending its imports of HEFL washers.[38] For most of the period, *** domestic firms produced HEFL washers in the United States: Bosch, which had apparently only begun its washer production line in 2007,[39] and ***. For the three full years, the total combined production of HEFL washers by these *** domestic producers was *** units, meeting *** percent of U.S. apparent consumption in this segment over this period.[40]

Such conditions within the U.S. market are directly comparable to the conditions found by the Commission in Outboard Engines from Japan. I now find, as the Commission did in Outboard Engines, that market factors mitigate the significance of the volume and market share of subject imports in this market segment over the period of investigation. The domestic industry, and other market participants, imported HEFL washers to meet the demands of the U.S. market that the domestic industry, until only very recently, was largely unable to meet.

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[32] CR/PR at table C-2 and Whirlpool's importer questionnaire.

[33] CR/PR at Table C-2 (calculated) and Whirlpool's importer questionnaire.

[34] Whirlpool's shipments of imports from Germany amounted to *** percent of all ;shipments of nonsubject HEFL imports in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010. LG Post-Conf. Br. at Exhibit 3; CR/PR at Table C-2 and Whirlpool's importer questionnaire.

[35] LG Post-Conf. Br. at Exhibit 3.

[36] CR at III-2 to -3, PR at III-2; CR at III-7, PR at III-3. Conf. Tr. at 26 and 45 (Mr. Bitzer). The quarterly volumes sold of *** HEFL washers can be found in CR/PR at Table V-9 (pricing product 3A).

[37] CR at III-3, PR at III-2; LG Post-Conf. Br. at Exhibit 3 (compare full-year 2010 figure with interim 2010 figure).

[38] CR at III-10, PR at III-4; Conf. Tr. at 20, 26, 32-33, and 64-65 (Mr. Bitzer). Although petitioner repeats the verb "repatriate" many times, it is not clear when HEFL washers were last produced domestically by *** in significant quantities. Petitioner stated that it had made front-load washers in the United States for 50 years. Conf. Tr. at 21 and 101 (Mr. Bitzer). It appears that HEFL production was first moved to Germany in 2001, and was later augmented by production capacity in Mexico. Conf. Tr. at 64-65 (Mr. Bitzer),

[39] Conf. Tr. at 45 (Mr. Bitzer).

[40] Based on domestic production capacity for HEFL washers of *** units in 2008, *** units in 2009, and *** units in 2010, the domestic industry could have met at most *** percent of apparent U.S. consumption over those three years. CR/PR at Table C-2. Some of the allocations of the production capacity appear to be generous toward the HEFL segment, i.e. ***, but this illustration suffices for the purposes of the preliminary phase.

Volume–High-Efficiency Top Load (HETL): In this market segment, which began the period as—*** segment, but which saw the most rapid growth, subject imports played a relatively minor role until the interim 2011 period. Although subject import shipment volumes increased by *** percent over the three full years of the period,[41] the share held by subject imports in U.S. consumption actually declined from *** percent in 2008 to *** percent in 2010.[42] Between the interim periods, subject import volumes in this market segment increased at an even more rapid pace, rising by *** percent and the market share of subject imports increased to *** percent in interim 2011, as compared to *** percent in interim 2010.[43] The growth observed in the volumes of subject imports of HETL washers began from what even the petitioner characterizes as a "low base."[44] To provide a sense of the small scale from which subject imports in this segment began, for the first two years of the period, 2008–09, subject import volumes of HETL washers totaled *** units, which constituted less than *** percent of all HETL washers consumed in the United States for those two years.[45] Responsible for much of the growth in subject import volumes in 2010 and interim 2011 was the success of new models of HETL washers introduced by both LG and Samsung late in the period.[46] I find that subject imports in the HETL market segment grew to become relatively significant in the interim 2011 period.[47] Nevertheless, as will be discussed in the price section, the significance of the increasing market share of subject import in this segment is mitigated by evidence showing that they entered at prices higher than those of the domestically produced HETL washers, and so their increasing market share was likely based on non-price factors.

Volume–Summary: To summarize my findings on volume, in the market segment with the highest volume of U.S. consumption and in which most U.S. producers' U.S. shipments are found—CTL washers—there were no subject imports, and only a minuscule amount of non-subject imports. In the market segment with the second highest volume of U.S. consumption and with the highest value of U.S. consumption—HEFL washers—the domestic industry's production was, until interim 2011, constrained to supplying *** of U.S. consumption, and members of the domestic industry were themselves responsible for a *** portion of subject imports, as well as non-subject imports. In similar cases in the past, the Commission has found the significance of such volumes of subject imports to have been mitigated. Because I believe that subject imports in the HEFL market segment were pulled into the United States by inadequate levels of domestic production, I do not find the volume these subject imports

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[41] CR/PR at Table C-3. Subject imports *** of HETL washers were *** units in 2008, *** units in 2009, *** units in 2010, and *** units in interim 2011, as compared to *** units in interim 2010.

[42] CR/PR at Table C-3. This was because U.S. consumption of HETL washers increased by *** percent over the same period. Id. The market share of subject imports of HETL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010.

[43] CR/PR at Table C-3.

[44] Conf. Tr. at 49 (Mr. Greenwald).

[45] CR/PR at Tables C-3. ***. LG Post-Conf. Br. at 7 & Exhibit 3.

[46] LG Post-Conf. Br. at 7 ("LG did not participate in this U.S. sector until 2010, and Samsung did not enter until 2011."), 11 ("In the category of HE Top Load, there were no subject imports in the market until 2010 (for LG) and 2011 (for Samsung)."); Conf. Tr. at 125 (Mr. Dexter) ("We [Samsung] did not begin selling HE top-load models here until May 2011 . . . ."); Conf. Tr. at 9 (Mr. Greenwald) ("it is true that Samsung and LG only recently began to market their own washers, their own high-efficiency top-load washers . . . ."); at 49 (Mr. Greenwald) ("Both Samsung and LG are late entrants.")

[47] CR/PR at Table C-3. The market share of subject imports in this segment increased from *** percent in full year 2010 to *** percent in interim 2011.

to be a significant factor in these investigations. Finally, in the market segment that was by far the smallest in 2008, but which grew rapidly enough to overtake U.S. consumption of CTL washers, at least by value, in interim 2011—HETL washers—subject imports kept pace with growing consumption, but their market share actually declined over the three full years and their market share did not exceed *** percent. In interim 2011, after the introduction into the U.S. market of new models by LG and Samsung, the market share held by subject imports did increase significantly. Nevertheless, as I will discuss further in the price and impact sections, subject imports of HETL washers were generally overselling domestically produced HETL washers, and were gaining their market share based on non-price factors.

B. Price Effects of Subject Imports

> Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[48]

Product-specific pricing data were gathered on five LRW products, and the Commission also asked for a narrower set of data to isolate prices for those model numbers that were the top sellers for each quarter; data for the top selling models are listed under the "B" sub-tables, while the "A" tables show the broader set of pricing data for that product.[49] The pricing product data only covered *** percent of U.S. producers' U.S. shipments, but *** percent of subject import shipments from Korea and *** percent of subject import shipments from Mexico.[50]

1. Pricing Product Comparisons

Following the pattern from the volume section, my discussion of the pricing products will be grouped by the market segment.

Pricing Products–Conventional Top Load: Because there were no subject imports of conventional top load washers, there were no pricing products that covered this market segment. This omission will also affect my discussion of price depression/suppression, as presented below.

Pricing Products–High-Efficiency Front Load (HEFL): Pricing products 1, 2, and 3 cover this market segment. For product 1A, there are *** quarters of comparison between subject imports and the U.S.-produced product, all showing overselling by subject imports.[51] For product 1B, there are *** quarters of comparison between subject imports and the U.S.-produced product, with *** of the *** comparisons showing overselling by subject imports.[52] ***.[53] For product 2 (both A & B), there are no

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[48] 19 U.S.C. § 1677(7)(C)(ii).

[49] CR at V-7, PR at V-4.

[50] CR at V-7, PR at V-4.

[51] CR/PR at Table V-5.

[52] CR/PR at Table V-6.

[53] Whirlpool domestic producer questionnaire.

comparisons because there is no domestic production of this pricing product.[54] For product 3 (both A & B), there are *** quarters of data from U.S., Korean, and Mexican producers, allowing for full comparisons between them all. As discussed above in the volume section, the domestic producer of pricing product 3 was ***,[55] and *** imports from Mexico for the three full years, and *** imports from Mexico in interim 2011, were imported by the petitioner Whirlpool. Whirlpool ***.[56] For pricing product 3A, although there was primarily underselling by subject imports from Korea, in *** of *** quarterly comparisons, and consistent underselling by subject imports from Mexico, in *** of *** quarterly comparisons, it is instructive to note that the prices of the subject imports from Mexico, *** entered by Whirlpool, were *** than those of the subject imports from Korea in *** of *** quarterly comparisons.[57] For pricing product 3B, although there was primarily underselling by subject imports from Korea, in *** of *** quarterly comparisons, and from Mexico, in *** of *** quarterly comparisons, I note that the prices of the subject imports from Mexico, almost all entered by Whirlpool, were *** than those of the subject imports from Korea in *** of *** quarterly comparisons.[58] It is an unusual case where the petitioner requests that the Commission include among its pricing products a product that *** and which it instead imported from *** at prices both *** those of the sole domestic producer, *** and *** those of other subject imports.[59]

Just before the record closed in this preliminary phase, significant issues were raised by respondents about whether some of the models identified by *** for inclusion in this pricing product actually met the definition set out by the Commission.[60] Marketing materials from *** regarding HEFL models included within pricing product 3 were provided to the Commission that indicated that several, and perhaps most, of them were larger than the 3.7 cubic feet maximum specified in the questionnaire instructions.[61] While petitioner responded that there are some systematic inconsistencies between capacity measurement methods,[62] these allegations lead me to conclude that the pricing comparisons show more underselling by subject imports than is likely the case; it also is likely that the volume of domestic

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[54] CR/PR at Tables V-7 and -8.

[55] Bosch domestic producer questionnaire. Pricing product 3A covers *** domestic production over the period. This is the *** made in the United States and *** over the period. As stated in the volume discussion, *** U.S. demand for HEFL washers. Bosch shut down its only U.S.-based factory in the second quarter of 2011.

[56] Whirlpool importer questionnaire, question ***.

[57] CR/PR at Table V-9. This is true for pricing product 2A/2B as well, in which case *** imports from Mexico were entered by Whirlpool. Whirlpool importer questionnaire, question III-2b. The Mexican prices are *** than the Korean prices in *** available quarterly comparisons. CR/PR at Tables V-7 and V-8.

[58] CR/PR at Table V-9. Note that in interim 2011, for both pricing products 3A and 3B, Mexican prices are *** than Korean prices in *** quarterly comparisons, which corresponds to the period in which subject imports from Mexico by Samsung are present. Samsung's imports from Mexico were priced higher than Whirlpool's imports from Mexico in 2 out of 3 quarters in 2011. See also Samsung Post-Conf. Br. at 28 and Exhibit 22.

[59] Petition at 168-70. Samsung Post-Conf. Br. at 28 ("We are mystified as to why Whirlpool would ask the staff to collect pricing data for HEFL washer models ***.")

[60] CR at V-7 n.1, PR at V-4 n.1. Letter to James Holbein from Counsel for LG, Jan. 27, 2011; Letter to James Holbein from Counsel for Samsung, Jan. 27, 2011.

[61] Letter to James Holbein from Counsel for Samsung, at Exhibit 1. ***. All of these model numbers are listed in *** questionnaire response for pricing product 3B (question IV-2).

[62] ***. CR at V-7 n.1, PR at V-4 n.1.

production within this pricing product is overstated.[63] I find, therefore, that the only pricing product for which there are indications of subject import underselling contains unreliable data, and thus I conclude that there was no significant underselling by subject imports of HEFL washers.

Pricing Products–High-Efficiency Top Load (HETL): Pricing products 4 and 5 cover this market segment. As discussed in the volume section above, subject imports were a *** of U.S. consumption of this HETL washers for most of the period, a fact reflected in the absence of subject import pricing comparisons for the *** quarters of the period.[64] For product 4A, there are *** quarters of price comparisons, the *** of the period, with *** of subject import overselling and *** in which prices are equal.[65] For product 4B, there are also *** quarters of price comparisons, also *** of the period, with *** of subject import overselling and *** of subject import underselling.[66] For products 5A and 5B, there are *** quarters of pricing comparisons for each product, *** of the period, and all with subject import overselling.[67] The evidence from these two pricing products indicates that there is no significant price underselling by subject imports in the HETL washer segment.[68]

Pricing Products–Summary: To summarize my conclusion on the pricing products, first, there is no pricing data on CTL washers because there are no subject imports in this market segment. Second, in the HEFL washer market segment, I find there to be *** subject import overselling in pricing product 1, with no available comparisons for pricing product 2, and serious data questions regarding pricing product 3, such that I find the pricing comparisons for product 3 to be not meaningful. Finally, within the HETL washer market segment, there is *** subject import overselling. Therefore, I find that there is no significant subject import underselling in any of the market segments, and thus no significant subject import underselling in the market for LRWs as a whole.

2. Price Depression and Suppression

Price Depression/Suppression–Conventional Top Load (CTL): In addressing price depression, it is important to recognize that the Commission did not collect any pricing product data on the CTL market segment. While it would have been unusual to collect pricing product data in a market segment that has no imports, it should be noted that the petitioner did argue that there was price depression in this market segment by virtue of "an undeniable cascading effect down the entire continuum of our product

[63] The obvious problem with including domestically produced washers with a larger capacity than specified is that they will typically be more expensive than the smaller washers that are properly within the specified range. Thus, this data problem could explain most, if not all, of the observed subject import underselling. Because all of the accused models are alleged to be larger than the specified range, the effect of excluding those (likely) more expensive models would be to reduce domestic prices within product 3, thus reducing or eliminating margins of underselling. An across-the-board price decrease of *** percent for all domestic prices in pricing products 3A/3B would eliminate the majority of quarterly comparisons that currently show subject import underselling.

[64] CR/PR at Tables V-11 to V-14.

[65] CR/PR at Table V-11.

[66] CR/PR at Table V-12.

[67] CR/PR at Tables V-13 and V-14.

[68] Comparing Korean import AUVs against those of domestically produced HETL washers confirms that subject import AUVs, although ***, were still *** than domestic AUVs throughout the period. CR/PR at Table C-3.

lineup."[69] AUV data for the CTL market segment shows that AUVs increased by *** percent over the three full years, but were *** percent lower in interim 2011 than in interim 2010. AUVs in this market segment ended the period at a higher level than in 2008.[70]

In addressing price suppression, the COGS-to-net-sales ratio for CTL washers declined irregularly by *** percentage points over the three full years, but was *** percentage points higher in interim 2011 than in interim 2010.[71] While the COGS-to-net-sales ratio did increase significantly in interim 2011, reversing a decline over the period of three full years, it is difficult to attribute any role in this to subject imports, as there were no subject imports in this market segment. A more likely cause for any cost-price squeeze in interim 2011 was continually declining consumer demand for products in the CTL washer segment.

Price Depression/Suppression–High-Efficiency Front Load (HEFL): In addressing price depression, I note that domestic pricing trends for the HEFL market segment present several difficulties. Pricing product 1 only has domestic prices for the last four quarters of the period; the price of product 1 fluctuated, but ended higher than the level at which it had started.[72] There are no domestic prices for product 2.[73] And, as mentioned above, there are serious issues with the data for domestic pricing product 3.[74] AUV data for the HEFL market segment shows that AUVs increased by *** percent over the three full years, and then increased by *** percent in interim 2011, as compared to interim 2010. AUVs in this segment were therefore higher in both 2010 and interim 2011 than they were in 2008.[75] Thus, I do not find evidence of price depression in the HEFL market segment.

In addressing price suppression in the HEFL market segment, I note that the COGS-to-net-sales ratio increased by *** percentage points over the three full years, but was *** percentage points lower in interim 2011 than in interim 2010.[76] While the COGS-to-net-sales ratio ended the period higher than where it began, this likely relates to the low unit volumes being produced domestically, which prevented economies of scale from being realized. The domestic producers whose prices and costs are being measured in the HEFL washers market segment were relatively small operations that were only able to service a small fraction of the U.S. consumption of HEFL washers, and *** these domestic producers, Bosch, had only begun producing HEFL washers the year prior to the beginning of the period of

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[69] Conf. Tr. at 37 (Mr. Bitzer).

[70] CR/PR at Table C-4. Domestic AUVs in the CTL washer market segment were *** in 2008, *** in 2009, *** in 2010, and *** in interim 2011, as compared to *** in interim 2010.

[71] CR/PR at Table C-4. The COGS-to-net-sales ratio for CTL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared with *** percent in interim 2010.

[72] CR/PR at Tables V-5 and -6 and Figure V-1.

[73] CR/PR at Tables V-7 and -8.

[74] CR/PR at Tables V-9 and -10 and Figure V-1. For the pricing data shown in the tables, prices in interim 2011 are unquestionably lower than they were in 2008, for both products 3A and 3B.

[75] CR/PR at Table C-2. Domestic AUVs in the HEFL washer segment were *** in 2008, *** in 2009, *** in 2010, and *** in interim 2011, as compared to *** in interim 2010.

[76] CR/PR at Table C-2. The COGS-to-net-sales ratio for HEFL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared with *** percent in interim 2010.

investigation, and was out of business by mid-2011.[77] It is also true that Whirlpool itself was responsible for the importation of *** subject imports of HEFL washers over the period.[78]

Price Depression/Suppression–High-Efficiency Top Load (HETL): In addressing price depression, domestic pricing trends for the HETL market segment show that, for product 4A/4B, prices increased gradually until they peaked in the ***, after which they began a steady decrease; there was no significant competition, however, from subject imports in this pricing product until the second quarter of 2011, which was after the bulk of the price decline had already occurred.[79] For pricing product 5A/5B, a declining trend in domestic prices began prior to the debut of subject imports in the second quarter of 2010 and continued until it reversed in interim 2011. Because *** of price comparisons show subject import overselling, there appears to be no causal linkage between subject imports and domestic price movements.[80] AUV data for the domestic HETL washer market segment shows that AUVs decreased by *** percent over the three full years, and were *** percent lower in interim 2011 than in interim 2010.[81]. Given that significant subject imports of HETL washers from LG did not begin until 2010 and subject imports from Samsung did not begin until 2011, and because these Korean imports typically oversold the domestically produced HETL washers,[82] I consider it unlikely that subject imports played a significant role in the decline in AUVs.[83]

In addressing price suppression, the COGS-to-net-sales ratio for HETL washers increased steadily by *** percentage points over the three full years, and was *** percentage points higher in interim 2011 than in interim 2010.[84] Most of the increase in the COGS-to-net-sales ratio occurred prior to when significant imports from LG began in 2010 and imports from Samsung began in 2011.

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[77] I acknowledge that, as domestic AUVs were *** over the period, the AUVs of cumulated subject imports (*** of which were being produced by the Mexican affiliate of Whirlpool) were ***. CR/PR at Table C-2. Nevertheless, subject import volumes and market share *** in interim 2011.

[78] Compare prices of subject imports from Korea to those from Mexico in products 2 and 3, *** which were imported by Whirlpool. CR/PR at Tables V-7 to V-10.

[79] CR/PR at Tables V-11 and -12 and Figure V-1. Further, *** of the *** quarterly comparisons available in products 4A/4B between domestically produced products and subject imports show no evidence subject import underselling. In the *** of subject import underselling for product 4B, in the final quarter of the period, the margin is ***. CR/PR at Tables V-11 and -12.

[80] CR/PR at Table V-13 and -14 and Figure V-1.

[81] CR/PR at Table C-3. Domestic AUVs in the HETL washer segment were *** in 2008, *** in 2009, *** in 2010, and were *** in interim 2011, as compared to *** in interim 2010. This also provides an indication that values began decreasing in the HETL segment prior to the entrance of significant subject imports in mid-2010.

[82] Further evidence regarding the relative values of the domestically produced HETL washers and their subject import competition is provided by AUV data on cumulated subject imports (***). Subject import AUVs were significantly higher than domestic AUVs in every period. Subject import AUVs were $*** higher than domestic AUVs in 2008, $*** higher in 2009, $*** higher in 2010, and were $*** higher in interim 2011, as compared to $*** higher in interim 2010. CR/PR at Table C-3.

[83] Respondents argue that the domestic industry discounted its HETL washers to drive business to this fast growing segment and away from CTL washers. Samsung Post-Conf. Br. at 1; LG Post-Conf. Br. at 12. Petitioner admitted that they see the market as moving "more . . . from conventional into top load HE." Conf. Tr. at 69 (Mr. Bitzer).

[84] CR/PR at Table C-3. The COGS-to-net-sales ratio for HETL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared with *** percent in interim 2010.

Price Depression/Suppression–Summary: To summarize my findings on price depression, I find no credible evidence that there were any price declines at all, much less by reason of subject imports, in either the CTL or HEFL market segments. Further, although there appears to have been some price declines in the HETL market segment, I find no causal connection between subject imports and such price declines because the data for pricing products 4 and 5, as well as AUV comparisons, show that the price declines began well before subject imports began to enter in significant volumes and that subject imports have generally oversold the domestically produced washers in the HETL segment. Therefore, I find no price depression induced by subject imports in any of the three market segments.

Summarizing my findings on price suppression, I observe that the COGS-to-net-sales ratios in all three segments were higher in interim 2011 than they were in 2008. Nevertheless, I find that the role of subject imports in these increases was negligible. In the case of the CTL washer market segment, this is because there were no subject imports; in the case of the HEFL washer market segment, this is due to the fact that the data comes *** from a domestic producer that went out of business during the period and because the subject imports were, ***, entered by members of the domestic industry; and, finally, in the case of the HETL washer market segment, the role of subject imports is negligible because they did not begin to enter in significant quantities until the latter part of 2010 and were overselling the domestically produced HETL washers.

3. Lost Sales and Lost Revenue

Petitioner Whirlpool makes *** lost sales allegations. Petitioner states that it was able to quantify *** that it claims to have lost to ***. Whirlpool states that it lost a ***.[85] Although *** agrees that *** won these *** contracts, and that Whirlpool had bid on, but did not win, these contracts, *** points out that for the ***.[86] ***.[87] With respect to the other *** lost sales allegations, ***, Whirlpool could not offer ***.[88] There were ***.[89] There were also *** lost revenue allegations for which Whirlpool ***.[90] There were ***.[91]

C. Impact of Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[92] These factors include output, sales, inventories, capacity utilization, market

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[85] CR at V-32, PR at V-6; CR/PR at Table V-17. ***.

[86] CR/PR at Table V-17.

[87] CR/PR at Table V-17.

[88] CR at V-32, PR at V-6.

[89] CR/PR at Table V-17.

[90] CR at V-38, PR at V-6.

[91] CR/PR at Table V-18.

[92] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing (continued...)

share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[93]

Impact–Entire Domestic Industry: U.S. producers' production quantity of all LRWs increased irregularly by *** percent over the three full years, but was *** percent lower in interim 2011 than it was in interim 2010.[94] U.S. producers' commercial shipments of all LRWs declined irregularly by *** percent over the three full years of the period, but were *** percent higher in interim 2011 than in interim 2010.[95] Capacity utilization for all LRWs increased irregularly by *** percentage points over the three full years, but was *** percentage points lower in interim 2011, as compared with interim 2010.[96] The market share held by the domestic industry, by quantity, within apparent U.S. consumption of all LRWs declined by *** percentage points over the three full years, but was *** percentage points higher in interim 2011 than in interim 2010.[97] Measures of the domestic industry's overall output were mixed and showed differing trends between the three full years and the interim periods. Capacity utilization was lower in interim 2011 in part because of a reduction in production, but also because of an increase in production capacity over this same period.

The number of production workers producing all LRW washers increased irregularly by *** percent over the three full years but was *** percent lower in interim 2011 than in interim 2010.[98] Total wages paid to production workers producing all LRW washers increased irregularly by *** percent over the three full years, but declined by *** percent in interim 2011, as compared to interim 2010.[99] Labor productivity of the domestic industry producing all LRWs declined by *** percent over the three full

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[92](...continued)
difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.") SAA at 885.

[93]19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[94] CR/PR at Table C-1. Production quantity of all LRWs was *** units in 2008, *** units in 2009, and *** units in 2010; production quantity of all LRWs was *** units in interim 2011, as compared to *** units in interim 2010.

[95] CR/PR at Table C-1. U.S. producers' U.S. shipments of all LRWs were *** units in 2008, *** units in 2009, and *** units in 2010; U.S. producers' U.S. shipments of all LRWs were *** units in interim 2011, as compared with *** units in interim 2010.

[96] CR/PR at Table C-1. Capacity utilization for all LRWs was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared with *** percent in interim 2010.

[97] CR/PR at Table C-1. The market share held by the domestic industry making all LRWs in U.S. consumption was *** percent in 2008, *** percent in 2009, and *** percent in 2010; the market share of the domestic industry was *** percent in interim 2011, as compared to *** percent in interim 2010.

[98] CR/PR at Table C-1. The number of production workers producing all LRWs was *** in 2008, *** in 2009, and *** in 2010; the number of production workers producing all LRWs was *** in interim 2011, as compared with *** in interim 2010.

[99] CR/PR at Table C-1. Total wages paid to production workers producing all LRWs were $*** in 2008, $*** in 2009, and $*** in 2010; total wages paid to production workers were $*** in interim 2011, as compared to $*** in interim 2010.

years, but increased by *** percent in interim 2011, as compared to interim 2010.[100] Thus, while production workers were reduced in interim 2011, this had the effect of improving labor productivity in interim 2011.

U.S. producers' net sales of all LRWs, by value, increased irregularly by *** percent over the three full years and were *** percent higher in interim 2011 than in interim 2010.[101] Gross profit on the production of all LRWs increased by *** percent over the three full years, but was *** percent lower in interim 2011 than in interim 2010.[102] The ratio of operating income to net sales for all LRWs was ***, and while it improved by *** percentage points over the three full years, it then worsened by *** percentage points in interim 2011, as compared to interim 2010.[103] The return on investment in the domestic industry producing all LRWs improved by *** percentage points, but remained *** throughout the period.[104] Capital expenditures for the domestic industry producing all LRWs increased over the three full years by *** percent, but these expenditures declined by *** percent in interim 2011, as compared to interim 2010.[105] Research and development spending by the domestic industry producing all LRWs increased steadily by *** percent over the three full years and increased by *** percent in interim 2011, as compared to interim 2010.[106] The financial performance of the domestic industry producing all LRWs showed marked improvement over the three full years, but then experienced a decline in profitability and other measures in interim 2011.

To summarize, I find that the domestic industry producing all LRWs showed generally positive trends in output, employment, and financial performance over the three full years, but that these measures showed some erosion in interim 2011. In order to determine the role of subject import in these trends, it is necessary to review disaggregated trends in the three market segments within the LRW market and to analyze the role of subject imports therein.

Impact–Conventional Top Load (CTL): U.S. firms' production quantity of CTL washers declined steadily by *** percent over the three full years and were *** percent lower in interim 2011 than

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[100] CR/PR at Table C-1. Productivity per 1,000 hours of labor by the domestic industry was *** units in 2008, *** units in 2009, and *** units in 2010. Labor productivity was *** units in interim 2011, as compared to *** units in interim 2010.

[101] CR/PR at Table C-1. Net sales of all LRWs by the domestic industry were $*** in 2008, $*** in 2009, and $*** in 2010; net sales of all LRWs were $*** in interim 2011, as compared with $*** in interim 2010.

[102] CR/PR at Table C-1. Gross profit on the domestic industry's sales of all LRWs was $*** in 2008, $*** in 2009, and $*** in 2010; gross profit for all LRWs was $*** in interim 2011, as compared with $*** in interim 2010.

[103] CR/PR at Table C-1. The ratio of operating income to net sales for all LRWs was *** percent in 2008, *** percent in 2009, and *** percent in 2010; the ratio was *** percent in interim 2011, as compared with *** percent in interim 2010.

[104] CR/PR at Table VI-7. The return on investment on all LRWs was *** percent in 2008, *** percent in 2009, and *** percent in 2010.

[105] CR/PR at Table C-1. Capital expenditures of the domestic industry producing all LRWs were $*** in 2008, $*** in 2009, and $*** in 2010. Capital expenditures were $*** in interim 2011, as compared to $*** in interim 2010.

[106] CR/PR at Table VI-5. R&D expenses for the domestic industry producing all LRWs were $*** in 2008, $*** in 2009, and $*** in 2010; R&D expenses were $*** in interim 2011, as compared to $*** in interim 2010.

they were in interim 2010.[107] U.S. producers' commercial shipments of CTL washers declined steadily by *** percent over the three full years of the period and were *** percent lower in interim 2011 than they were in interim 2010.[108] Capacity utilization for the production of CTL washers declined irregularly by *** percentage points over the three full years, and was *** percentage points lower in interim 2011 than in interim 2010.[109] The introduction of a very small volume of non-subject CTL imports caused the market share of the domestic industry producing CTL washers to decline by *** percentage points over the three full years, and to decline by *** percentage points in interim 2011, as compared to interim 2010.[110] Measures of the domestic industry's CTL output show that despite the fact that it consistently held *** market share, and faced no competition from subject imports, collapsing demand in this market segment caused a steady *** decline in production and capacity utilization.

The number of production workers in the CTL market segment declined irregularly by *** percent over the three full years and was *** percent lower in interim 2011 than in interim 2010.[111] Total wages paid to production workers producing CTL washers declined irregularly by *** percent over the three full years and declined by *** percent in interim 2011, as compared to interim 2010.[112] Labor productivity in the CTL market segment declined steadily by *** percent over the three full years, but increased by *** percent in interim 2011, as compared to interim 2010.[113] Despite shedding workers during the three full years, the downsizing in the CTL market segment could not keep pace with the segment's falling demand and production, resulting in declining productivity, but steeper declines in employment between the interim periods did result in some labor productivity improvement.

U.S. producers' net sales of CTL washers, by value, declined steadily by *** percent over the three full years and were *** percent lower in interim 2011 than they were in interim 2010.[114] Gross profit on the production of CTL washers increased by *** percent over the three full years, but was ***

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[107] CR/PR at Table C-4. Production quantity of CTL washers was *** units in 2008, *** units in 2009, and *** units in 2010; production quantity was *** units in interim 2011, compared to *** units in interim 2010.

[108] CR/PR at Table C-4. U.S. producers' U.S. shipments of CTL washers were *** units in 2008, *** units in 2009, and *** units in 2010; U.S. producers' U.S. shipments were *** units in interim 2011, as compared with *** units in interim 2010.

[109] CR/PR at Table C-4. Capacity utilization for CTL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[110] CR/PR at Table C-4. The market share held by the domestic industry producing CTL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[111] CR/PR at Table C-4. The number of production workers producing CTL washers was *** in 2008, *** in 2009, and *** in 2010; the number of production workers was *** in interim 2011, as compared to *** in interim 2010.

[112] CR/PR at Table C-4. Total wages paid to production workers in the CTL washer segment were $*** in 2008, $*** in 2009, $*** in 2010, and were $*** in interim 2011, as compared to $*** in interim 2010.

[113] CR/PR at Table C-4. Productivity per 1,000 hours of labor in the CTL segment was *** units in 2008, *** units in 2009, and *** units in 2010; labor productivity was *** units in interim 2011, as compared to *** units in interim 2010.

[114] CR/PR at Table C-4. Net sales of CTL washers by the domestic industry were $*** in 2008, $*** in 2009, and $*** in 2010; net sales were $*** in interim 2011, as compared with $*** in interim 2010.

percent lower in interim 2011 than in interim 2010.[115] The ratio of operating income to net sales for CTL washers, while *** throughout the period, improved by *** percentage points over the three full years, but declined by *** percentage points in interim 2011, as compared to interim 2010.[116] Capital expenditures in the CTL washer segment increased by *** percent over the three full years, but then declined by *** percent in interim 2011, as compared to interim 2010.[117] Despite declining net sales, the domestic industry producing CTL washers did manage to improve its financial performance over the three full years, but then witnessed a significant decline in interim 2011. Most notable is the $*** decline in gross profits between the interim periods; this collapse in gross profits explains most, if not all, of the $*** decline in gross profit between the interim periods by the domestic industry producing all LRWs.[118] This is crucial in my analysis because this decline in profitability in interim 2011 occurs in a market segment that sees no competition from subject imports.

Impact–High-Efficiency Front Load (HEFL): U.S. manufacturers' production quantity of HEFL washers increased irregularly by *** percent over the three full years and were *** percent higher in interim 2011 than they were in interim 2010.[119] U.S. producers' commercial shipments of HEFL washers increased irregularly by *** percent over the three full years of the period and were *** percent higher in interim 2011 than they were in interim 2010.[120] Capacity utilization for the production of HEFL washers increased irregularly by *** percentage points over the three full years, and was *** percentage points higher in interim 2011 than in interim 2010.[121] The market share of the domestic industry producing HEFL washers declined steadily by *** percentage points over the three full years, and was higher by *** percentage points in interim 2011, as compared to interim 2010.[122] Measures of the domestic industry's HEFL output show that despite *** capacity utilization, the domestic industry generally improved its position over the period.

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[115] CR/PR at Table C-4. Gross profit on the production of CTL washers was $*** in 2008, $*** in 2009, and $*** in 2010; gross profit on CTL washers was $*** in interim 2011, as compared with $*** in interim 2010.

[116] CR/PR at Table C-4. The ratio of operating income to net sales for CTL washers was *** percent in 2008, *** percent in 2009, and *** percent in 2010; the ratio was *** percent in interim 2011, as compared to *** percent in interim 2010.

[117] CR/PR at Table C-4. Capital expenditures in the CTL washer segment were $*** in 2008, $*** in 2009, and $*** in 2010; capital expenditures were $*** in interim 2011, as compared to $*** in interim 2010.

[118] CR/PR at Table C-1.

[119] CR/PR at Table C-2. Production quantity of HEFL washers was *** units in 2008, *** units in 2009, and *** units in 2010; production quantity was *** units in interim 2011, compared to *** units in interim 2010.

[120] CR/PR at Table C-2. U.S. producers' U.S. shipments of HEFL washers were *** units in 2008, *** units in 2009, and *** units in 2010; U.S. producers' U.S. shipments were *** units in interim 2011, as compared with *** units in interim 2010.

[121] CR/PR at Table C-2. Capacity utilization for HEFL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[122] CR/PR at Table C-2. The market share held by the domestic industry producing HEFL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

The number of production workers in the HEFL market segment increased irregularly by *** percent over the three full years and was *** percent higher in interim 2011 than in interim 2010.[123] Total wages paid to production workers producing HEFL washers increased irregularly by *** percent over the three full years and was *** percent higher in interim 2011, as compared to interim 2010.[124] Labor productivity in the HEFL market segment declined irregularly by *** percent over the three full years, but was *** percent higher in interim 2011, as compared to interim 2010.[125] Workers added in 2010 outpaced production growth, but steeper increases in production between the interim periods, likely the result of Whirlpool's new facility, did result in significant labor productivity improvement.

U.S. producers' net sales of HEFL washers, by value, increased irregularly by *** percent over the three full years and were *** percent higher in interim 2011 than they were in interim 2010.[126] Gross profit on the production of HEFL washers went from *** over the three full years, and was *** percent lower in interim 2011 than in interim 2010.[127] The ratio of operating income to net sales for the domestic industry producing HEFL washers, *** throughout the period, declined by *** percentage points over the three full years, but was *** percentage points higher in interim 2011 than in interim 2010.[128] Capital expenditures in the HEFL washer segment increased by *** percent over the three full years, but then declined by *** percent in interim 2011, as compared to interim 2010.[129] Despite increasing commercial shipments and flat net sales over the three full years, the financial performance of the domestic industry producing HEFL washers worsened considerably, but then improved somewhat in interim 2011, but remained ***. Although the domestic industry's net sales in this segment were *** in 2008 and 2010, *** increases were observed in total wages, COGS, and SG&A expenses (all increasing by more than *** percent) over the period of three full years, eroding operating income.

During the period of the three full years, *** domestic producer in the HEFL market segment was Bosch (or BSH), a *** producer that was unable to produce at an economically efficient scale,[130] and so went out of business during interim 2011. Because domestic producers of HEFL washers were barely able to meet *** percent of the U.S. consumption of HEFL washers during the three full years of the

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[123] CR/PR at Table C-2. The number of production workers producing HEFL washers was *** in 2008, *** in 2009, and *** in 2010; the number of production workers was *** in interim 2011, as compared to *** in interim 2010.

[124] CR/PR at Table C-2. Total wages paid to production workers in the HEFL market segment were $*** in 2008, $*** in 2009, $*** in 2010, and were $*** in interim 2011, as compared to $*** in interim 2010.

[125] CR/PR at Table C-2. Productivity per 1,000 hours of labor in the HEFL segment was *** units in 2008, *** units in 2009, and *** units in 2010; labor productivity was *** units in interim 2011, as compared to *** units in interim 2010.

[126] CR/PR at Table C-2. Net sales of HEFL washers by the domestic industry were $*** in 2008, $*** in 2009, and $*** in 2010; net sales were $*** in interim 2011, as compared with $*** in interim 2010.

[127] CR/PR at Table C-2. Gross profit on the production of HEFL washers was *** in 2008, *** in 2009, and *** in 2010; gross profit was *** in interim 2011, as compared with *** in interim 2010.

[128] CR/PR at Table C-2. The ratio of operating income to net sales for HEFL washers was *** percent in 2008, *** percent in 2009, and *** percent in 2010; the ratio was *** percent in interim 2011, as compared to *** percent in interim 2010.

[129] CR/PR at Table C-2. Capital expenditures in the HEFL washer segment were $*** in 2008, $*** in 2009, and $*** in 2010; capital expenditures were $*** in interim 2011, as compared to $*** in interim 2010.

[130] CR/PR at Table VI-2. Bosch's operating margin was *** percent in 2008, *** percent in 2009, *** percent in 2010, *** percent in interim 2011, as compared to *** percent in interim 2010.

period (i.e. prior to the start-up of Whirlpool's new Ohio factory), this has meant that imports (both subject and non-subject) were necessarily pulled into the U.S. market and the petitioner was a *** participant in the importation of subject merchandise. But, based on the domestic industry's not unfavorable trends in its U.S. shipments data, its market share, its AUVs, and its net sales over the three full years, I am not able to attribute the domestic industry's *** decline in profitability to subject imports.

Impact–High-Efficiency Top Load (HETL): U.S. manufacturers' production quantity of HETL washers increased steadily by *** percent over the three full years and were *** percent higher in interim 2011 than in interim 2010.[131] U.S. producers' commercial shipments of HETL washers increased steadily by *** percent over the three full years of the period and were *** percent higher in interim 2011 than they were in interim 2010.[132] Capacity utilization for the production of HETL washers increased irregularly by *** percentage points over the three full years, but was *** percentage points lower in interim 2011 than in interim 2010 (due primarily to a *** percent increase in production capacity between the interim periods).[133] The market share of the domestic industry producing HETL washers declined irregularly by *** percentage points over the three full years and was *** percentage points lower in interim 2011, as compared to interim 2010.[134] Measures of the domestic industry's HETL output show that despite losing some market share to subject imports (***) in interim 2011, the domestic industry was increasing production at a rapid pace over the period to meet skyrocketing consumer demand. It must also be remembered that the market share of subject imports started from "a low base," a point conceded by petitioner,[135] and the increased sales of subject imports were obtained through the introduction of new models late in the period by both LG and Samsung.[136] As shown by pricing products 4 and 5, these new models *** oversold comparable offerings by domestic producers.

The number of production workers in the HETL market segment increased steadily by *** percent over the three full years and was *** percent higher in interim 2011 than in interim 2010.[137] Total wages paid to production workers producing HETL washers increased steadily by *** percent over the

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[131] CR/PR at Table C-3. Production quantity of HETL washers was *** units in 2008, *** units in 2009, and *** units in 2010; production quantity was *** units in interim 2011, compared to *** units in interim 2010.

[132] CR/PR at Table C-2. U.S. producers' U.S. shipments of HETL washers were *** units in 2008, *** units in 2009, and *** units in 2010; U.S. producers' U.S. shipments were *** units in interim 2011, as compared with *** units in interim 2010.

[133] CR/PR at Table C-2. Capacity utilization for HETL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[134] CR/PR at Table C-3. The market share held by the domestic industry producing HETL washers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[135] Conf. Tr. at 49 (Mr. Greenwald).

[136] Conf. Tr. at 124-25 (Mr. Dexter) ("Samsung and LG entered the front-load market with more innovative feature sets. These features included vibration reduction technology and steam as well as improved styling and design, including colors and chrome accents. Samsung and LG also provided significant improvements in quality and durability. These advantages allowed us to charge higher prices than our competitors while still gaining market share.")

[137] CR/PR at Table C-3. The number of production workers producing HETL washers was *** in 2008, *** in 2009, and *** in 2010; the number of production workers was *** in interim 2011, as compared to *** in interim 2010.

three full years and was *** percent higher in interim 2011, as compared to interim 2010.[138] Labor productivity in the HETL market segment increased steadily by *** percent over the three full years, but was *** percent lower in interim 2011, as compared to interim 2010.[139] With both the output and the number of workers growing rapidly throughout the period, the growth in the amount labor used in interim 2011 outpaced production growth, but productivity in interim 2011 was still much higher than in 2008.

U.S. producers' net sales of HETL washers, by value, increased steadily by *** percent over the three full years and were *** percent higher in interim 2011 than they were in interim 2010.[140] Gross profit on the production of HETL washers increased steadily by *** percent over the three full years, and was *** percent higher in interim 2011 than in interim 2010.[141] The ratio of operating income to net sales for HETL washers, *** throughout the period, declined by *** percentage points over the three full years, and was *** percentage points lower in interim 2011, as compared to interim 2010.[142] Capital expenditures in the HETL washer segment increased irregularly by *** percent over the three full years, but then declined by *** percent in interim 2011, as compared to interim 2010.[143]

Impact–Summary: To summarize my views on the impact of subject imports in the three market segments, I point first to the difficulties that the domestic industry is facing in the segment where it has been, and continues to be, dominant, the CTL washer segment. Losses in this segment, especially the $*** decline in gross profit over the interim periods, largely drove the domestic industry's overall results over the same interim periods. The absence of subject import competition in the market segment that is driving the losses of the domestic industry as a whole, in other words the absence of causality that can be tied to subject imports, forms the foundation of my negative determination in this case. In the HEFL segment, no adverse impact of subject imports can be seen in the domestic industry's market share, its U.S. shipments data, its AUVs, or its net sales; nevertheless, the domestic industry's fortunes collapsed over the three full years, prior to the advent of Whirlpool's domestic production of HEFL washers. I instead attribute this largely to the misfortunes of Bosch, which was not producing at an economically efficient level of production, and which exited the market in interim 2011. In the HETL segment, while the domestic industry had a steady downward trend in its operating margin, the causal link to subject imports was made tenuous by the fact that subject imports, largely absent from this U.S. market segment in 2008 and 2009, did not show up in any significant quantities until late 2010 and interim 2011. There is also evidence (both in the pricing products 4 and 5 and in the AUV data) that the subject imports significantly oversold the domestically produced HETL washers.

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[138] CR/PR at Table C-3. Total wages paid to production workers in the HETL market segment were $*** in 2008, $*** in 2009, $*** in 2010, and were $*** in interim 2011, as compared to $*** in interim 2010.

[139] CR/PR at Table C-3. Productivity per 1,000 hours of labor in the HETL segment was *** units in 2008, *** units in 2009, and *** units in 2010; labor productivity was *** units in interim 2011, as compared to *** units in interim 2010.

[140] CR/PR at Table C-3. Net sales of HETL washers by the domestic industry were $*** in 2008, $*** in 2009, and $*** in 2010; net sales were $*** in interim 2011, as compared with $*** in interim 2010.

[141] CR/PR at Table C-3. Gross profit on the production of HETL washers was $*** in 2008, $*** in 2009, and $*** in 2010; gross profit was $*** in interim 2011, as compared with $*** in interim 2010.

[142] CR/PR at Table C-3. The ratio of operating income to net sales for HETL washers was *** percent in 2008, *** percent in 2009, and *** percent in 2010; the ratio was *** percent in interim 2011, as compared to *** percent in interim 2010.

[143] CR/PR at Table C-3. Capital expenditures in the HETL washer segment were $*** in 2008, $*** in 2009, and $*** in 2010; capital expenditures were $*** in interim 2011, as compared to $*** in interim 2010.

D. Conclusion on Material Injury

In light of the foregoing, I find that subject imports are not having a significant adverse impact on the domestic industry. Accordingly, I determine that an industry in the United States is not materially injured by reason of subject imports from Korea and Mexico.

V. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM KOREA AND MEXICO[144] [145]

Section 771(7)(F) of the Tariff Act[146] directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted . . . ."[147] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making the determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued. In making my determination, I have considered all statutory factors that are relevant to these investigations.[148] For the reasons discussed below, I determine that the domestic industry is not threatened with material injury by reason of cumulated subject imports.[149]

A. No Significant Rate of Increase of the Volume or Market Penetration of Subject Imports

Rate of Increase–Entire Domestic Industry: The volume of U.S. shipments of cumulated subject imports of all LRWs increased steadily by *** percent over the three full years of the period, but

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[144] Based on an evaluation of the relevant criteria, as well as the majority's analysis supporting cumulation in the context of assessing present material injury, I exercise my discretion to cumulate imports from Korea and Mexico for purposes of assessing threat of material injury. 19 U.S.C. § 1677(7)(H).

[145] The U.S. Department of Commerce announced in the Federal Register that the following countervailable subsidies have been alleged as being provided to producers of LRWs in Korea: (1) Daewoo Restructuring; (2) GOK Facilities Investment Support; (3) Tax Reduction for Research and Manpower Development; (4) GOK Targeted Green "Stimulus" Subsidies; (5) Korea Trade Insurance Corporation; (6) Korea Export-Import Bank; (7) Korea Development Bank and IBK Short-Term Discounted Loans for Export Receivables; (8) GOK 21st Century Frontier and Other R&D Programs; (9) Gwangju Metropolitan City Production Facilities Subsidies; and (10) GOK Supplier Support Fund Tax Deduction. CR at I-5-6, PR at I-4-5.

[146] 19 U.S.C. § 1677(7)(F).

[147] 19 U.S.C. § 1677(7)(F)(ii).

[148] 19 U.S.C. § 1677(7)(F)(i).

[149] I do not find the domestic industry to be vulnerable. In two of the three market segments within the market for all LRWs, CTL and HETL washers, the domestic industry has, or at least had during the period of investigation, a U.S. market share in excess of *** percent. In the third segment, HEFL, the *** U.S. producer recently inaugurated production in what they term to be "the largest and most efficient washer factory in the world." Conf. Tr. at 41 (Mr. Bitzer).

was *** percent lower in interim 2011 than in interim 2010.[150] As a share of apparent U.S. consumption, cumulated subject imports steadily increased by *** percentage points over the three full years, but were *** percentage points lower in interim 2011 than in interim 2010.[151]

Therefore, at the aggregate level for all LRWs, the data show a slowdown in subject imports in the interim 2011 period, both in terms of volume and market share. A significant cause of this slowdown late in the period is the activity of the petitioner, Whirlpool, who was itself responsible for a *** share of subject imports from Mexico. Petitioner admitted that "much of the apparent drop [in subject imports] is in fact simply Whirlpool relocating production to the United States."[152] Given that this relocation of production is part of a long-term corporate strategy, accompanied by the investment of more than $100 million, this reduction in subject import volumes is likely to be ongoing.[153] I therefore find no likelihood of substantially increased subject import volumes in the imminent future in the market for all LRWs.

Rate of Increase–Conventional Top Load (CTL): Within this market segment for washers, there were no subject imports and only an insignificant volume of non-subject imports.[154] Respondents testified that they do not intend to enter this market segment.[155] There is no threat of increased volumes of subject imports in this segment.

Rate of Increase–High-Efficiency Front Load (HEFL): The market share of subject imports in this segment increased steadily over the three full years of the period, from *** percent in 2008, to *** percent in 2009, and to *** percent in 2010, before declining to a *** percent share in interim 2011, as compared to the *** percent share in interim 2010.[156] Because this market segment had, by far, the highest volume of subject imports, import trends here will dominate. As mentioned above, petitioner has admitted that its own relocation of production to the United States has had the effect of reducing subject import volumes,[157] and this is the market segment in which *** petitioner's imports were found. Whirlpool's shipments of subject imports, which amounted to *** percent of total shipments of subject imports of HEFL washers in 2008, declined by *** percent over the three full years, and were *** percent lower in interim 2011 than in interim 2010.[158] Through the operation of Whirlpool's corporate strategy, subject imports have slowed down considerably, and this trend is expected to continue with the

[150] CR/PR at Table C-1. U.S. shipments of cumulated subject imports of all LRWs were *** units in 2008, *** units in 2009, *** units in 2010, and were *** in interim 2011, as compared to *** units in interim 2010.

[151] CR/PR at Table C-1. The market share held by subject imports of all LRWs in apparent U.S. consumption was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[152] Conf. Tr. at 47 (Mr. Greenwald).

[153] Conf. Tr. at 20, 26, 32-33, and 64-65 (Mr. Bitzer).

[154] CR/PR at Table C-4.

[155] Respondents state that they are "completely absent from this market and have no intent on entering this market." Conf. Tr. at 142 (Mr. Klett).

[156] CR/PR at Table C-2.

[157] Conf. Tr. at 47 (Mr. Greenwald).

[158] CR/PR at Table C-2 and Whirlpool's importer questionnaire.

discontinuing of Whirlpool's Mexican imports this year.[159] I therefore find no likelihood of substantially increased subject import volumes in the imminent future in this market segment.

Rate of Increase–High-Efficiency Top Load (HETL): This market segment saw the *** in subject import volumes. Subject import volumes increased by *** percent over the three full years of the period and at an even more rapid pace between the interim periods, rising by *** percent. The market share held by subject imports in U.S. consumption actually declined by *** percent over the three full years, but then increased by *** percent in interim 2011, as compared with interim 2010.[160] The rapid growth observed in the volumes of subject imports of HETL washers, however, began from what even the petitioner characterizes as a "low base."[161] Responsible for much of the growth in subject import volumes in 2010 and interim 2011 was the success of new models of HETL washers introduced by both LG and Samsung late in the period.[162] As mentioned above, there is no evidence of significant underselling by subject imports of HETL washers.[163] Volume data from pricing product 5A, representing almost one-quarter of subject imports of HETL washers in 2010 and interim 2011, shows that import volumes slowed in the final quarter of the period, after increasing for five straight quarters, indicating that demand for the new models may have stabilized.

B. No Significant Unused Production Capacity in Exporting Countries

1. Korea[164] [165]

Korean producers reported that production capacity increased by *** percent over the three full years and was *** percent higher in interim 2011 than in interim 2010; no significant capacity increases were expected in 2011 or 2012.[166] Despite these increases in production capacity, Korean capacity utilization increased by *** percentage points over the three full years, reaching *** percent in 2010, but

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[159] Conf. Tr. at 27 and 65-66 (Mr. Bitzer).

[160] CR/PR at Table C-3.

[161] Conf. Tr. at 49 (Mr. Greenwald).

[162] LG Post-Conf. Br. at 7 ("LG did not participate in this U.S. sector until 2010, and Samsung did not enter until 2011."), 11 ("In the category of HE Top Load, there were no subject imports in the market until 2010 (for LG) and 2011 (for Samsung)."); Conf. Tr. at 125 (Mr. Dexter) ("We [Samsung] did not begin selling HE top-load models here until May 2011 . . . ."); Conf. Tr. at 9 (Mr. Greenwald) ("it is true that Samsung and LG only recently began to market their own washers, their own high-efficiency top-load washers . . . ."); at 49 (Mr. Greenwald) ("Both Samsung and LG are late entrants.")

[163] CR/PR at Tables V-11 to -14.

[164] As mentioned above in the volume section, there is believed to be a third Korean producer of washers, Daewoo, that did not respond to the Commission's questionnaire. There is general agreement among the participants to these investigations that LG and Samsung were responsible for "virtually all, if not all, of exports to the U.S. from Korea in 2010." CR at VII-2-3, PR at VII-2.

[165] I find that producers of LRWs in Korea are export-oriented. The ratio of total exports to shipments by Korean producers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010. CR/PR at Table VII-2.

[166] CR/PR at Table VII-2. Korean production capacity for all LRWs was *** units in 2008, *** units in 2009, *** units in 2010, and was *** units in interim 2011, as compared to *** units in interim 2010.

was *** percentage points lower in interim 2011 than in interim 2010.[167] The decline in capacity utilization in the interim 2011 period resulted from lower Korean production of LRWs, and not from any significant capacity increase. The unused Korean capacity in 2010 was equal to *** units, or less than *** percent of total U.S. consumption of LRWs in 2010.[168] I find that the relatively minimal excess capacity in Korea does not indicate a likelihood of substantially increased imports of subject merchandise into the United States.[169]

2. Mexico[170]

Mexican producers reported that production capacity increased by *** percent over the three full years and was *** percent higher in interim 2011 than in interim 2010.[171] Primarily because of these *** capacity increases, Mexican capacity utilization declined by *** percentage points over the three full years and was *** percent lower in interim 2011 than it was in interim 2010.[172] The unused Mexican capacity in 2010 was equal to *** units, or *** percent of total U.S. consumption of LRWs in 2010. Despite the fact that this figure is *** larger than the Korean unused capacity, what it does not take into account is Whirlpool's plan to stop exporting to the U.S. market from its Mexican facility this year and instead use it to produce for the Mexican home market, as well as the Canadian and Central American markets.[173] Whirlpool Mexico's unused capacity in 2010 was about *** units,[174] so the figure shown above for the entire Mexican industry should be adjusted downward to *** units, or *** percent of total U.S. consumption of LRWs in 2010. Since excess capacity existed in Mexico throughout the period of investigation and appears not to have influenced the level of U.S. imports from that country, I find that the excess capacity in Mexico does not indicate a likelihood of substantially increased imports of subject merchandise into the United States in the imminent future.[175]

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[167] CR/PR at Table VII-2. Capacity utilization in Korea was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[168] CR/PR at Tables VII-2 and C-1. In interim 2011, the excess capacity figure *** percent of total U.S. consumption of LRWs.

[169] An antidumping order was in place in Australia against Korean washers from 2003 to 2008. There currently are no trade remedies in place that would divert Korean exports to the U.S. market. CR at VII-10, PR at VII-6.

[170] I find that producers of LRWs in Mexico are export-oriented. The ratio of total exports to shipments by Mexican producers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in interim 2011, as compared to *** percent in interim 2010. CR/PR at Table VII-4.

[171] CR/PR at Table VII-4. Mexican production capacity for all LRWs was *** units in 2008, *** units in 2009, *** units in 2010, and was *** units in interim 2011, as compared to *** units in interim 2010.

[172] CR/PR at Table VII-4. Capacity utilization in Mexico was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[173] CR at III-3, PR at III-2; CR at VII-7, PR at VII-5. Conf. Tr. at 81-82 (Mr. Bitzer)

[174] CR/PR at Table VII-3.

[175] There are no antidumping orders against Mexican exports of washer by any other country. CR at VII-10, PR at VII-6.

C. No Likelihood that Subject Merchandise Will Have Price Depressing or Suppressing Effects on Domestic Prices

1. No Evidence of Price Depression by Subject Imports

As detailed in my discussion of price depression in the material injury section of these views, I did not find evidence of price depression in any of the market segments. For CTL washers, there was no pricing product data, but AUVs that had risen over the three full years, and which were still higher in interim 2011 than they were in 2008, gave no indication that price depression was present (and this in a market segment where demand has fallen steeply and steadily). Of the three pricing products in the HEFL market segment, one showed increasing prices, another showed no domestic prices, and the third I found to be too unreliable to base any conclusions upon. Increasing domestic AUVs in the HEFL market segment also negate any conclusion of price depression. While prices were declining for the two pricing products in the HETL market segment, as were AUVs, I concluded that subject imports arrived too late in the period, and at prices that oversold domestic prices, and so the requisite causation by subject imports was missing. There are no pricing trends late in the period that lead me to believe that subject imports will enter at prices that are likely to have a significant depressing effect on domestic prices or that are likely to increase demand for further imports.

2. No Evidence of Price Suppression by Subject Imports

As detailed in my discussion of price suppression in the material injury section of these views, I did not find evidence of price suppression in any of the market segments. For CTL washers, there was a notable increase in the COGS-to-net-sales ratio in interim 2011, but since there was no subject imports of CTL washers throughout the period, such an increase in the ratio could not have been caused by subject imports. In the HEFL market segment, the rising COGS-to-net-sales ratio for the domestic industry is mostly composed from one small domestic producer that, after entering the LRW market in 2007, had exited by mid-2011,[176] and which never produced more than *** percent of the U.S. consumption of HEFL washers.[177] In the immediate future, almost all domestic production of HEFL washers will take place in what petitioner has described as "the largest and most efficient washer factory in the world in Clyde, Ohio."[178] The fact that Whirlpool's Mexican affiliate is terminating exports to the United States this year means that Whirlpool is moving from being a *** importer of subject merchandise in this market segment to *** domestic producer. This alone is likely to reduce the cost-price squeeze since Whirlpool's imports from Mexico were among the imports with the lowest AUVs.[179] In the HETL market segment, a rising COGS-to-net-sales ratio was not impacted significantly by subject imports because these did not enter in significant volumes until the latter part of 2010 and interim 2011, and were imported at prices exceeding those of the domestically produced HETL washers. These observations lead me to believe that subject imports will not enter at prices that are likely to have a significant suppressing effect on domestic prices or that are likely to increase demand for further imports.

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[176] Conf. Tr. at 45 (Mr. Bitzer).

[177] LG Post-Conf. Br. at Exhibit 3 and CR/PR at Table C-2.

[178] Conf. Tr. at 41 (Mr. Bitzer).

[179] The AUVs of subject imports of HEFL washers from Mexico, *** of which—in each of the full three years—were imported by petitioner, were $*** less than Korean AUVs in 2008, $*** less in 2009, $*** less in 2010, and $*** less in interim 2011.

D. Inventories of Subject Merchandise

The ratio of inventories to shipments for Korean producers of subject merchandise declined by *** percentage points over the three full years, but was *** percentage points higher in interim 2011 than in interim 2010.[180] The ratio of inventories to shipments for Mexican producers of subject merchandise declined by *** percentage points over the three full years, and was *** percentage points lower in interim 2011 than in interim 2010.[181]

The ratio of inventories to shipments for importers of subject merchandise from Korea declined steadily by *** percentage points over the three full years, and was *** percentage points lower in interim 2011 than in interim 2010.[182] The ratio of inventories to shipments for importers of subject merchandise from Mexico declined irregularly by *** percentage points over the three full years, and was *** percentage points lower in interim 2011 than in interim 2010.[183]

I find that these ratios were generally decreasing and were relatively small, especially when it is taken into account that, as petitioner notes, the market "requires that producers supply a diversity of product offerings over a range of price points."[184]

E. Conclusion on Threat of Material Injury

In light of the foregoing, I find that subject imports are not likely to have a significant adverse influence on the domestic industry in the imminent future. Accordingly, I determine that an industry in the United States is not threatened with material injury by reason of subject imports from Korea and Mexico.

CONCLUSION

For the reasons stated above, I find that there is no reasonable indication that a domestic industry producing LRWs is materially injured or threatened with material injury by reason of subject imports from Korea and Mexico that are allegedly sold at LTFV and by reason of imports of LRWs that are allegedly subsidized by the Government of Korea.

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[180] CR/PR at Table VII-2. The ratio of inventories to shipments for Korean producers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[181] CR/PR at Table VII-4. The ratio of inventories to shipments for Mexican producers was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[182] CR/PR at Table VII-5. The ratio of inventories to shipments for importers of subject merchandise from Korea was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[183] CR/PR at Table VII-5. The ratio of inventories to shipments for importers of subject merchandise from Mexico was *** percent in 2008, *** percent in 2009, *** percent in 2010, and was *** percent in interim 2011, as compared to *** percent in interim 2010.

[184] Petitioner Post-Conf. Br. at 14 (section heading).

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on December 30, 2011, by Whirlpool Corporation ("Whirlpool"), Benton Harbor, MI, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Korea and Mexico of large residential washers ("LRWs") that are allegedly sold in the United States at less-than-fair-value ("LTFV") and subsidized by the Government of Korea. The following tabulation provides information relating to the background of these investigations:[1]

Effective date	Action
December 30, 2011	Petition filed with Commerce and the Commission; institution of Commission investigation (77 FR 1082, January 9, 2012).
January 20, 2012	Commission's conference.[1]
January 26, 2012	Initiation of antidumping duty investigations by Commerce (77 FR 4007).
January 27, 2012	Initiation of countervailing duty investigation on Korea by Commerce (77 FR 4279).
February 10, 2012	Commission's vote.
February 13, 2012	Commission's determinations transmitted to Commerce.
February 20, 2012	Commission's views transmitted to Commerce.
[1] A list of witnesses that appeared at the conference is presented in app. B.	

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission—

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*
> . . .

[1] *Federal Register* notices cited in this tabulation are presented in app. A of this report.

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . .(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of Report

Information on the subject merchandise, alleged margins of dumping and subsidies, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Part IV* and *Part V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. The statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury are presented in *Part VII*.

MARKET SUMMARY

The U.S. market for LRWs totaled approximately $*** and *** units in 2010. Currently, four firms produce LRWs in the United States, (1) Whirlpool; (2) General Electric Co. ("GE"); (3) Alliance Laundry Systems, LLC ("Alliance"), and (4) Staber Industries, Inc. ("Staber"). These firms are believed to account for virtually all U.S. production of LRWs manufactured in the United States in 2010.[2] During

[2] Three other firms (BSH Home Appliances ("BSH"), Electrolux Home Products, Inc. ("Electrolux"), and Fisher & Paykel Appliances, Inc. ("Fisher & Paykel")) produced LRWs during the period of investigation; however, each of these firms ceased production of LRWs in the U.S. during the period for which data were collected. Conference transcript, pp. 26 and 42 (Levy). BSH, which produced high efficiency front load LRWs, closed its production line in New Bern, North Carolina in late 2010; Electrolux closed its LRW production facility in Webster City, Iowa in early 2011 and transferred additional LRW capacity to its facility in Juarez, Mexico; and Fisher & Paykel, which produced top load LRWs, transferred production from Ohio to Thailand in October 2009. Petition, p. 12. Petitioner's post conference brief, Answers to Commission Question, p. 1. The Commission received U.S producer questionnaires from all seven firms (Alliance, BSH, Electrolux, Fisher & Paykel, GE, Staber, and Whirlpool);

the period for which data were collected, Whirlpool accounted for the vast majority of U.S. production of LRWs and in 2010 accounted for *** percent of total reported U.S. production.[3] At least *** firms have reported importing LRWs from subject countries since 2008. Two firms, Samsung Electronics America, Inc. ("Samsung") and LG Electronics USA, Inc. ("LG"), U.S. subsidiaries of foreign producers in Korea and Mexico, accounted for the vast majority of reported subject imports from Korea, while Whirlpool and Electrolux accounted for the vast majority of subject imports from Mexico in 2010.[4]

U.S. producers' U.S. shipments of LRWs totaled *** units valued at $*** in 2010, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value). U.S. shipments of imports from Korea totaled *** units valued at $*** in 2010, and accounted for *** percent of apparent U.S. consumption by quantity (*** percent by value), while U.S. shipments of imports from Mexico totaled *** units valued at $***, and accounted for *** percent of apparent consumption by quantity (*** percent by value). U.S. shipments of imports from all other sources combined totaled *** units valued at $***, and accounted for *** percent of apparent consumption by quantity (*** percent by value).

SUMMARY DATA

Appendix C presents a summary of data collected in these investigations.[5] U.S. industry data are based on questionnaire responses from six U.S. producers that accounted for virtually all of U.S. production of LRWs during the period of investigation (see Part III of this report).[6] Data for U.S. imports from Korea, Mexico, and nonsubject countries are based on questionnaire responses from U.S. importers (see Part IV of this report). Information on the industries that produce LRWs in Korea and Mexico is based on questionnaire responses from two foreign producers and exporters from Korea, from four foreign producers and exporters from Mexico, and publicly available data (see Part VII of this report). Data from other sources are referenced and footnoted where appropriate.

PREVIOUS INVESTIGATIONS

There have been no previous antidumping or countervailing duty investigations on LRWs.

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

On January 26, 2012, Commerce published a notice in the Federal Register of the initiation of its antidumping investigations on LRWs from Korea and Mexico.[7] The alleged estimated weighted-average

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however, data submitted by Electrolux were either missing and/or incomplete and are not included in the staff report.

[3] According to testimony at the preliminary conference, Whirlpool represents more than 90 percent of the production of LRWs in the United States. Conference transcript, p. 26 (Levy). Whirlpool produces LRWs in the United States for sale under the Whirlpool, Maytag, Roper, Estate, Admiral, Amana, and Crosley brands, and also supplies LRWs to OEM customers for resale under their own brands. Petition, p. 10.

[4] Conference transcript, p. 67 (Greenwald).

[5] Table C-1 presents data concerning the U.S. market for all LRWs; table C-2 presents data concerning the U.S. market for high efficiency front load LRWs; table C-3 presents data concerning the U.S. market for high efficiency top load LRWs; and table C-4 presents data concerning the U.S. market for conventional top load LRWs.

[6] The Commission received U.S producer questionnaires from seven firms (Alliance, BSH, Electrolux, Fisher & Paykel, GE, Staber, and Whirlpool); however, data submitted by Electrolux were either missing and/or incomplete and are not included in the staff report.

[7] *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 77 FR 4007, January 26, 2012.

dumping margins (in percent *ad valorem*), as reported by Commerce are summarized in the tabulation below:

Country	Estimated dumping margin (*percent ad valorem*)
Korea	31.03 to 82.41
Mexico	27.21 to 72.41
Source: *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007, January 26, 2012.	

NATURE OF ALLEGED COUNTERVAILABLE SUBSIDIES

On January 27, 2012, Commerce published a notice in the Federal Register of the initiation of its countervailing duty investigation on LRWs from Korea.[8] In its notice, Commerce listed the following programs alleged in the petition to have provided countervailable subsidies to producers of LWRs in Korea: [9]

1. Daewoo Electronics Corporation (Daewoo) Restructuring
    a. GOK-Directed Equity Infusions under the Daewoo Workout
    b. GOK-Directed Ongoing Preferential Lending under the Daewoo Workout
2. GOK Facilities Investment Support: Article 26 of the Restriction on Special Taxation Act (RSTA)
3. Tax Reduction for Research and Manpower Development: RSTA Article 10(1)(3)
4. GOK Targeted Green "Stimulus" Subsidies
    a. Research, Supply, or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Art 10(1)(1)
    b. Research, Supply, or Workforce Development Investment Tax Deductions for "Core Technologies" Under RSTA Art 10(1)(2)
    c. RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities
    d. GOK Subsidies for "Green Technology R&D" and its Commercialization
    e. Industrial Bank of Korea (IBK) Preferential Loans to Green Enterprises
    f. Support For SME "Green Partnerships"
5. Korea trade Insurance Corporation—Short-Term Export Credit Insurance
6. Korea Export-Import Bank—Export Financing

[8] *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007, January 26, 2012.

[9] *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Countervailing Duty Investigation,* 77 FR 4279, January 27, 2012.

7. Korea Development Bank and IBK Short-Term Discounted Loans for Export Receivables

8. GOK 21st Century Frontier and Other R&D Programs

9. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act

10. GOK Supplier Support Fund Tax Deduction

THE SUBJECT MERCHANDISE

Commerce's Scope[10]

Commerce has defined the scope of these investigations as follows:

For purposes of these investigations, the term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper; (b) a base; and (c) a drive hub; and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer.

The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" market meeting either of the following two definitions:

(1) (a) it contains payment system electronics; (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console 90ntaining the user interface is made of steel and is assembled with security fasteners; or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation, the unit cannot begin a wash cycle without first receiving a signal from a bonafide payment acceptance device such as an electronic credit card reader; (c) it

[10] *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 77 FR 4007, January 26, 2012.

contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to these investigations are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these investigations may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Tariff Treatment

LRWs are classifiable in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States ("HTS"), and imported under HTS statistical reporting number 8450.20.0090. Products subject to these petitions may also be imported under HTS subheadings 8450.11.00, 8450.90.20 or 8450.90.60.

THE PRODUCT

Physical Characteristics and Uses

A washer is an automatic clothes washing machine appliance that is capable of removing soil from fabric. It does so by using water and a detergent as the vehicle for cleaning the fabric.[11] It uses wash, rinse, and spin cycles which are typically programmed into the unit.[12] LRWs are washers with a cabinet width of at least 24.5 inches and no more than 32.0 inches.[13] LRWs are typically produced and sold in two configurations, either with a vertical axis or a horizontal axis,[14] however some units rotate on a titled axis.[15] LRWs are typically purchased by households for use in a single family dwelling.[16]

Large Residential Washer Types in the U.S. Market

Currently in the U.S. market, there are three primary types of LRWs: (1) high efficiency front load LRWs; (2) high efficiency top load LRWs; and (3) conventional top load LRWs. A general description of each of these LRW types follows.

High Efficiency Front Load LRWs

This type of LRW features a front loading door for loading clothes (see Figure 1).[17] High efficiency front load LRWs are typically positioned at the premium end of the LRW market in terms of price and performance.[18] They often come equipped with a broad variety of product features, [19] and

[11] Petition, p. 17.
[12] Petition, p. 19.
[13] Petition, p. 15.
[14] Petition, p. 17.
[15] Conference transcript, p. 21 (Bitzer).
[16] Petition, p. 17.
[17] Conference transcript, p. 21 (Bitzer).
[18] Conference transcript, p. 21 (Bitzer); conference transcript, p. 123 (Dexter).

typically rotate on a horizontal axis, though they can also rotate on a tilted axis.[20] The tubs of high efficiency front load LRWs fill only part way with water and clean clothes through a process of lifting them to the top of the tub and dropping them into the water.[21]

High efficiency front load LRWs work most effectively with low-foaming, high-efficiency detergent.[22] They typically clean clothes better and more efficiently that the best high efficiency top load LRWs, without necessarily costing more (depending on the product features included).[23] Most high efficiency front load LRWs can typically handle approximately 12 to 20 pounds of clothes per load, which is about equal to high efficiency top load LRWs but more than conventional top load LRWs.[24] Very fast spin cycles mean better moisture extraction compared with high efficiency top load LRWs, thereby reducing drying time and energy consumption.[25] However, high efficiency front load LRWs have been reported to develop mold and odors.[26] This development may cause some consumers to prefer top load LRWs to front load LRWs.[27]

Figure 1
High efficiency front load washer

Source: Whirlpool

[20] Conference transcript, p. 21 (Bitzer). According to the petitioner, some high efficiency front load washer models are designed with an axis tilted up to 60 degrees. Conference transcript, p. 54 (Bitzer).

[21] Petition, exh. 15.

[22] Petition, exh. 15.

[23] Petition, exh. 15. Petition, exh. 15. Respondent Samsung also distinguishes high efficiency front load washer washers from high efficiency top load washer washers by being more effective at cleaning, along with being gentler on fabrics. Conference transcript, p. 123 (Dexter).

[24] Petition, exh. 15.

[25] Petition, exh. 15.

[26] Consumer Reports, "Washers and Dryers: Time to Clean Up with Lower Prices, Rebates," February, 2010, p. 45.

[27] Litigation on this issue is ongoing. For more information, please refer to, "Front Loading Washer Litigation" at: http://www.lieffcabraser.com/defective-products/case/126/front-loading-washer-litigation (retrieved January 30, 2012).

High Efficiency Top Load LRWs

This type of LRW features a top loading door for loading clothes (see Figure 2). In general, prices for high efficiency top load LRWs are lower than for high efficiency front load LRWs.[28] Similar to high efficiency front load LRWs, high efficiency top load LRWs can also come equipped with a broad array of product features, and high efficiency top load washers typically rotate on a vertical axis, though they can also rotate on a horizontal axis.[29] High efficiency top load LRWs use various cleaning methods including lifting and tumbling clothes.[30] Like high efficiency front load LRWs, the tub of high efficiency top load LRWs fills only partly with water, so they use less water than conventional top load LRWs.[31] High efficiency top load LRWs also spin at higher speeds than conventional top load LRWs, thereby extracting more water before clothes go into the dryer, and thus reduce energy consumption.[32] Like high efficiency front load LRWs, high efficiency top load LRWs work best with low-foaming, high-efficiency detergent.[33] Some high efficiency top load LRWs can hold up to 20 pounds or more of laundry, which is more than conventional top load LRWs.[34]

Figure 2
High efficiency top load washer

Source: Whirlpool

[28] According to respondent Samsung, "…the prices of HE front load washers are currently 20 percent higher on average than HE top load washers for models with comparable capacity and features." Conference transcript, p. 124 (Dexter).
[29] Conference transcript, p. 22 (Bitzer).
[30] Petition, exh. 15.
[31] Petition, exh. 15.
[32] Petition, exh. 15.
[33] Petition, exh. 15.
[34] Petition, exh. 15.

Conventional Top Load LRWs

Like high efficiency top load LRWs, conventional top load LRWs feature a top loading door for loading clothes (see Figure 3). Conventional top load LRWs differ from high efficiency top load and high efficiency front load washers in several ways. Conventional top load LRWs clean clothes by filling their tubs with water and then swirling them through the use of an agitator.[35] Conventional top load LRWs tend to have smaller capacity than comparable high efficiency washers, because the agitator takes up space in the washing tub.[36] Loading conventional top load LRWs or adding laundry in the middle of a cycle is typically easier than in machines without an agitator such as high efficiency washers.[37] Conventional top load LRWs tend to treat fabrics more harshly than high efficiency washers, because the agitator often twists and tangles clothes with great force.[38] Conventional top load LRWs use more water and more energy than high efficiency LRWs. They also generally spin clothes more slowly during the spin cycle than high efficiency LRWs, requiring longer use of a clothes dryer and thus consuming more energy.[39]

The Consortium for Energy Efficiency ("CEE") establishes industry norms that take into account energy utilization and water consumption. Based on these norms, which can change over time, certain LRWs can be identified as high efficiency.[40] While high efficiency front load and high efficiency top load washers meet this industry norm, conventional top load LRWs do not. However, conventional top load LRWs can and often do qualify for Energy Star, a U.S. Department of Energy standard, which has a less stringent rating system than that used by the CEE.[41]

[35] Petition, exh. 15.
[36] Conference transcript, p. 122 (Dexter).
[37] Petition, exh. 15.
[38] Conference transcript, pp. 122-123 (Dexter).
[39] Conference transcript, p. 123 (Dexter).
[40] Conference transcript, p. 55 (Levy).
[41] Conference transcript, p. 55 (Levy). There are three tiers within the CEE's rating system. According to the CEE's standard, Tier I is typically equivalent to an Energy Star rating, while tier III includes LRWs that are the most efficient. According to the petitioner, "high efficiency" LRWs typically belong to tier III of the CEE's rating system. Conference transcript, pp. 62-63 (Tubman).

Figure 3
Conventional residential washer

Source: Whirlpool

Manufacturing Processes

LRWs are mass produced in a production plant. According to the petitioner, each type of LRW can be produced in the same plant at the same time.[42] However, according to respondent Samsung, most production lines in a production plant will typically produce only one type of LRW, and it is uncommon that different types of LRWs would be produced on the same production line.[43]

LRWs consist of several distinct sub-systems manufacturing processes that involve a wide variety of materials. Some materials are purchased in bulk, others are purchased as cut, shaped or painted pieces, and others are purchased as component systems. All of these components are brought together on an assembly line, and then the finished product is tested and packed for shipment.[44]

The petitioner describes nine separate production modules or sub-processes it utilizes in the production of a LRW. These are the production of the: (1) cabinet (including the top, lid, and door); (2) drive system; (3) wash system; (4) control system; (5) exterior features; (6) interior features; (7) literature; (8) labels; and (9) packaging. The components for each module originate within five areas in the petitioner's production plant, including: materials receiving, cabinet forming, fabrication support, plastics forming, and machining. Different producers may organize their components and assemblies in different departments, but the technology and processes employed are ultimately the same.[45] The following is a step-by-step description of the production of a typical LRW.

First, the material department receives all purchased raw materials, which would include pre-stamped metal blanks, injection molded parts, electrical subassemblies, printed literature and labels, and

[42] Conference transcript, p. 23 (Bitzer).

[43] Conference transcript, p. 123 (Dexter) and pp. 169-170 (Brindle). Whirlpool reports that its LRW plant possesses two high speed production lines that produce a mix of high efficiency top load LRWs and conventional top load LRWs. Petitioner's postconference brief, p. 9.

[44] Petition, p. 20.

[45] Petition, pp. 20-21.

packaging materials. Then, the material department will maintain inventories and deliver material to the appropriate fabrication department or to the assembly line.[46]

The cabinet forming department creates the exterior metal shell of the washer, including the top, lid, and door. Raw metal blanks are formed from steel coils using automated equipment, and then stamped and assembled. Some components are often pre-fabricated in the fabrication support department and then delivered to the cabinet formers. Cabinets and lids are fabricated and processed through the paint department. Completed painted cabinets and lids are then delivered to the assembly lines. Washer doors are typically purchased as an assembly, managed by the materials team, and delivered to the assembly line to be attached to the cabinet.[47]

The fabrication support department processes raw materials such as steel bar stock and coil sheet steel. Purchased steel bar stock is formed and machined into components of the wash systems and drive. Sheet steel is blanked to the appropriate size, stamped, and formed using custom dies designed by the petitioner. The formed parts are cleaned, deburred, and painted as necessary. Such fabricated steel components are used in the cabinet, drive and assembly systems of the washer.[48]

Drive system related components are designed and sized by petitioner engineers. These components include motors, gears, shafts, seals, and metal and plastic housings. These components are often purchased from specialty manufacturers and manufactured in support departments. Motor manufacturing, in particular, is highly specialized and a high volume manufacturing business.[49]

The plastics forming department processes raw plastic pellets or granules primarily into the plastic tubs used for the wash unit modules. The granules are melted and then injected into plastic molding equipment. The equipment uses molds to obtain the required geometry. Once the tubs are created through this process, they are delivered to the final assembly departments.[50]

The wash system model consists of a fabricated basket, or drum, and plastic tub joined together. The fabricated basket is produced using automated equipment. Steel coils which are stamped and welded together form the shell of the basket. To create the completed fabricated basket, additional purchased and/or fabricated parts are attached to the shell. The fabricated basket and tub together with a fastening device constitute the wash system assembly. Once complete, the wash system is delivered to the assembly line.[51]

Petitioner engineers design and specialty suppliers supply the controls and interior and exterior feature components of the washer. Major manufacturers will likely own tool dies for feature components and design their own electronics hardware and software. To ensure conformance to design specification for incoming materials, as well as manufactured components within the factory, a quality group establishes and monitors production systems and processes.[52]

The product assembly process consists of integrating the purchased parts and the self-produced subassemblies on an assembly line. All components are presented to the assembly line, which include the cabinet, wash unit, drive, control systems, interior and exterior features, literature, labels, and packaging. All these components are assembled in a defined order to construct the finished washer. The final product undergoes one hundred percent testing and inspection and is visually inspected for fit and finish.[53]

The finished and inspected product is then transferred to the packaging area where labels are applied, literature is included, and the washer is packaged. Before the unit is automatically shrink-wrapped or packaged in a corrugated box, an external protective packaging is applied manually to the unit. The packaged unit is then shipped to a distribution center.[54]

[46] Petition, p. 21.
[47] Petition, p. 21.
[48] Petition, p. 21.
[49] Petition, p. 21.
[50] Petition, p. 22.
[51] Petition, p. 22.
[52] Petition, p. 22.
[53] Petition, p. 22-23.
[54] Petition, p. 23.

Product Features

LRWs are sold with a variety of product features. In its petition, Whirlpool lists a number of examples of product features, including capacity, water heaters, number/style of wash cycles, steam, and cabinet finish.[55] Petitioner stated that all three types of LRWs can come equipped with a broad variety of features and that different LRW types can often contain the same feature.[56] At the preliminary staff conference and in the postconference briefs, various product features were discussed at length. These product features included: energy efficiency, capacity, appearance (color, cabinet finish, decorative elements, etc.), and introduction of new and improved innovations (noise reduction, steam, allergy friendly cycle, etc.).

Energy efficiency

Energy efficiency in LRWs is indicated by either being called "high efficiency" or by an Energy Star rating. As previously mentioned, high efficiency LRWs meet an industry norm established by the CEE that takes into account energy utilization and water consumption.[57] Conventional top load LRWs do not meet this industry norm while high efficiency front load and high efficiency top load washers do, which is why they are called "high efficiency." The Energy Star standard, which is a U.S. Department of Energy standard reflected in U.S. Government Regulations,[58] can often be met by conventional top load LRWs. Because conventional top load LRWs use agitators to clean clothes, more water is generally used than high efficiency washers that do not use an agitator. In terms of energy consumption, because high efficiency washers achieve higher spin cycles than conventional top load LRWs, clothes washed in them do not need to spend as much time in the dryer, which is a high energy consuming appliance. Petitioner also noted that one attractive feature tied to energy efficient-rated LRWs is the utility rebates associated with purchasing such a unit.[59]

Capacity

Capacity refers to the amount of clothes an LRW can wash per load. Both the petitioner and respondents said capacity is an important feature of LRWs and one which consumers value highly. Petitioner explained that capacity can be important especially to a "full family with multiple children."[60] Respondent Samsung said that capacity was one of the top three purchase factors for consumers.[61] According to petitioner, the capacity range for different types of LRWs differ, with conventional top load LRWs providing between 2.5 and 3.6 cubic feet of capacity, while high efficiency front load and high efficiency top load washers provide between 3.3 and 4.3 cubic feet and 3.5 an 4.7 cubic feet of capacity, respectively.[62]

Appearance

The appearance of LRWs can vary greatly depending on what appeals to the market. Color, cabinet finish, and decorative elements are examples of LRW features that can differ. Respondent LG emphasized the innovations it has developed around appearance, citing its introduction of units of various

[55] Petition, p. 17.
[56] Conference transcript, p. 90 (Greenwald).
[57] Conference transcript, p. 55 (Levy).
[58] Conference transcript, p. 55 (Levy).
[59] Conference transcript, p. 91 (Tubman).
[60] Conference transcript, p. 91 (Tubman).
[61] Conference transcript, p. 126 (Dexter).
[62] Exhibit 4 of Petitioner's conference exhibits.

colors into the market, first with black units in 2004, then with midnight blue and cherry red units in 2006.[63] Respondent LG also noted the innovations it has made in other appearance features of its LRWs, mentioning specifically electronic controls, digital displays, and door construction design.[64]

Introduction of new and improved innovations

Creating new features and improving on existing features is an important component of maintaining competitiveness in the LRW market. Petitioner considers product development a major factor of competition in the industry and invests significantly in product innovation.[65] As noted at the preliminary conference, Whirlpool introduced the first high efficiency top load LRW to the market in 199 and has pioneered this product configuration for more than a decade.[66] Petitioner stated that it has "over one thousand engineers" in the United States devoted to washer technology development, mainly focused on the basics of LRW improvement, including lowering energy and water consumption.[67]

Respondent LG said that it has been a leader in bringing innovation to the LRW market and pointed to several product innovations that have revolutionized LRWs. These features include direct drive technology in 2003 which made washer operation more reliable, quieter, and smoother, according to respondent LG.[68] Respondent LG also noted its introduction of the use of steam to the washer platform in 2006 and then in 2007 the introduction of an allergy friendly cycle to its products.[69] Respondent Samsung pointed to its vibration reduction technology as a major product innovation feature of its units.[70]

While noting the importance of introducing new features in its products and devoting resources to innovation, the petitioner also emphasized that most product features and new technologies can be replicated by most other producers in different ways.[71] Petitioner provided as an example the ability to reduce vibration through means other than Samsung's vibration reduction technology.[72]

Respondents LG and Samsung acknowledged that it is common for newly-introduced technologies to be replicated by competitors soon thereafter.[73] But respondents also argued that it is because of this phenomenon that they need to continue to lead the industry in bringing new product features to the market.[74]

DOMESTIC LIKE PRODUCT ISSUES

The petitioner contends that LRWs comprise a continuum a similar products, with no clear dividing lines, and that the Commission should find one domestic like product that is co-extensive with the scope of the investigations as identified by Commerce.[75] Respondent Samsung contends that there are three domestic like products: conventional top load LRWs with agitators; high efficiency front load LRWs, which do not have agitators; and high efficiency top load which also do not have agitators.[76] [77]

[63] Conference transcript, p. 135 (Herring).
[64] Conference transcript, p. 136 (Herring).
[65] Conference transcript, p. 93-94 (Schmidt).
[66] Conference transcript, p. 36 (Bitzer).
[67] Conference transcript, p. 94 (Bitzer).
[68] Conference transcript, p. 134 (Herring).
[69] Conference transcript, pp. 134-135 (Herring).
[70] Conference transcript, p. 125 (Dexter).
[71] Conference transcript, p. 100 (Bitzer).
[72] Conference transcript, p. 100 (Bitzer).
[73] Conference transcript, pp. 184-185 (Dexter and Herring).
[74] Conference transcript, pp. 184-185 (Dexter and Herring).
[75] Petitioner's postconference brief, p. 4. Conference transcript, pp. 50-51 (Levy).
[76] Respondent Samsung's postconference brief, p. 2.
[77] Rather than address Commission's traditional six-factors for the like product analysis, respondent LG discusses differences between conventional LRWs, high efficiency top load LRWs, and high efficiency front load

The Commission collected data regarding conventional top load, high efficiency top load, and high efficiency front load washer market segments.[78]

The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities, production processes, and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price.

Physical Characteristics and Uses

Petitioner acknowledges the obvious differences between the ways in which clothing is loaded (i.e., front or top); but notes all LRWs have the same basic characteristics and end uses in that they wash clothes by use of water, detergent, and a mechanical cleaning action, and use rinse/spin cycles to remove detergent and water from the clothing. Petitioner maintains that high efficiency front load washers can turn on a horizontal axis or a tilted axis and high efficiency top load LRWs and conventional top load LRWs turn on a vertical axis. However, petitioner notes that both categories of top load LRWs can turn on a horizontal axis as well.[79]

With regard to water and energy efficiency characteristics, petitioner maintains that there are no clear dividing lines because all three configurations can qualify for the DOE's Energy Star rating and because the "high efficiency" norms, established by the CEE, change over time. Petitioner maintains that there is substantial overlap in rated Department of Energy ("DOE") capacity between the three configurations and that in terms of use, all LRWs are designed and used for washing loads of clothing in a household setting; all are narrow enough to fit through a typical doorframe; and all are available in a multitude of features (i.e., color/finish, glass door/lid).[80]

Respondent Samsung acknowledges that all three LRW categories have the same use; however, it contends that each of the three categories differ in their physical characteristics, including the presence or absence or an agitator and the ways in which clothing is loaded. Respondent Samsung also notes that the engineering in each category differs since an agitator requires a different mechanical process than a drum that spins on either a vertical or horizontal axis. Moreover, it asserts that front load LRWs with a horizontal axis have higher rotational forces that require additional reinforcement to limit vibration, which costs more to engineer and construct. Respondent Samsung also cites ergonomic differences between top load and front load washers, noting that Whirlpool, Samsung, and LG all sell pedestals on which front load LRWs can be placed in order to raise the door to a more comfortable height. Respondent Samsung also contend that very few conventional top load LRWs qualify for a Tier III energy efficiency rating from the CEE, which can serve as an important feature for consumers.[81]

LRWs and asserts that "however the Commission defines the 'like product' in this proceeding, it needs to understand that there are three categories of large residential washers and that there are significant different conditions of competition among these three categories." Respondent LG cites differences between the categories including: the presence (or absence) of an agitator; differences in the manner in which clothing is loaded; and differences pertaining to wash cycles, features, capacity, efficiency, and price. Respondent LG's postconference brief, pp. 3-4.

[78] *See* Appenidx C, tables C-2, C-3, and C-4.

[79] Similarly, petitioner maintains that while most conventional top load LRWs sold in the United States possess an agitator; high efficiency front load LRWs generally possess a "baffle"; and most high efficiency top load LRWs use a "impeller" to move clothing through the water; some models of high efficiency top load LRWs (such as one produced by GE) possess a hybrid between the two known as an "agipeller." Moreover, petitioner cites the presence of conventional top load washers sold outside the United States that possess an impeller as well as the development of a high efficiency top load LRW produced by Fisher & Paykel that possessed an agitator. Petitioner's postconference brief, pp. 5-7.

[80] Petitioner's postconference brief, p. 7.

[81] Respondent Samsung's postconference brief, pp.4-8.

Common Manufacturing Facilities, Production Processes, and Production Employees

Petitioner produces all three configurations of LRWs at its facility in Clyde, Ohio where they share common manufacturing facilities to a substantial degree and roughly half of the production related workers are entirely shared across all LRW platforms. With regard to assembly line workers, which comprise the other half of the workforce, Whirlpool has a flex crew that switches between high efficiency and conventional top load LRWs and another flex crew that switches between high efficiency front load and high efficiency front load LRWs.[82]

Respondent Samsung cites testimony from Whirlpool at the preliminary conference in which Whirlpool acknowledges that it produces the three categories of LRWs on separate production lines using different tooling in its Clyde, Ohio plant and contend that the Whirlpool's decision to repatriate production of its high efficiency front load LRWs from Germany to the United States is an indication that such washers could not be produced using existing conventional or high efficiency top load production lines.[83]

Interchangeability

Petitioner maintains all LRWs are generally interchangeable, depending upon consumer taste, associated features, and pricing.[84]

Respondent Samsung maintain that the top load LRWs (whether conventional or high efficiency) have limited interchangeability with front load models.[85]

Customer and Producer Perceptions

Petitioner contends that consumers and producers generally acknowledge that LRWs constitute a recognized product category, and while variations exist among LRWs based on features, they are fundamentally similar.[86]

Respondent Samsung maintain that customers perceive the three categories of LRWs as having different advantages and disadvantages that have a strong influence on their purchasing choices.[87]

Channels of Distribution

Petitioner maintains that all LRWs are marketed through the same set of appliance retailers, which is the channel of distribution for the vast majority of LRWs.[88]

[82] According to the petitioner, all LRW models share a common press room (where metal parts are stamped), common plastic forming shops, common paint shops, common test labs, and common materials receiving, inventory, and distribution areas. Additionally, Whirlpool's shaft grinding shop and cabinet forming equipment are shared between certain conventional top load and high efficiency top load LRWs. Whirlpool generally finds it efficient to maintain dedicated assembly lines; it has two high speed lines that run a mix of a high efficiency and conventional top load LRWs. Petitioner's postconference brief, p. 9.

[83] Respondent Samsung's postconference brief, p. 6.

[84] Petitioner's postconference brief, p. 12.

[85] This assertion is based on a study conducted by Samsung that showed 70 percent of top load buyers will not consider a front load model, and 70 percent of front loaders will not consider a top load model. Respondent Samsung's postconference brief, p. 5.

[86] Petitioner's postconference brief, p. 10.

[87] Respondent Samsung notes the existence of consumer complaints and litigation arising from allegations that high efficiency front load washers may give rise to mold, mildew, and odor problems. In addition, respondent Samsung cites a study commissioned by Samsung in 2011 of ***. Samsung postconference brief, pp. 4-7.

Respondent Samsung acknowledges that the channels of distribution all three categories of LRWs are largely the same; however, it contends that within any particular retail outlet, conventional top load LRWs are merchandised differently from high efficiency top and front load LRWs.[89]

Price

Petitioner maintains that there is substantial overlap in pricing, depending upon the feature load of a particular LRW model.[90] For example, petitioner notes that depending on the features included, a conventional top load LRW could range in cost from $299-$799, while high efficiency top load LRWs range from $499-$1,999, and high efficiency front load LRWs range from $499-$2,099.[91]

Respondent Samsung maintains that there are differences in prices between the three categories, noting differences in the average unit values and the average per unit cost of goods sold. It contends that if top load and front load models were interchangeable, then they would not vary significantly in price ***.[92]

[88] Petitioner's postconference brief, p. 10. Between 65 and 70 percent of LRWs sold in the United States are sold through five retailers: Lowe's, The Home Depot, Sears, Best Buy, and HH Gregg. Petitioner's postconference brief, p. 19.

[89] Respondent Samsung contends that high efficiency LRWs are frequently positioned to attract more consumer attention and that point of sale brochures, signs, or stickers may be used to drive demand for higher end high efficiency models through emphasis on water savings, capacity, and/or cleaning power. In addition, it maintains that high efficiency models in premium colors may be more likely to occupy floor spots than white conventional top load models. Respondent Samsung's postconference brief, p. 6.

[90] Petitioner's postconference brief, p. 12.

[91] Petitioner's preliminary conference exhibit 4.

[92] Samsung postconference brief, pp. 7-9.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET CHARACTERISTICS AND CHANNELS OF DISTRIBUTION

Five large national retailers (Best Buy, The Home Depot, HH Gregg, Lowe's, and Sears) account for 65 to 70 percent of sales of LRWs in the United States.[1] There are a few smaller national retailers and several regional chains, such as Bray and Scarff, PC Richards, and Menards. Domestic producers and importers alike market their LRWs through these national, regional, and local retailers.[2] These retailers tend to market a variety of LRWs, including conventional machines and high efficiency front and top loaders.[3]

Suppliers compete for display space at the large retailers on the basis of price, size, energy efficiency, color, front versus top loader, and other features, as retailers offer a range of LRWs at different price points in order to attract a variety of customers. Manufacturers and importers have incentives to lower prices or offer additional features to obtain floor space at retailers.[4] Once a particular model is displayed in a store, it competes with other models on the basis of price, quality, and features. In-store sales continue to dominate online purchases; however, many consumers research prices, quality, and features online before going to the store.[5] Discounting selected models of LRWs during special promotional events, such as "Black Friday" sales and similar events at other times of the year has become an important feature of marketing LRWs.[6]

Sales to distributors, such as large retailers, are the dominant channel of distribution (table II-1). Over 99 percent of U.S.-produced LRWs and LRWs imported from both Korea and Mexico were sold to distributors, as compared to end users or final consumers. The share of nonsubject import shipments sold to distributors was also very high, though slightly less than that of LRWs from domestic and subject sources.

GEOGRAPHIC DISTRIBUTION

All responding U.S. producers (***) reported selling LRWs to ***. Similarly, *** reported selling LRWs imported from Korea to ***. *** and *** reported selling LRWs imported from Mexico to all regions in the contiguous United States. ***, an importer, reported selling LRWs imported from Korea and Mexico in the Southeast and Central Southwest regions of the United States.

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[1] Petitioner's postconference brief, p. 19.

[2] Whirlpool reported that it markets a few LRWs directly to employees. Conference transcript, p. 88 (Blitzer).

[3] Conference transcript, p. 68 (Bitzer).

[4] For example, *** reported in its questionnaire response that it seeks to maximize price consistent with obtaining floor space. *** stated that it decided to provide floor space to a *** model because of its unique color.

[5] Petitioners state that customers prefer to see LRWs before making a purchase and that online sales account for about 7.8 percent of appliance sales, in general, and that the figure is perhaps lower for LRWs. Conference transcript, pp. 88-89 (Bitzer and Tubman).

[6] Whirlpool reported that there has been a proliferation of discount periods. For example, there is Columbus Day, July Fourth, "Earth Day," and "Black Friday" was first extended to a week and now to nearly a month. Conference transcript, pp. 102-103 (Bitzer).

Table II-1
LRWs: U.S. producers and U.S. importers' U.S. shipments of subject product, by channel of distribution, January 2008–September 2011

	2008	2009	2010	January-September 2010	January-September 2011
	Quantity (units)				
U.S. producers' U.S. shipments to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of Korean products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of Mexican products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of nonsubject products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
	Share of quantity (percent)				
U.S. producers' U.S. shipments to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of Korean products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of Mexican products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***
U.S. importers' U.S. shipments of nonsubject products to:					
Distributors	***	***	***	***	***
End users	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. producers of LRWs have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of U.S.-produced LRWs to the U.S. market. The main contributing factors to the moderate-to-large degree of responsiveness of supply are some unused capacity, inventories, and the existence of alternate markets.

Industry capacity

Total domestic capacity utilization was at *** percent in 2010, up slightly from *** percent in 2008; however, domestic capacity utilization fell to *** during January–September 2011 compared with *** percent during the same period in 2010. Whirlpool has the largest U.S. capacity and accounted for *** percent of total U.S. capacity in 2010 and *** percent during January–September 2011. *** utilized *** percent of its capacity in 2010 and *** percent during January–September 2011, which represented the *** capacity utilization rates in the domestic industry. Whirlpool has a new state-of-the-art plant in Clyde, Ohio and facilities in other parts of the country.[7] *** has the next largest U.S. production capacity; it accounted for *** percent of domestic capacity in 2010 and *** percent during January–September 2011. Its capacity utilization rates, approximately *** percent in 2010 and during January–September 2011, were *** than those of ***. A few smaller U.S. firms produce LRWs domestically; *** possessed *** percent, *** percent, and less than *** percent, respectively, of U.S. capacity in 2010.[8] Capacity utilization at these smaller firms was well under *** percent from January 2008 through September 2011. The various levels of capacity utilization suggest that U.S. producers likely have moderate capacity to increase production of LRWs in response to an increase in prices**.**

Alternative markets

U.S. producers exported *** LRWs (or 21.3 percent of total shipments) in 2010 (a 1.1 percent increase from 2008) and *** LRWs (20.3 percent of total shipments) during January–September 2011 (a 6.4 percent decline from the similar period in 2010). Because of the existence of these alternative markets, U.S. producers likely have some ability to shift shipments between other markets and the U.S. market in response to price changes.

Production alternatives

U.S. producers reported that the LRWs are produced on dedicated assembly lines and that it would require considerable effort and expense to retool another production line to produce LRWs. Assembly lines of LRWs are supported by fabrication shops that produce the metal parts shaped for LRWs and special paints. U.S. producers reported that different types of LRWs and electric or gas clothes dryers are often produced at the same plant.

Inventory levels

U.S. producers' inventories at the end of September 2011 were *** LRWs; this figure represents a 23.6 percent drop compared with September 2010, but end-of-year 2010 inventories were 83.4 percent greater than those of 2008. These inventory levels, which represented about 10 percent of U.S. shipments in 2010 and January–September 2011, suggest that U.S. producers likely have some ability to respond to changes in demand with changes in the quantity shipped from inventories.

[7] Conference transcript, p. 19 (Bitzer).

[8] BSH has since shut down its U.S. operations. Two other U.S. producers, Electrolux and Fisher Paykel, had previously stopped manufacturing LRWs in the United States.

Subject Imports from Korea

Based on available information, Korean producers have the ability to respond to changes in demand with moderate-to-large changes in the quantity of shipments of LRWs to the U.S. market. The main contributing factors to the moderate-to-large degree of responsiveness of supply are the existence of substantial alternate markets, constrained by low inventories and moderate capacity utilization.

Korean producers had the capacity to produce *** LRWs in 2010. The capacity utilization of Korean producers was *** percent in 2010, although it fell to *** percent during January–September 2011. The ratio of inventories to total shipments increased from 1.9 percent of total shipments during January–September 2011 to 3.1 percent for the similar period in 2011. In 2010, the Korean domestic market and internal transfers accounted for *** percent of shipments; exports to the United States accounted for *** percent, with exports to other foreign markets accounting for the remaining shares. The fact that Korean producers have only supplied the U.S. market with high efficiency top loaders and front loaders could indicate that its capability to supply the U.S. market with conventional LRWs is limited.[9]

Subject Imports from Mexico

Based on available information, Mexican producers have the ability to respond to changes in demand with moderate-to-high changes in the quantity of shipments of LRWs to the U.S. market. The main contributing factors to the moderate-to-high degree of responsiveness of supply are the existence of unused capacity and alternate markets but constrained by low-to-moderate inventories.

Mexican producers had the capacity to produce *** LRWs in 2010. The capacity utilization of Mexican producers was *** percent in 2010, although it fell to *** percent during January–September 2011. Reported end-of-period inventories varied between *** and *** percent of total shipments from January 2010 to September 2011. In 2010, the Mexican home market and internal transfers accounted for *** percent of shipments; the United States accounted for *** percent, with other foreign markets accounting for the remaining shares. Mexican producers have only supplied the U.S. market with high efficiency top loaders and front loaders; its ability to supply the U.S. market with conventional LRWs appears limited.

U.S. Demand

Based on available information, the quantity demanded of LRWs is likely to exhibit small changes in responses to changes in price. Over 90 percent of purchases of LRWs are to replace existing units that have reached, or are close to, the end of their product life, which is typically 7–10 years.[10] Because LRWs have few, if any, substitutes and because breakdowns occur at a relatively steady rate, purchases of washing machines are not as sensitive to price as many commodities, and purchases have not been greatly affected by the economic downturn.[11] To some extent, purchases can be delayed by repairing existing units.

End Uses

All responding U.S. producers and importers reported that LRWs are used in homes by final consumers to wash clothes and other household items. *** added that some LRWs may be used in multi-family apartment buildings. *** added that different organizations, such as military barracks, could have small laundry facilities on premises.

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[9] Samsung stated that it has not and does not intend to export conventional LRWs to the United States. Conference transcript, p. 123 (Dexter).

[10] Petitioner's postconference brief, p. 13.

[11] Conference transcript, p. 23-24 (Bitzer).

A small share of purchases of LRWs is purchased by contractors for installation into newly constructed homes. This small segment of the market is more sensitive to changes in income levels in the overall economy.

Business Cycles

*** stated in its questionnaire response that overall economic conditions affect sales of LRWs but that most sales of LRWs are to replace aging or broken equipment or to upgrade. Therefore, LRWs are less sensitive to trends in the housing market because housing starts are small relative to replacement needs in existing homes.

Demand Trends

Most firms reported that U.S. demand had decreased since 2008, although some said that it had fluctuated. ******* stated that U.S. demand has fluctuated and that demand in foreign market is affected by the business cycle and housing in those markets. *** stated that overall demand for LRWs decreased because of poor economic conditions. It also reported that consumers are demanding increased capacity machines, and water and energy savings, and that high efficiency washers have frequently been introduced and promoted with aggressive pricing. *** stated that the demand for front load washers is decreasing but the demand for high efficiency top loaders is increasing in the United States. *** stated that demand for LRWs in emerging markets continues to grow and that these markets tend to focus more on front load washers. *** stated that the overall demand for LRWs has decreased in the United States due to the severe recession.

Apparent Consumption

The apparent U.S. consumption of LRWs fell between 2008 and 2009, but the 2010 figure was up 10.5 percent from the 2008 level. However, the January–September 2011 level was down 6.3 percent from the same period in 2010. The increase in consumption of LRWs between 2008 and 2010 was greater than the nominal growth in U.S. gross domestic product of 1.6 percent for the same period. The decline in apparent consumption of LRWs during January–September 2011 relative to January–September 2010 was counter to the 3.9 percent rise in U.S. nominal GDP for the same period.

Increases in both price and quantity for a given product indicate that demand is increasing, but if quantity increases while price falls, supply is likely also shifting. The following discussion examines apparent consumption of LRWs, which includes aspects of both demand and supply.[12] Between January 2008 and September 2011, the apparent consumption of conventional LRWs decreased each successive period, and the average unit value of such LRWs was fairly steady, which is consistent with a stable supply curve and contractions in demand (figure II-1). On the other hand, apparent consumption of high-efficiency top loaders increased markedly (260.7 percent between 2008 and 2010 and 59.8 percent between January–September 2010 and the same period in 2011), while its average unit values declined (26.1 percent during 2008–2010 and 3.4 percent during the January-September periods of 2010 and 2011). These changes are consistent with an increase in demand for this product, and with suppliers also being able to provide more high efficiency top loaders at a lower price. A similar picture emerges for front loaders, although the changes are smaller.

[12] Previously in this chapter, it was stated that demand is unlikely to be very sensitive to price (implying a somewhat steep downward sloping demand curve) and that suppliers likely have a moderate-to-large ability to respond to increases in price (implying a fairly flat upward sloping supply or industry marginal cost curve).

Figure II-1
LRWs: Average unit values and apparent consumption by type of LRW, January 2008–September 2011

* * * * * * *

Substitute Products

All responding U.S. producers reported that LRWs have no substitutes. Similarly all responding U.S. importers, except ***, reported that LRWs have no substitutes. *** stated that, in urban apartments with little space, compact residential washers are a substitute. It added that the laundromat market is different from that of LRWs.

Manufacturers' Energy Efficient Appliance Credit

The Manufacturers' Energy Efficient Appliance Credit provides federal tax credits for manufacturers that produce appliances that meet certain energy efficiency standards. Producers and importers were asked if they received this credit for their sales of LRWs. *** was the only firm that reported receiving this credit. It added that this credit does not affect pricing but is used to invest in technology to produce more energy and water efficient appliances. ***, which responded in the negative, stated that it earns credits on certain qualifying appliances including certain LRWs, but that the credits are based on production instead of on sales. *** stated that the credit is only available to U.S. manufacturers. They alleged that *** is a large recipient of these credits and receives credits of up $225 per qualifying washer. They further allege that these credits have enabled ***.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported LRWs depends upon such factors as relative prices, quality, features offered, and "the fit, feel, and finish" of the machine.[13] Based on available data, staff believes that consumers substitute between the domestic product and similar products imported from Korea and Mexico to a moderately high degree. The substitutability is limited somewhat because LG and Samsung do not market conventional LRWs in the United States. While sales of conventional LRWs have declined, they still accounted for more than 35 percent of domestic sales during January to September 2011. LG stated at the conference that it has attempted to enter the upper end of the market by offering high quality machines with a broad range of features.[14] Whirlpool responded that aggressively priced high-efficiency top loaders and front loaders have drawn customers away from other models.[15] Respondents argue that more expensive high energy machines cannot draw customers away from conventional machines and that factors other than price are at issue.[16]

Lead Times

U.S. producer *** reported that *** percent of its sales are from inventory and *** percent are produced to order. For the produced-to-order sales, *** reported average lead times of *** weeks, but did not indicate a lead time for sales from inventory. U.S. producer *** reported that *** percent of its sales

[13] LG, in both the conference and in its postconference brief repeatedly used the phrase "fit, feel, and finish."
[14] Conference transcript, pp. 133-135 (Herring).
[15] Petitioner argues that, although consumers may prefer a certain type of LRW, pricing can induce a customer to switch to a different type of machine. Petitioner's postconference brief, pp. 15-16.
[16] Respondents argue that, if consumers purchase higher priced imported subject LRWs, it must be due to superior nonprice features of the machine. LG's postconference brief, p. 5.

are from inventory and *** percent are produced to order; lead times were *** days for the inventory sales and *** days for produced-to-order sales. *** reported that *** percent of its U.S. sales of Korean LRWs are from its U.S. inventory and that lead times for these sales are *** weeks. LG's produced-to-order sales have lead times of *** weeks. *** reported that *** percent of its U.S. sales of Korean LRWs are from its U.S. inventory, with lead times of *** days and that *** percent are produced to order with lead times of *** weeks. *** reported that *** percent of its U.S. sales of Mexican LRWs are from its U.S. inventory, with lead times of *** days and that *** percent are produced to order with lead times of *** days.

Comparison of U.S.-Produced and Imported LRWs

Producers and importers were asked to assess the degree of interchangeability between LRWs from the United States, Korea, Mexico, and nonsubject countries, and their responses are summarized in table II-2. All responding U.S. producers reported that differences other than price are frequently or sometimes a factor in their firm's sales of LRWs. Responding importers reported that differences other than price are always, frequently, or sometimes a factor in their firm's sales of LRWs. The distribution of responses was approximately equal for all country combinations.

Table II-2
LRWs: Perceived degree of interchangeability of product produced in the United States and other countries[1]

* * * * * * *

Producers and importers were also asked to assess the importance of factors other than price in competition between LRWs from the United States, Korea, Mexico, and nonsubject countries. Their responses are summarized in table II-3. All responding U.S. producers reported that differences other than price are frequently or sometimes a factor in their firm's sales of LRWs. All responding U.S. importers reported that differences other than price are always, frequently, or sometimes a factor in their firm's sales of LRWs. *** identified quality, transportation network, and technical support as nonprice factors that are important. *** cited JD Powers' consumer satisfaction surveys that show that consumers frequently consider ease of use, warranty, style, performance, and reliability as more important than price. *** stated that many factors influence the desirability of a LRW, but that there are no nonprice factors that are independent of price; instead, the desired factors are assessed based on their effect on the price of the large residential washer.

Table II-3
LRWs: Differences other than price between products from different sources[1]

* * * * * * *

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information presented in this section of the report is based on (except as noted) the questionnaire responses of six U.S. producers which are believed to have accounted for virtually all U.S. production of LRWs in 2010.

U.S. PRODUCERS

The Commission sent U.S. producers' questionnaires to seven firms identified in the petition as U.S. producers of LRWs. All seven firms submitted a response (Alliance, BSH, Electrolux, Fisher & Paykel, GE, Staber, and Whirlpool); however, data submitted by Electrolux were either missing and/or incomplete and are not included in the staff report.[1] Petitioner Whirlpool estimates that it accounted for approximately *** percent of total U.S. production of LRWs during the twelve-month period ending September 30, 2011. Of the seven firms that responded to the Commission's questionnaires, *** opposed the petition; *** supported the petition; and *** took no position on the petition. Table III-1 lists U.S. producers of LRWs, their production locations, positions on the petition and shares of reported production in 2010.

Table III-1
LRWs: U.S. producers of LRWs, their positions on the petition, production locations, production, and shares of reported production, 2010

Firm	Production location(s)	Share of reported production (*percent*)	Position on petition
Alliance[1]	Ripon, WI	***	***
BSH[2]	New Bern, NC	***	***
Electrolux[3]	Webster City, IA	([4])	***
Fisher & Paykel[5]	Clyde, OH	***	***
GE[6]	Louisville, KY	***	***
Staber Industries	Groveport, OH	***	***
Whirlpool[7]	Benton Harbor, MI Clyde, OH	***	Petitioner

[1] ***.
[2] ***.
[3] Electrolux's sister company, Electrolux Home Products Corp. N.V., is a Mexican producer/exporter of the subject merchandise. Electrolux is owned by AB Electrolux (Sweden).
[4] Not available.
[5] Fisher & Paykel is wholly owned by Fisher & Paykel Limited (New Zealand). The company is also related to Fisher & Paykel Appliances Co. Ltd. (Thailand), a producer of LRWs.
[6] GE is related to GEA Products, LP, a wholly owned subsidiary and U.S. importer of subject merchandise. The company is also related to Mabe S.A. de C.V., a Mexican producer of LRWs, through a minority joint venture. GE is also engaged in a minority joint venture with Little Swan General Appliance Co., Ltd. (China), a producer of LRWs.
[7] Whirlpool is related to Whirlpool Overseas Manufacturing Sarl, a Mexican producer/exporter of LRWs, as well as Whirlpool Germany, a nonsubject producer of LRWs.

Source: Compiled from data submitted in response to Commission questionnaires.

[1] *** provided limited trade and financial data.

As indicated in table III-1, four U.S. producers, ***, are related to foreign producers of LRWs. Three firms, ***, are each related to subject foreign producers of the subject merchandise, while *** is also related to a U.S. importer of the subject merchandise. In addition, as discussed in greater detail below, four of the seven U.S. producers directly import the subject merchandise.

Table III-2 presents selected information regarding the U.S. industry during the period of investigation. As indicated in table III-2, the LRW industry in the United States was affected by several plant closings and, in the case of Electrolux and Fisher & Paykel, shifting towards offshore production. BSH, Electrolux, and Fisher & Paykel produced LRWs during the period of investigation; however, each of these firms ceased production of LRWs in the U.S. during the period for which data were collected.[2] BSH, which produced high efficiency front load LRWs, closed its production line in New Bern, NC in late 2010; Electrolux closed its LRW production facility in Webster City, IA in early 2011 and transferred additional LRW capacity to its facility in Juarez, Mexico; and Fisher & Paykel, which produced top load LRWs, transferred production from Ohio to Thailand in October 2009.[3]

Conversely, Whirlpool, ***, made the business decision to repatriate its U.S. production of front load LRWs from Germany and Mexico. Whirlpool did not produce front load LRWs in the United States until October 2010. Prior to October 2010, Whirlpool supplied front load LRWs to the U.S. market from Whirlpool's facilities in Germany and Mexico.[4] In 2008, Whirlpool made the decision to stop exporting front load LRWs from its facilities in Germany and Mexico to the U.S. market and invest $100 million to expand its facilities in Clyde, OH to produce front load LRWs. In ***, Whirlpool's facilities in Mexico will refocus on the domestic market in Mexico and export markets in Latin America and Canada, while Whirlpool's facilities in Germany would be retooled by another company to produce solar cells.[5]

Table III-2
LRWs: Selected U.S. industry events, 2008-11.

Year	Company	Events
2009/2011	GE	***Labor contract***: Members of IUE-CWA union who work at GE Appliances join other union members to approve a new four-year national labor contract with GE.[1]
2009	Fisher & Paykel	***Production curtailment and transfer***: Fisher & Paykel transfers its large residential washer production from Ohio to Thailand.[2]
2010	Whirlpool	***Expansion***: Whirlpool adds Alpha/front load production line in its Clyde, OH production facility.[3]
		Relocation: Whirlpool announces it will relocate its Benton Harbor machining operations to its Clyde, OH large residential washer production facility in late 2010 or early 2011.[4]
		Plant closing: Whirlpool announces it will close its Benton Harbor machining plant used to supply machined and plated parts to its Clyde, OH large residential washer production facility in late 2010 or early 2011.[5]
2011	Electrolux	***Plant closing and production transfer***: Electrolux closes its large residential washer production facility in Webster City, Iowa and transfers additional large residential washer capacity to its facility in Juarez, Mexico.[7]

[2] Conference transcript, pp. 26 and 42 (Levy).
[3] Petition, p. 12. Petitioner's post conference brief, Answers to Commission Question, p. 1.
[4] Conference transcript, p. 32 (Bitzer).
[5] Conference transcript, pp. 27, 34 and 81-82 (Bitzer); and email from ***, January 31, 2012.

[1] GE, "GE Union Members Vote "Yes" on New Four-Year Contracts," news release, June 29, 2011. http://www.ge.com/union-negotiations/resources/pdfs/PressReleaseContractRatifiedJune29.pdf, retrieved January 27, 2012.
[2] Fisher & Paykel Appliances Holding Limited, Annual Report 08/09, p. 12.
[3] Petition, p. 174.
[4] Appliance Magazine, "Whirlpool Closes Benton Harbor Machining," June 1, 2010. http://www.appliancemagazine.com/news_print.php?article=1401014&zone=0&first=1, retrieved January 27, 2012.
[5] Appliance Magazine, "Whirlpool Closes Benton Harbor Machining," June 1, 2010. http://www.appliancemagazine.com/news_print.php?article=1401014&zone=0&first=1, retrieved January 27, 2012.
[6] New Bern Sun Journal, "BSH Closing Production Line, Cutting 100 Jobs," January 21, 2011. http://www.newbernsj.com/common/printer/view.php?db=nbsj&id=94213, retrieved January 27, 2012.
[7] Raymondville Chronicle News, "Electrolux Plant in Iowa Shuts Down, Moves to Mexico," April 6, 2011. http://www.raymondvillechroniclenews.com/news/2011-04-06/News/Electrolux_plant_in_Iowa_shuts_down_moves_to_Mexic.html, retrieved January 27, 2012.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-3 and figure III-1. Total U.S. capacity increased from 2008 to 2010 by *** percent. This increase is due to Whirlpool's increase in capacity ***. U.S. capacity volume was more than apparent U.S. consumption of LRWs in 2010. Total U.S. production of LRWs increased by *** percent from 2008 to 2010.[6] Annual capacity utilization rates ranged from *** percent in 2009 to *** percent in 2010. Capacity was higher in January-September 2011 than in January-September 2010, by *** percent, while production was lower during the same period, by *** percent. The decrease in capacity in January-September 2011 is due in part to BSH's decision to cease its production of high efficiency front load LRWs in May 2011. Capacity utilization was also lower in January-September 2011 than in January-September 2010, by *** percentage points.

Table III-3
LRWs: U.S. producers' production, capacity, and capacity utilization, 2008-10, January-June 2010, and January-June 2011

* * * * * * *

Figure III-1
LRWs: U.S. producers' production, capacity, and capacity utilization, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

Responding U.S. producers, ***, reported changes in capacity due to acquisitions, relocations, production curtailments, plant closures, and/or revised labor agreements. The tabulation below lists these events that occurred during the period of investigation.

Over the period examined, *** firms reported constraints on production capacity and include economic payback on large capital investments as well as equipment constraints, particularly for LRW models with higher-end features.

*** of the six responding U.S. producers, ***, reported producing other products using the same manufacturing equipment and/or production employees that were used to produce LRWs, while one U.S.

[6] In Whirlpool's experience, the ideal capacity utilization rate is between 70-80 percent, in order to make a good return on investment and justify the fixed costs of running the production line. Conference transcript, pp. 24-25 and 63-64 (Bitzer).

producer, ***. Other products produced using the same manufacturing equipment and/or production employees include ***.

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORTS

As detailed in table III-4, the volume of U.S. producers' U.S. shipments of LRWs decreased by *** percent from 2008 to 2010, while the value of U.S. shipments increased by *** percent. The quantity of U.S. shipments was slightly higher in January-September 2011 relative to January-September 2010. Responding U.S. producers, except for ***, reported export shipments. No U.S. producer reported internal consumption or related transfers. The majority of reported export shipments were to *** with some shipments also reported to ***.[7]

Table III-4
LRWs: U.S. producers' U.S. shipments, export shipments, and total shipments, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

The Commission requested that U.S. producers report their firm's U.S. shipments of LRWs by model type (high-efficiency front load, high-efficiency top load, and conventional top load). These data are presented in Appendix C. Figure III-2 presents a summary of these data.

Figure III-2
LRWs: U.S. producers' U.S. shipments, by model type, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

U.S. PRODUCERS' IMPORTS

*** reported U.S. imports from Korea and/or Mexico during the period of investigation.[8] *** reported importing from nonsubject sources. ***. ***.[9] Whirlpool continues to import front load LRWs as it ramps up its U.S. production, but the intention is to repatriate all its front load LRW production, and phase out all imports of such product through 2012.[10] ***. Whirlpool's U.S. imports from Mexico are from its affiliate Whirlpool Overseas Manufacturing Sarl, while its nonsubject imports are from its affiliate in Germany.[11] ***. Table III-5 presents U.S. producers' U.S. imports and purchases of U.S. imports from Korea and Mexico during the period of investigation, its U.S. production, and the ratio of their U.S. imports or purchases of U.S. imports to their U.S. production.

[7] ***.

[8] Electrolux, though it failed to provide data on its U.S. operations, reported in its importer questionnaire response that it imports LRWs from Mexico.

[9] ***.

[10] Conference transcript, p. 48 (Bitzer). More specifically, ***. Email from ***, January 31, 2012.

[11] Conference transcript, p. 32 (Bitzer).

Table III-5
LRWs: U.S. producers' imports, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of LRWs for the period of investigation are presented in table III-6.

Table III-6
LRWs: U.S. producers' end-of-period inventories, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers ("PRWs) engaged in the production of LRWs, the total hours worked by such workers, wages paid to such PRWs, productivity, and unit labor costs during the period of investigation are presented in table III-7.

Table III-7
LRWs: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 24 firms, including those firms listed in the petition as likely to be U.S. importers of LRWs, firms listed in proprietary U.S. customs data as U.S. importers of LRWs under HTS subheading 8450.20.00, as well as to all U.S. producers. U.S. importer questionnaire responses were received from nine firms and accounted for virtually all U.S. imports from Korea and Mexico as well as nonsubject sources.[1] Table IV-1 lists all responding U.S. importers of LRWs, their U.S. locations, and their share of total imports, by source, in 2010.[2]

Table IV-1
LRWs: U.S. importers, source(s) of imports, U.S. headquarters, and shares of imports in 2010

Firm	Location	Source of imports	Share of imports			
			Korea	Mexico	Other	Total
Climatic[1]	Columbia, SC	***	***	***	***	***
Electrolux[2]	Charlotte, NC	***	***	***	***	***
Fisher & Paykel[3]	Huntington Beach, CA	***	***	***	***	***
GE	Louisville, KY	***	***	***	***	***
Haier America[4]	New York, NY	***	***	***	***	***
LG[5]	Englewood Cliffs, NJ	***	***	***	***	***
Miele	Princeton, NJ	***	***	***	***	***
Samsung[6]	Ridgefield Park, NJ	***	***	***	***	***
Whirlpool	Benton Harbor, MI	***	***	***	***	***
Total			100.0	100.0	100.0	100.0

[1] ***.
[2] Owned by AB Electrolux (Sweden).
[3] Owned by Fisher & Paykel Appliances Ltd. (New Zealand).
[4] ***.
[5] Owned by LG Electronics Ltd. (Korea), a subject producer/exporter of the subject merchandise.
[6] Owned by Samsung Electonics Ltd. (Korea), a subject producer/exporter of the subject merchandise.

Note.—Because of rounding, figures may not add up to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

[1] Electrolux provided a partial importer questionnaire response. In addition, the Commission received U.S. importer's questionnaire responses from nine firms that reported that they did not import LRWs. Six of the nine firms also reported that they purchase, rather than import, subject merchandise. These firms include: ***. A seventh company, ***, also reportedly purchases, rather than imports, LRWs. Petitioner's postconference brief, p. 19.

[2] Reported U.S. imports of high efficiency front load LRWs, high efficiency top load LRWs, and conventional (non-high efficiency) top load LRWs are used in Appendix C, table C-2 (high efficiency front load), table C-3 (high efficiency top load), and table C-4 (conventional top load) to accurately account for U.S. apparent consumption and market shares of those models.

*** firms reported being related to firms, either foreign or domestic, that are engaged in the production of LRWs.[3] One importer, *** reported entering or withdrawing LRWs from foreign trade zones, and none reported entering or withdrawing LRWs from bonded warehouses. In addition, no importers reported imports of LRWs under the temporary importation under bond program.

U.S. IMPORTS

Table IV-2 presents data for U.S. imports of LRWs from Korea, Mexico, and nonsubject countries. The data below are compiled using responses to the Commission's U.S. importer questionnaire. As shown, U.S. imports from Korea increased by *** percent between 2008 and 2010. The volume of U.S. imports from Mexico increased by *** percent from 2008 to 2010. U.S. imports from both countries were lower in January-September 2011 relative to January-September 2010, by 24.8 percent (Korea) and 5.3 percent (Mexico). The volume of U.S. imports from nonsubject countries decreased by *** percent from 2008 to 2010, and were 48.5 percent lower in January-September 2011 relative to January-September 2010. The sources of reported U.S. imports from nonsubject countries were: ***.

Table IV-2
LRWs: U.S. imports, by source, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

The Commission requested that U.S. importers report their firm's shipments of imports of LRWs by model type (high-efficiency front load, high-efficiency top load, and conventional top load). These data are presented in Appendix C. Figure IV-1 presents a summary of these data.

Figure IV-1
LRWs: U.S. importers' shipments of imports, by model type, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

NEGLIGIBILITY

The Tariff Act of 1930 provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition.[4] The shares (in *percent*) of the total quantity of U.S. imports from Korea and Mexico for the period of December 2010 through November

[3] Electrolux's parent company in Sweden and an affiliate in Mexico both produce LRWs. Fisher & Paykel's parent company in New Zealand and an affiliate in Thailand also produce LRWs. Haier America is related to Qingdao Haier Washing Machine Co., Ltd. (China), a producer of LRWs. LG and Samsung are respectively owned by LG Korea and Samsung Korea, the dominant producers/exporters of the subject merchandise. Samsung is also affiliated with Samsung Electronics Mexico, S.A. de C.V. and Samsung Electronics Thailand, producers of LRWs in Mexico and Thailand. As detailed in *Part III* of this report, GE is related to Mabe S.A. de C.V. (Mexico) and Little Swan General Appliance Co., Ltd. (China), producers of LRWs, through minority joint ventures, while Whirlpool is affiliated with producers of LRWs in both Mexico and Germany.

[4] 19 U.S.C. § 1677(24)(A)(ii).

2011 using official Commerce statistics were 54.8 percent and 38.1 percent, respectively, and 92.9 percent cumulatively, well above the 3 and 7 percent negligibility thresholds.

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning fungibility and channels of distribution are addressed in *Part II* of this report. With regard to geographical markets, official Commerce statistics show that the vast majority of U.S. imports from Korea entered the United States through cities on the Western seaboard (primarily through Los Angeles, CA), while virtually all U.S. imports from Mexico entered the United States through El Paso, TX and Laredo, TX. Imports from Korea and Mexico were present in every month of the period for which data were collected.[5] Both U.S. producers and U.S. importers reported distributing LRWs geographically throughout the United States.[6] Petitioner states that U.S. imports from Korea and Mexico should be cumulated because they are subject to petitions filed on the same day and they compete with one another and the domestic like product.[7] During the preliminary phase of these investigations, respondents did not raise any issues with regard to cumulation of subject imports.

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Data on apparent U.S. consumption of LRWs are presented in table IV-3. From 2008 to 2010, the quantity and value of apparent U.S. consumption of LRWs increased by *** percent and *** percent, respectively. Apparent U.S. consumption was lower in January-September 2011 relative to January-September 2010, by both quantity (*** percent) and value (*** percent). In 2010, U.S. production accounted for *** percent of apparent U.S. consumption of LRWs.

U.S. producers lost *** percentage points of U.S. market share from 2008 to 2010 based on quantity and *** percentage points based on value. U.S. imports from Korea gained *** percentage points of U.S. market share from 2008 to 2010 based on quantity and *** percentage points based on value. U.S. imports from Mexico gained *** percentage points of U.S. market share from 2008 to 2010 based on quantity and *** percentage points based on value. U.S. imports from nonsubject countries lost *** percentage points of U.S. market share based on quantity and *** percentage points based on value.

Table IV-3
LRWs: Apparent U.S. consumption and U.S. market shares, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

[5] Official Commerce statistics for HTS 8450.20.0090.

[6] Responses to U.S. producer's questionnaires, question IV-10; responses to U.S. importer's questionnaires, question III-10.

[7] Petition, p. 157.

RATIO OF IMPORTS TO U.S. PRODUCTION

Table IV-4 presents data on the ratio of U.S imports to U.S. production.

Table IV-4
LRWs: Ratio of U.S. imports to U.S. production, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Producers and importers generally reported rising raw material costs. *** and *** stated in their questionnaire responses that recent increases in the prices of steel, plastic resin, copper, and aluminum are expected to continue. *** stated in its questionnaire response that plastics, carbon steel, stainless steel, copper, aluminum, and packing cardboard are the principal raw materials. It added that prices for these commodities were high in early 2008, fell markedly with the recession, reached lows around June 2009, and have since trended upward. *** stated in its questionnaire response that most commodity prices continue to increase as the global economy expands and that it recently raised retail prices to cover these cost increases. *** stated that its raw material costs increased in mid to late 2011 and that these costs are influenced by crude oil prices.

U.S. Inland Transportation Costs

Three responding producers reported U.S. inland transportation costs ranging from 5 to 15 percent of total delivered costs, with a mean (weighted by 2010 shipment quantity) of 5.6 percent. Four responding U.S. importers reported U.S. inland transportation costs ranging from 1 to 14 percent of total delivered costs, with a mean (weighted by 2010 import quantity) of 8.8 percent. All reporting producers and importers reported that they typically arrange transportation to their customers. Korean LRWs tended to be shipped somewhat greater distances than Mexican LRWs (table V-1).

Table V-1
LRWs: Shares of sales by distance from production facility or U.S. point of shipment for importers

* * * * * * *

PRICING PRACTICES

Pricing Methods

U.S. manufacturers and importers alike reported using a variety of methods to establish price, such as transaction-by-transaction pricing, price lists, contracts, and profit off of a minimum advertised price (MAP). Manufacturers and importers of LRWs influence retail prices by establishing model-specific MAPs with retailers. *** reported that manufacturers offer cooperative advertising funds as an incentive for retailers to promote and advertise LRWs at a certain MAP. *** added that a MAP is the starting point for prices and that discounts and retail margins are taken off of the MAP. *** reported that retailers request price proposals in terms of the retailers' gross profit margin relative to MAPs. When particular MAPs are lowered, such as for a "Black Friday" sale, the manufacturer or importer typically also lowers its price to the retailer, which may be either an upfront reduction or a post-sale rebate. Both U.S. manufacturers and importers reported in their questionnaire responses that they set MAPs, but *** and *** added that retailers maintain discretion to establish their own prices. Both U.S. producers and importers reported that they set the same MAPs for all customers. Both producers and importers reported that competitors' prices were a factor in establishing MAPs for their own products.

Companies reported different shares of sales sold on the spot market versus on a contract basis. *** reported that *** percent of its sales were pursuant to long-term contracts (over a year) and that *** percent were spot sales. *** reported that all of its sales were through contracts, *** percent of which

were long term and *** percent were short term (a year or less). *** reported that *** percent of its sales were through short-term contracts, with the remaining *** percent being spot sales (with a similar pattern for product from Mexico and Korea). Contracts tended to fix price and not have meet-or-release provisions.

Sales Terms

The most typical payment terms for both U.S. producers and importers were net 30 days, although *** and *** also reported using net 60 days. U.S. producers and importers of both Mexican and Korean products typically quote prices on a delivered basis.

Discounts

Discounts on prices of LRWs fall into two categories: direct discounts (i.e., discounts, incentives, rebates, and other adjustments that are tied to the specific product being sold) and indirect discounts that are not tied to a specific product (i.e., allocated discounts, incentives, allowances, rebates tied to some broad performance measure or volume discounts based on multiple products, including different white goods and electronic products).

*** stated that its discounts are based on units sold to large customers whose sales volumes are known. To smaller retailers, it reported sometimes providing upfront allowances. It also reported providing allowances for promotional displays. Indirect discounts could be provided based on broad sales that are not specifically tied to sales of a certain model of LRW; these could include volume discounts based on a broad range of products, or incentives, allowances or rebates that are offered on a variety of goods. *** reported using a variety of discounts including retail sales promotions, quantity discounts, annual total volume discounts, sales incentives, promotional discounts, cooperative advertising, and inventory financing. *** stated that it also provides a variety of discounts, including annual rebates for meeting annual sales targets on combined purchases of consumer electronics and appliances. It reported establishing these discounts on a client-specific basis and feeling pressure to increase its discounts based on the large indirect discounts offered by ***. *** also reported volume discounts, promotional discounts, and other discounts. It stated that indirect discounts do not influence price negotiations. It also stated that the negotiations for floor space and promotional space are not directly linked to indirect discounts, which can either be linked to a specific product or to broader sales.

*** The Commission's questionnaire asked firms to report numbers of LRWs that were sold to retailers at promotional pricing during November 2011 or were offered to a retailer at promotional pricing in November 2011. U.S. importers discounted large numbers of high efficiency front loaders and top loaders, and U.S. producers discounted large numbers of conventional LRWs (table V-2).

Table V-2
LRWs: November 2011 Black Friday discounts, by types of LRWs and U.S. producer or importer

* * * * * * *

To gain further information on discounts, the Commission's questionnaire asked producers and importers to report sales information and value of direct and indirect discounts. These data show that indirect discounts may be more important than direct discounts for *** and that direct discounts may be more important for *** (table V-3).

Table V-3
LRWs: Total Quantity and value sold, direct and indirect discounts by four largest firms

* * * * * * *

PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and net f.o.b. value of LRWs shipped to unrelated U.S. customers. Data were requested from January 2008 through September 2011, and specifications for all SKUs that fell under each product were also requested. Pricing data for the following products were requested.

Product 1A Front loading, high efficiency washer; rated DOE capacity greater than or equal to 4.2 cubic feet; steam cycle(s) included; water heater included; LCD display; any non-white finish. Report data for all your SKUs that fall under this definition.

Product 1B For each quarter during the period, report data for Product 1A, but only for your highest-volume SKU falling within this product definition.

Product 2A Front loading, high efficiency washer; rated DOE capacity greater than or equal to 3.7 cubic feet but less than 4.2 cubic feet; steam cycle(s) not included; water heater included; white finish. Report data for all your SKUs that fall under this definition.

Product 2B For each quarter during the period, report data for Product 2A, but only for your highest-volume SKU falling within this product definition.

Product 3A Front loading, high efficiency washer; rated DOE capacity of greater than or equal to 3.2 cubic feet but less than 3.7 cubic feet; steam cycle(s) not included; water heater included; white finish. Report data for all your SKUs that fall under this definition.

Product 3B For each quarter during the period, report data for Product 3A, but only for your highest-volume SKU falling within this product definition.

Product 4A Top loading, high efficiency washer; rated DOE capacity of greater than or equal to 3.7 cubic feet but less than 4.2 cubic feet; steam cycle(s) not included; water heater not included; lid includes glass material; white finish. Report data for all your SKUs that fall under this definition.

Product 4B For each quarter during the period, report data for Product 4A, but only for your highest-volume SKU falling within this product definition.

Product 5A Top loading, high efficiency washer; rated DOE capacity of greater than or equal to 4.2 cubic feet; steam cycle(s) not included; water heater included; lid includes glass material; any non-white finish. Report data for all your SKUs that fall under this definition.

Product 5B For each quarter during the period, report data for Product 5A, but only for your highest-volume SKU falling within this product definition.

The petitioner suggested these products including those with the "B" suffix that request data on the highest volume SKU for each quarter. This was done to ensure comparability, while the A data represent all data for the product description.

*** provided U.S. producer pricing data, although for fairly small quantities, of products 1, 4, and 5. No U.S. producer provided data for product 2. BSH provided U.S. producer pricing data for product 3.[1] *** provided Korean pricing data for products 1, 3, and 5, and for U.S. imports from Mexico for product 3 but only for 2011. *** provided data on imports of product 2 from *** and imports of product 3 from ***. *** provided pricing data on imports from Korea for all 5 pricing products. *** provided pricing data on imports of product 5 from Korea.

Data reported by these firms accounted for approximately *** percent of U.S. producers' shipments of LRWs, *** percent of U.S. shipments of subject imports from Korea, and *** percent of subject imports from Mexico in 2010. Pricing data on U.S. products could be limited because it manufactures many conventional washers, on which no data were collected.[2] The U.S. pricing data represents 5.3 percent of U.S. production of high efficiency LRWs. *** provided a small amount of pricing data, which was not used because they were unable to provide discounted values. Pricing data, which are net of all discounts, for these products are presented in V-5 to V-14 and figure V-1.

Pricing Data and Discounts

As previously discussed, both U.S. manufacturers and importers offer a range of direct and indirect discounts, and before examining the pricing data, which is net of all discounts, table V-4 shows average direct and indirect discounts. Collectively, the discounts are fairly large and significantly affect price. Importers of Korean products had the largest direct discounts and fairly large indirect discounts, although U.S. producers' indirect discounts were larger on product 4 and product 5.[3] Average indirect discounts on subject Mexican products were among the largest in the table, although its direct discounts were small. Average direct and indirect discounts on product 3 for U.S. producers were the lowest in the pricing data.

Table V-4
LRWs: Average direct and indirect discounts by source country and by product

* * * * * * *

Table V-5
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1A[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-6
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1B[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

[1] ***

[2] No nonsubject pricing data were collected.

[3] Petitioners alleged that respondents miscalculated their indirect discounts. Petitioners postconference brief, pp. 35-37.

Table V-7

LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2A[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-8
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2B[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-9
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3A[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-10
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3B[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-11
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4A[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-12
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4B[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-13
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5A[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Table V-14
LRWs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5B[1] and margins of underselling/(overselling), by quarters, January 2008-September 2011

* * * * * * *

Figure V-1
LRWs: Weighted-average prices and quantities of domestic and imported products 1A–5B, by quarters, January 2008-September 2011

* * * * * * *

Price Trends

Table V-15 summarizes the price trends, by country and by product. As shown in the table, prices of both the domestic and subject imported products tended to decrease between January 2008 and September 2011.

Price Comparisons

As shown in table V-16, prices for some LRWs imported from Korea were priced higher than comparable U.S.-produced LRWs. There were approximately equal instances of underselling and overselling of the U.S. and Korean LRWs. Mexican LRWs oversold the U.S. product more often, particularly in the more broadly defined "A" products where there were no instances of the Mexican products overselling the comparable U.S. products. Overall, there were approximately equal instances of overselling and underselling, but the underselling margins were larger.

Table V-15
LRWs: Summary of weighted-average f.o.b. prices for products 1A-5B from the United States, Mexico, and Korea

* * * * * * *

Table V-16
LRWs: Instances of underselling/overselling and the range and average of margins, January 2008-September 2011

* * * * * * *

LOST SALES AND LOST REVENUES

* * * * * * *

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Four producers,[1] provided usable financial data on their LRWs operations. These firms accounted for the vast majority of the domestic industry's production/sales volume during the period. *** reported transfers to related firms (approximately *** percent of combined sales value of 2010). The unit sales values of *** than the unit sales values of its commercial sales between 2008 and 2010 and the two interim (January-September) periods in 2010 and 2011.[2]

OPERATIONS ON LARGE RESIDENTIAL WASHERS

Aggregate income-and-loss data for the U.S. producers are presented in table VI-1. To summarize, the overall financial condition of the domestic LRWs industry experienced continuous operating losses throughout the period, due mainly to the increased average unit total costs which were consistently higher than the average unit sales value ("AUV") of net sales over the period. Most of the deterioration occurred between interim 2010 and interim 2011, despite the somewhat increased AUV during the same period. From 2008 to 2010, an increase in the AUV ($*** per unit) as well as an increase in unit total costs ($*** per unit), i.e., cost of goods sold ("COGS") and selling, general, and administrative ("SG&A") expenses combined resulted in a decreased operating loss in 2010 (by $*** per unit). As a result, the industry's operating loss margin decreased from *** percent in 2008 to *** percent in 2010.

Even though the AUV of the domestic net sales increased somewhat between the two interim periods (by $*** per unit), average total costs increased more during the same period (by $*** per unit), which resulted in a much higher per-unit operating loss (a decrease by $*** per unit) in January-September 2011. The increase in per-unit total costs between the two interim periods was mainly attributable to the increase of per-unit cost of raw materials, especially for ***.

Table VI-1
LRWs: Results of operations of U.S. producers, fiscal years 2008-10, January-September 2010, and January-September 2011

* * * * * * *

Selected company-by-company data are presented in table VI-2. Total net sales (quantities and values), per-unit values (sales, COGS, SG&A, and operating income), operating income, and the ratio of operating income (loss) to net sales are presented in this table on a firm-by-firm basis. Both *** reported decreased sales quantities and values between 2008 and 2010 and between the two interim periods. *** sales quantities and values increased between 2008 and 2010 and between the two interim periods. The unit sales values, unit COGS and unit SG&A of *** are much higher compared to those of *** due primarily to product mix. Further, the sales quantities and values of *** are much smaller to compared to sales volume and values of ***. Therefore, it is not advisable to compare the unit values of each producer of the four producers.

While per-unit cost of raw materials increased substantially between the two interim periods, due

[1] All four producers have their fiscal years end on December 31. Two other producers, ***, submitted questionnaire responses. However, their responses were not used because they contained either incomplete and irreconcilable data, or no financial data.

[2] ***. E-mail from ***, January 18, 2012.

primarily to the increase of ***,[3] the other producers' per-unit material costs actually decreased during the same period. Per-unit direct labor and factory overhead costs combined only increased moderately during the same period, as well as per-unit SG&A expenses. ***. ***.[4] All domestic producers reported operating losses for all periods except ***.

Table VI-2
LRWs: Results of operations of U.S. producers, by firm, fiscal years 2008-10, January-September 2010, and January-September 2011

* * * * * * *

Selected aggregate per-unit cost data of the producers on their operations, i.e., COGS and SG&A expenses, are presented in table VI-3. Overall per-unit COGS and total cost (which includes SG&A expenses) increased from 2008 to 2010 and again between the two interim periods, and per-unit cost of raw materials were much higher in interim 2011 than interim 2010, driven mainly by increases in raw material costs of *** as explained before. The ratio of total COGS to net sales decreased between 2008 and 2010, but was higher in interim 2011 than in interim 2010.

Table VI-3
LRWs: Average unit costs of U.S. producers, fiscal years 2008-10, January-September 2010, and January-September 2011

* * * * * * *

The variance analysis showing the effects of prices and volume on the producers' sales of LRWs, and of costs and volume on their total cost, is shown in table VI-4.[5] The analysis indicates that the decrease in operating loss between 2008 and 2010 was the result of per-unit prices increasing faster than costs and expenses. The summary at the bottom of the table illustrates that from 2008 to 2010 the positive effect of increased prices more than offset the negative effect of increased costs and expenses. The variance analysis indicates that the decrease in operating loss of $*** resulted from the combined positive effects of increased price ($***) and decreased sales volume ($***), despite of increased costs/expenses ($***). Between the two interim periods, the variance analysis indicates that the substantial increase in operating loss of $*** resulted from the negative effect of increased costs/expenses ($***) combined with the positive effect of increased price ($***) and the positive effect of volume ($***).

[3] ***. E-mail from ***, January 26, 2012.

[4] ***.

[5] The Commission's variance analysis is calculated in three parts: sales variance, COGS variance, and SG&A expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the COGS and SG&A variances) and a volume variance. The sales or cost variance is calculated as the change in unit price/cost times the new volume, while the volume variance is calculated as the change in volume times the old unit price/cost. Summarized at the bottom of the respective tables, the price variance is from sales, the cost/expense variance is the sum of those items from COGS and SG&A, respectively, and the net volume variance is the sum of the price, COGS, and SG&A volume variance. All things being equal, a stable overall product mix generally enhances the utility of the Commission's variance analysis.

Table VI-4
LRWs: Variance analysis of operations of U.S. producers, fiscal years 2008-10, January-September 2010, and January-September 2011

* * * * * * *

All domestic producers reported Energy Efficient Appliance Federal Tax Credits for LRWs, amounting to ***. ***.[6]

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are presented in table VI-5. While all U.S. producers reported capital expenditures, the majority were spent by *** during the period for which data were collected. Capital expenditures increased substantially between 2008 and 2010, and R&D expenses increased throughout this period. Data for capital expenditures on a firm-by-firm basis are shown in table VI-6.

Table VI-5
LRWs: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2008-10, January-September 2010, and January-September 2011

*** * * * * * ***

Table VI-6
LRWs: Capital expenditures by U.S. producers, by firms, fiscal years 2008-10 January-September 2010, and January-September 2011

*** * * * * * ***

ASSETS AND RETURN ON INVESTMENT

U.S. producers were requested to provide data on their assets used in the production and sales of LRWs during the period for which data were collected to assess their return on investment ("ROI"). The total net asset assets increased continuously and substantially from 2008 to 2010.[7] At the same time, the return on the assets remained negative during the same period as operating loss decreased in 2009 and somewhat increased in 2010. The trend of ROI over the period was the same as the trend of the operating income margin shown in table VI-1.

Table VI-7
LRWs: Value of assets and return on investment of U.S. producers, fiscal years 2008-10

* * * * * * *

[6] In its questionnaire response submitted on January 16, 2012, ***, respectively. As these credits were not utilized, they were moved to the deferred asset account, consistent with GAAP. Other firms also explained that these credits were not reported because they were applied to income taxes and below net income items.

[7] While other firms' net assets either decreased or remained relatively at the same level, ***. E-mail from***, January 18, 2012.

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual negative or potential effects on their return on investment, or their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of LRWs from Korea and Mexico. Their responses were as follows:

Actual Negative Effects

Alliance.–***
BSH.–***
GE.–***
Whirlpool.–***

Anticipated Negative Effects

Alliance.–***
BSH.–***
GE.–***
Whirlpool.–***

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors[1]--
>
> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
>
> (VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

> (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
>
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN KOREA

The petition identified three potential producers of LRWs in Korea: Daewoo Electronics ("Daewoo"), LG Electronics, Inc. ("LG Korea"), and Samsung Electronics Co., Ltd. ("Samsung Korea"). The Commission received questionnaire responses from LG Korea[3] and Samsung Korea.[4] These firms are believed to account for virtually all, if not all, of exports to the U.S. from Korea in 2010.[5] Daewoo, which entered bankruptcy in the late 1990s, is believed to export LRWs from Korea as well, but did not provide a response to the Commission's questionnaire. Table VII-1 shows 2010 capacity, production, and export shipment data for the individual firms.

[2] Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

[3] LG Korea is affiliated with LG Electronics USA Inc., a U.S. importer of the subject project; Nanjing LG-Panda Appliances Co., Ltd, a producer of LRWs in China; LG Electronics Russia, LLC, a producer of LRWs in Russia; LG Electronics India Pvt. Ltd, a producer of LRWs in India; LG Electronics Thailand Co., Ltd, a producer of LRWs in Thailand; LG Electronics Vietnam Co., Ltd., a producer of LRWs in Vietnam; LG Electronics Almaty Kazakstan, a producer of LRWs in Kazakstan; LG Electronics de Sao Paulo Ltd, a producer of LRWs in Brazil; LG Electronics Wroclaw Sp. z.o.o., a producer of LRWs in Poland. LG Korea estimated that it accounted for *** percent of total production of LRWs in Korea and *** percent of total exports to the United States of LRWs from Korea in 2010.

[4] Samsung Korea is affiliated with Samsung America, a U.S. importer of the subject product; Thai-Samsung Electronics Co., Ltd, a producer of LRWs in Thailand; and Samsung Electronics Mexico S.A. de C.V., a producer of LRWs in Mexico. Samsung Korea reported ***.

[5] Conference transcript, p. 67 (Greenwald) and p. 138 (Connelly).

Table VII-1
LRWs: Korea's reported production capacity, production, and U.S. exports, by firm, 2010

Producer	Capacity (units)	Production (units)	Share of reported 2010 production in Korea (percent)	Exports to the U.S. (units)	Share of reported 2010 total shipments exported to the U.S. (percent)
LG Korea	***	***	***	***	***
Samsung Korea	***	***	***	***	***
Total	***	***	***	***	***
Source: Compiled from data submitted in Commission questionnaire responses.					

LG Korea

In 2010, *** percent of LG Korea's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments were to export markets other than the United States, which include ***. LG Korea's exports to the United States increased by *** percent from 2008 to 2010. Between 2008 and 2010, LG Korea's production increased by *** percent. LG Korea reported that it shipped to *** U.S. importers of LRWs during the period of investigation, ***.

Samsung Korea

In 2010, *** percent of Samsung Korea's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments were to export markets other than the United States. Samsung Korea's exports to the United States increased by *** percent from 2008 to 2010. Between 2008 and 2010, its production increased by *** percent; however, production was *** percent lower in interim 2011 when compared with interim 2010. Samsung Korea reported that it shipped to *** U.S. importers of LRWs during the period of investigation, ***.

Table VII-2 presents cumulative data for reported capacity, production, and shipments of LRWs for all reporting producers in Korea.[6]

Table VII-2
LRWs: Data for capacity, production, shipments, and inventories of producers in Korea, 2008-10, January-September 2010, January-September 2011, and projected 2011-12

* * * * * * *

THE INDUSTRY IN MEXICO

The petition identified four potential producers of LRWs in Mexico: Electrolux Home Products de Mexico, S.A. de C.V. ("Electrolux Mexico"); Controladora Mabe S.A. de C.V. ("Mabe"); Samsung Electronics Mexico S.A. de C.V. ("Samsung Mexico"); and Whirlpool Mexico, S.A. de C.V. ("Whirlpool Mexico"). The Commission received questionnaire responses from Electrolux,[7] Mabe,[8] Samsung

[6] LG Korea and Samsung Korea reported ***.

[7] Electrolux Mexico is affiliated with Electrolux Home Products, Inc., a U.S. importer of subject product. Electrolux was also U.S. producer of LRWs until early 2011 when it shifted its production of LRWs to its facilities

Mexico,[9] and Whirlpool Mexico.[10] Table VII-3 shows 2010 capacity, production, and export shipment data for the individual firms.

Table VII-3
LRWs: Mexico's reported production capacity, production, and U.S. exports, by firm, 2010

Producer	Capacity (units)	Production (units)	Share of reported 2010 production in Mexico (percent)	Exports to the U.S. (units)	Share of reported 2010 total shipments exported to the U.S. (percent)
Electrolux Mexico	***	***	***	***	***
Mabe	***	***	***	***	***
Samsung Mexico	***	***	***	***	***
Whirlpool Mexico	***	***	***	***	***
Total	***	***	100.0	***	***

Source: Compiled from data submitted in Commission questionnaire responses.

Electrolux Mexico

In 2010, *** percent of Electrolux Mexico's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments were to export markets such as ***.[11] Electrolux Mexico began production of ***. Electrolux Mexico reported that it shipped to *** U.S. importers of LRWs during the period of investigation, ***.

Mabe

In 2010, *** percent of Mabe's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments were to export markets such as ***. According to Mabe's projections for 2011 and 2012 ***.

Samsung Mexico

In 2010, *** percent of Samsung Mexico's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments

in Mexico. Petition, p. 12. Electrolux Mexico estimated that it accounted for *** percent of total production of LRWs in Mexico and *** of total exports to the United States of LRWs from Mexico in 2010.

[8] Mabe is affiliated with GE, a U.S. producer and importer of subject product. Mabe estimated that it accounted for *** percent of total production of LRWs in Mexico and *** percent of total exports to the United States of LRWs from Mexico in 2010.

[9] Samsung Mexico is affiliated with Samsung America, a U.S. importer of the subject product; Thai-Samsung Electronics Co., Ltd, a producer of LRWs in Thailand; and Samsung Korea, a producer of LRWs in Korea. Samsung Mexico reported ***.

[10] Whirlpool Mexico is affiliated with Whirlpool, a U.S. producer and U.S. importer of subject product and Whirlpool Bauknecht Hausgeräte GmbH, a producer of LRWs in Germany. Whirlpool Mexico estimated that it accounted for *** percent of total production of LRWs in Mexico and *** percent of total exports to the United States of LRWs from Mexico in 2010.

[11] Electrolux Mexico currently produces ***.

were to export markets such as ***.[12] Samsung Mexico's reported capacity increased by *** percent from 2008 to 2010 and its production decreased by *** percent during that same period.[13] Samsung Mexico's capacity is projected to increase by *** percent between 2010 and 2012 and its production is projected to increase by *** percent over the same period. Samsung Mexico's ***.[14] Samsung notes that it intends to shift LRW production from Korea to Mexico.[15] Samsung Mexico's exports to the United States are projected to increase by *** percent between 2011 and 2012. Samsung Mexico reported that it shipped to *** U.S. importers of LRWs during the period of investigation, ***.

Whirlpool Mexico

In 2010, *** percent of Whirlpool Mexico's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market, and *** percent of its total shipments were to export markets such as ***. Whirlpool Mexico's exports to the United States decreased by *** percent from 2008 to 2010.[16] Whirlpool Mexico reported that it shipped to *** U.S. importers of LRWs during the period of investigation, ***.

Whirlpool did not produce front load LRWs in the United States until October 2010. Prior to October 2010, Whirlpool supplied front load LRWs to the U.S. market from Whirlpool's facilities in Germany and Mexico.[17] In 2008, Whirlpool made the decision to stop exporting front load LRWs from its facilities in Germany and Mexico to the U.S. market and invest $100 million to expand its facilities in Clyde, Ohio to produce front load LRWs. At the preliminary conference, a representative from Whirlpool noted that Whirlpool's facilities in Mexico would refocus on the domestic market in Mexico and export markets in Latin America and Canada, while Whirlpool's facilities in Germany would be retooled by another company to produce solar cells.[18] According to petitioner, ***.[19]

Table VII-4 presents cumulative data for reported capacity, production, and shipments of LRWs for all reporting producers in Mexico.

Table VII-4
LRWs: Data for capacity, production, shipments, and inventories of producers in Mexico, 2008-10, January-September 2010, January-September 2011, and projected 2011-12

* * * * * * *

[12] Samsung Mexico reported that it began exporting subject product to the United States in ***. During that period, *** percent of Samsung Mexico's total shipments of LRWs were exported to the United States, *** percent of its total shipments were to its home market and *** percent of its total shipments were to all other export markets.

[13] Samsung Mexico reported that ***.

[14] Respondent Samsung's postconference brief, p. 47. According to counsel for Samsung, ***. Email from ***, February 1, 2012.

[15] Respondent Samsung's postconference brief, p. 47.

[16] Counsel for petitioner reports that ***. Email from ***, January 31, 2012.

[17] Conference transcript, p. 32 (Bitzer).

[18] Conference transcript, pp. 27, 34 and 81-82 (Bitzer).

[19] Email from ***, January 31, 2012.

U.S. INVENTORIES OF IMPORTED MERCHANDISE

Table VII-5 presents data on U.S. importers' reported inventories of LRWs.

Table VII-5
LWRs: U.S. importers' inventories, 2008-10, January-September 2010, and January-September 2011

* * * * * * *

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested U.S. importers to indicate whether they imported or arranged for the importation of LRWs after September 30, 2011. *** stated that they had imported or arranged for importation of approximately *** units $(***) from Korea since September 30, 2011. *** stated they had imported or arranged for importation of approximately *** units $(***) from Mexico since September 30, 2011.

ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS

In September 2003, Australia's Customs Service completed antidumping investigations on Korean washing machines and imposed antidumping duties on washing machines exported by Samsung Korea and Daewoo. In September 2004, Australia's Custom Service expanded those orders to cover exports of LG Korea as well. The measures were revoked in July 2008, pursuant to a finding that no Australian industry was producing like goods.[20]

GLOBAL MARKET

Tables VII-6 and VII-7 present *Global Trade Atlas* data concerning the export of washer machines, by destination, from Korea and Mexico, respectively, from 2008-2010.[21]

[20] Petition, pp. 14-15.

[21] This HS category includes "household or laundry type washing machines, exceeding a dry linen capacity of 10 kilograms." According to the petitioner, although this category does not fit the scope perfectly, it should serve as a benchmark for the Commission's questionnaire data. Petitioner's post conference brief, Answers to Commission Questions, p. 2.

Table VII-6
LRWs: Korean exports, by destination, 2008-10

Destination market	Calendar year		
	2008	2009	2010
	Quantity (*units*)		
United States	853,804	1,068,486	1,641,587
Canada	138,915	219,210	313,706
Iran	51,636	47,046	126,593
France	25,235	40,035	74,551
United Kingdom	12,155	48,689	74,465
Taiwan	71,552	62,954	70,569
Australia	7,900	50,302	69,865
Mexico	66,881	45,346	57,469
Italy	5,580	22,466	46,978
Ecuador	44,577	29,358	46,611
All other destination markets	340,170	411,951	405,721
Total	1,618,405	2,045,843	2,928,115
	Value (*dollars*)		
United States	402,636,439	443,497,601	611,181,989
Canada	74,439,934	86,773,907	113,510,183
Iran	17,577,536	13,786,572	39,455,612
France	9,067,391	11,558,832	26,050,911
United Kingdom	3,249,658	9,593,373	21,578,129
Taiwan	21,996,565	16,987,329	22,107,341
Australia	4,940,205	15,610,810	26,058,492
Mexico	25,465,017	12,759,465	17,642,565
Italy	2,265,754	5,257,102	13,959,587
Ecuador	10,400,402	7,350,485	10,943,314
All other destination markets	124,807,386	123,635,720	134,372,659
Total	696,846,287	746,811,196	1,036,860,782
	Average unit value (*dollar per unit*)		
United States	471.58	415.07	372.31
Canada	535.87	395.85	361.84
Iran	340.41	293.04	311.67
France	359.32	288.72	349.44
United Kingdom	267.35	197.03	289.78
Taiwan	307.42	269.84	313.27
Australia	625.34	310.34	372.98
Mexico	380.75	281.38	306.99
Italy	406.05	234.00	297.15
Ecuador	233.31	250.37	234.78
All other destinations	366.90	300.12	331.19
Average	430.58	365.04	354.11

Source: Global Trade Atlas, HS 8450.20

Table VII-7
LRWs: Mexican exports, by destination, 2008-10

Destination market	Calendar year		
	2008	2009	2010
	Quantity (*units*)		
United States	50,987	322,237	442,249
Colombia	162,668	161,052	195,326
Ecuador	31,860	27,480	32,520
Venezuela	194,442	88,723	32,173
Peru	11,372	8,172	30,904
Chile	9,592	16,114	29,323
Panama	16,466	20,796	14,801
Guatemala	11,203	18,361	14,386
El Salvador	7,548	14,826	9,956
Costa Rica	8,377	10,090	8,772
All other destination markets	24,182	20,867	25,176
Total	528,697	708,718	835,586
	Value (*dollars*)		
United States	33,915,653	157,818,406	203,220,074
Colombia	32,857,262	34,850,320	42,652,176
Ecuador	7,546,206	6,423,770	7,369,655
Venezuela	47,716,826	18,919,242	6,555,096
Peru	2,966,836	1,974,253	7,862,908
Chile	2,824,992	3,992,454	7,440,107
Panama	4,032,577	2,413,958	3,116,767
Guatemala	2,536,962	3,897,328	3,047,336
El Salvador	1,662,447	3,035,581	2,093,773
Costa Rica	1,814,210	2,111,484	1,918,304
All other destination markets	4,914,325	5,204,567	6,009,547
Total	142,788,296	240,641,363	291,285,743
	Average unit value (*dollar per unit*)		
United States	$665.18	$489.76	$459.52
Colombia	201.99	216.39	218.36
Ecuador	236.86	233.76	226.62
Venezuela	245.40	213.24	203.75
Peru	260.89	241.59	254.43
Chile	294.52	247.76	253.73
Panama	244.90	116.08	210.58
Guatemala	226.45	212.26	211.83
El Salvador	220.25	204.75	210.30
Costa Rica	216.57	209.27	218.68
All other destination markets	203.22	249.42	238.70
Average	270.08	339.54	348.60

Source: Global Trade Atlas, HS 8450.20

INFORMATION ON NONSUBJECT SOURCES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"[22]

According to the petitioner, LRWs were produced and exported to the United States from Germany, China, and the Czech Republic during the period of investigation.[23] Petitioner also estimates that nonsubject imports of LRWs have decreased during the period of investigation to now account for less than 3 percent of apparent domestic consumption.[24]

Official U.S. trade statistics do not precisely reflect U.S. imports of LRWs, as the HTSUS subheadings listed by the petitioner as including LRWs also include imports of nonsubject products.[25] Petitioner stated that the HTSUS subheading that best represents U.S. imports of LRWs is HTSUS 8450.20.0090.[26] Table VII-8 represents U.S. imports under HTSUS statistical reporting number 8450.20.0090 from leading countries during the period of investigation.

Table VII-8
LRWs: U.S. imports of HTSUS 8450.20.0090, household- or laundry-type washing machines, including machines which both wash and dry, each of a dry linen capacity exceeding 10 kg, by source, 2008-10, January-September 2010, and January-September 2011

Item	Calendar year			January-September	
	2008	2009	2010	2010	2011
			Value ($*1,000*)		
Korea	409,387	512,672	599,258	488,840	354,135
Mexico	208,645	315,393	438,870	324,417	276,384
Germany	339,885	265,297	190,016	140,325	96,437
China	5,009	4,568	8,625	6,912	507
Other	42,644	26,248	28,439	19,178	21,008
Total	1,005,570	1,124,178	1,265,208	979,672	748,470

Note. HTSUS 8450.20.0090 includes nonsubject products.

Source: USITC DataWeb/USDOC (accessed January 26, 2012).

[22] Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

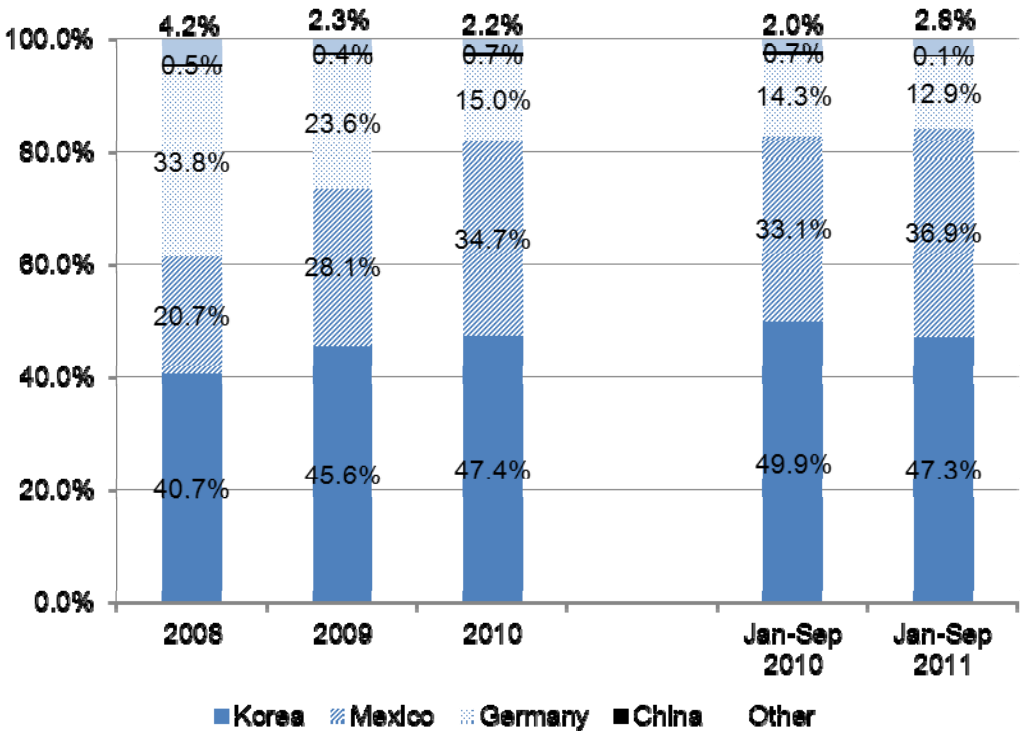
[23] Petition, p. 28.

[24] Petition, p. 28.

[25] Petition, p. 17.

[26] Petitioner's postconference brief, Part II, Question 3. Nonsubject imports that may be accounted for under this subheading might include combination washer/dryer machines and large washers that would be used in a commercial or industry setting.

Figure VII-1
LRWs: Percent share of US imports of HTSUS 8450.20.0090, household- or laundry-type washing machines, including machines which both wash and dry, each of a dry linen capacity exceeding 10 kg, by source, 2008-10, January-September 2010, and January-September 2011



Source: USITC DataWeb/USDOC (accessed January 26, 2012).

Germany

Germany was the largest nonsubject supplier of LRWs to the United States during 2008–10. According to official U.S. import statistics, U.S. imports from Germany under HTSUS 8450.20.0090, which contain LRWs, totaled $339.9 million in 2008, $265.3 million in 2009, and $190 million in 2010.[27] This constitutes 34 percent (2008), 24 percent (2009), and 15 percent (2010), respectively, of total U.S. import value in this category. As a share of only nonsubject U.S. imports, U.S. imports from Germany represent the majority of total nonsubject U.S. imports under this subheading, accounting for 88 percent (2008), 90 percent (2009), and 84 percent (2010), respectively.[28] There are at least 3 major producers of LRWs in Germany: Whirlpool, Miele & Cie (Miele), and BSH Bosch und Siemens Hausgerate. ***.[29]

China

China was identified by the petitioner as another nonsubject supplier of LRWs during the period of investigation. According to official U.S. import statistics, U.S. imports from China under HTSUS 8450.20.0090, which contain LRWs, totaled $5.0 million in 2008, $4.6 million in 2009, and $8.6 million in 2010.[30] This constitutes 0.5 percent (2008), 0.4 percent (2009), and 0.7 percent (2010), respectively, of

[27] USITC Dataweb/USDOC (accessed January 26, 2012).
[28] USITC Dataweb/USDOC (accessed January 26, 2012).
[29] ***; Standard and Poor's Industry Survey, "Household Durables," p. 32.
[30] USITC Dataweb/USDOC (accessed January 26, 2012).

total U.S. import value in this category. As a share of only nonsubject U.S. imports, U.S. imports from China accounted for 1.3 percent (2008), 1.5 percent (2009), and 3.8 percent (2010), respectively during the same period.[31] Producers of LRWs in China that exported to the United States during the period of investigation include Little Swan and Qingdao Haier Washing Machine Co., LTD (Haier).[32] ***.[33] Haier is part of the Haier Group, a privately-held manufacturer and exporter of home appliances.[34]

Czech Republic

The Czech Republic was the third nonsubject country mentioned by the petitioner as having produced and exported LRWs to the United States during the period of investigation.[35] U.S. imports from the Czech Republic under HTSUS 8450.20.0090, which contain LRWs, totaled less than $1 million in 2008 and 2009, and no U.S. imports were recorded in 2010.[36] German-based company Miele has a production plant in the Czech Republic, and it is likely to be the source of any U.S. imports from the Czech Republic during the period of investigation.[37]

[31] USITC Dataweb/USDOC (accessed January 26, 2012).
[32] Petition, p. 28.
[33] ***
[34] Datamonitor, "Haier Group," Company Profile, March 3, 2011, p. 5.
[35] Petition, p. 28.
[36] USITC Dataweb/USDOC (accessed January 26, 2012).
[37] Datamonitor, "Miele & Cie," Company Profile, September 26, 2011, p. 5.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary)]

Large Residential Washers From Korea and Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Mexico of large

residential washers that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Korea. The products subject to the petitions are classifiable in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States, and imported under statistical reporting number 8450.20.0090. Products subject to these petitions may also be imported under HTS subheadings 8450.11.00, 8450.90.20 or 8450.90.60. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 13, 2012. The Commission's views are due at Commerce within five business days thereafter, or by February 21, 2012.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission,s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez ((202) 205–2136) or Edward Petronzio ((202) 205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on December 30, 2011, by Whirlpool Corporation, Benton Harbor, MI.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 20, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov*) on or before January 18, 2012. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 2012, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 3, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–120 Filed 1–6–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–868, A–201–841]

Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 26, 2012.

FOR FURTHER INFORMATION CONTACT: David Goldberger (Mexico) or Holly Phelps (Republic of Korea), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On December 30, 2011, the Department of Commerce (''the Department'') received antidumping duty petitions concerning imports of large residential washers (washing machines) from the Republic of Korea (''Korea'') and Mexico filed in proper form by Whirlpool Corporation (''the petitioner''), a domestic producer of washing machines. *See* Large Residential Washers from the Republic of Korea and Mexico; Antidumping and Countervailing Duty Petitions (collectively, ''the petitions''). On January 5, 2012, the Department issued questionnaires regarding the petitions to the petitioner. The petitioner responded to the Department's request for information in the First Supplement to the AD/CVD Petitions, dated January 9, 2012 (First Supplement to the AD/CVD Petitions). On January 9, 2012, the Department requested additional information from the petitioner. The petitioner responded to the Department's request for additional

information in the Second Supplement to the AD/CVD Petitions, dated January 11, 2012 (Second Supplement to the AD/CVD Petitions).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), the petitioner alleges that imports of washing machines from Korea and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the investigations that it is requesting the Department to initiate (*see* ''Determination of Industry Support for the Petitions'' below).

Scope of Investigations

The products covered by these investigations are washing machines from Korea and Mexico. For a full description of the scope of the investigations, please see the ''Scope of the Investigations,'' in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by February 8, 2012, 20 calendar days from the date of signature of this notice. All comments must be filed on the records of the Korea and Mexico antidumping duty investigations as well as the simultaneously initiated Korea countervailing duty investigation (C–580–869). All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (IA ACCESS).[1] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of washing machines to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe washing machines, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by February 8, 2012. Additionally, rebuttal comments must be received by February 15, 2012. All comments must be filed on the records of both the Korea and Mexico antidumping duty investigations. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644

[1] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IAACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

(CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that washing machines constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Large Residential Washers from the Republic of Korea (''Korea AD Initiation Checklist'') and Antidumping Duty Investigation Initiation Checklist: Large Residential Washers from Mexico (''Mexico AD Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Large Residential Washers, on file electronically via IA ACCESS in the Central Records Unit, Room 7046, of the main Department of Commerce building.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the petitions with reference to the domestic like product as defined in the ''Scope of Investigations'' section above. To establish industry support, the petitioner provided its shipments of the domestic like product in 2010, and compared its shipments to the estimated total shipments of the domestic like product for the entire domestic industry. *See* Volume I of the petitions, at 10–14; Volume II of the petitions, at Exhibits 2–3, 5–8, and 9; First Supplement to the AD/CVD Petitions, at 4–8 and Exhibits A–C; and Second Supplement to the AD/CVD Petitions, at 4–5 and Exhibits Q–R. Because total industry production data for the domestic like product for 2010 is not reasonably available and the petitioner has established that shipments are a reasonable proxy for production data, we have relied upon the shipment data provided by the petitioner for purposes of measuring industry support. For further discussion, *see* Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment II.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 732(c)(4)(D) of the Act, Korea AD Initiation Checklist, and Mexico AD Initiation Checklist, at Attachment II. Second, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the petitions account for at least 25 percent of the total production of the domestic like product. *See* Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment II. Finally, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigations that it is requesting the Department initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, and an increase in the volume of imports and import penetration. *See* Volume I of the petitions, at 1–6 and 156–181; Volume II of the petitions, at Exhibits 1–4, 9, 33–38, and 49; and First Supplement to the AD/CVD Petitions at 8–13 and Exhibits C–L. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by information reasonably available to the petitioner and meet the statutory requirements for initiation. *See* Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment III: Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Large Residential Washers from the Republic of Korea and Mexico.

Period of Investigations

The period of investigation (''POI'') is October 1, 2010, through September 30, 2011, for both Korea and Mexico. *See* 19 CFR 351.204(b)(1).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate investigations with respect to Korea and Mexico. The sources of, and adjustments to, the data relating to U.S. price and NV are discussed in greater detail in the Korea AD Initiation Checklist and the Mexico AD Initiation Checklist.

Korea

U.S. Price

The petitioner provided three U.S. prices based on average model-specific retail prices obtained from a market survey database. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in, and knowledge of, the market. Originally, the petitioner deducted international freight based on U.S. Customs and Border Protection (''CBP'') data from U.S price for both price-to-price comparisons and price-to-constructed value (CV) comparisons. It subsequently revised these comparisons to remove the deduction for international freight from U.S. price. However, because it is more accurate for price-to-price comparisons to deduct international freight expenses from the U.S. price, we revised the price-to-price margin calculations to deduct international freight. *See* Korea AD Initiation Checklist.

Normal Value

The petitioner provided three home market prices based on a survey of retail prices in Korea. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in, and knowledge of, the market. The petitioner further adjusted home market price by deducting Korean valued added tax (''VAT'') and other taxes. It made no other adjustments to home market price. *See* Korea AD Initiation Checklist.

Mexico

U.S. Price

The petitioner provided two U.S. prices based on average model-specific retail prices obtained from a market survey database. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in, and knowledge of, the market. Originally, the petitioner deducted international freight based on CBP data from U.S price for both price-to-price comparisons and price-to-CV comparisons. It subsequently revised these comparisons to remove the deduction for international freight from U.S. price. However, because it is more accurate for price-to-price comparisons to deduct international freight expenses from the U.S. price, we revised the price-to-price margin calculations to deduct international freight. *See* Mexico AD Initiation Checklist.

Normal Value

The petitioner provided two home market prices based on retail prices available in Mexico. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in, and knowledge of, the market. The petitioner further adjusted home market price by deducting Mexican VAT. It made no other adjustments to home market price. *See* Mexico AD Initiation Checklist.

Sales-Below-Cost Allegations

The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of large residential washing machines in the Korean and Mexican markets were made at prices below the fully-absorbed cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' SAA at 833.

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

Korea

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''); selling, general and administrative (''SG&A'') expenses; financial expenses; and packing expenses. The petitioner relied on its own production experience to calculate the raw material, packing, and freight costs included in the calculation of COM. The petitioner adjusted these inputs to account for known differences between U.S. and Korean prices and for differences in weights and technologies between the petitioner's washing machine models and those of the Korean producers' washing machine models sold in the comparison market and the United States. Inbound freight costs associated with procuring material inputs were calculated based on the petitioner's own experience adjusted for differences in weight between the washing machine models used to calculate COP/CV and the Korean models.

The petitioner relied on its own labor costs, adjusted for known differences between the U.S. and Korean hourly compensation rates for electrical equipment, appliance, and component manufacturing in 2007, as reported by the U.S. Bureau of Labor Statistics. The petitioner relied on its own experience to determine the per-unit factory overhead costs (exclusive of labor) associated with the production of washing machines.

The petitioner stated that the washing machine manufacturing processes in Korea are very similar to its own manufacturing processes, and therefore it is reasonable to estimate the Korean producers' usage rates based on the usage rates experienced by a U.S. washing machine producer. *See* Volume I of the petitions, at 21.

To determine SG&A expense rates, the petitioner relied on the fiscal year (FY) 2010 unconsolidated financial statements of two Korean producers of washing machines. The petitioner relied on the FY 2010 consolidated financial statements of the same two Korean producers of washing machines to determine the financial expense rates. *See* Korean Initiation Checklist for further discussion.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Normal Value Based on Constructed Value

Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner calculated NV based on CV. The petitioner calculated CV using the same average COM, SG&A, financial expense, and packing figures used to compute the COP. The petitioner relied on the same 2010 unconsolidated financial statements used as the basis for the SG&A rates to calculate profit rates. Because one of the producers did not incur a profit, the petitioner did not include profit in the calculation of CV for that producer's washing machine model. We revised petitioner's calculation of the profit rate for the second Korean washing machine producer to exclude those income and expense items not included in the petitioner's calculation of that producer's COP. *See* Korean Initiation Checklist.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of washing machines from Korea are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. price to home-market price, as discussed above, the estimated dumping margins range from 31.03 percent to 77.52 percent. Based on a comparison of U.S. price to CV, as discussed above, the

estimated dumping margins are 63.38 percent and 82.41 percent. *See id.*

Mexico

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of COM; SG&A expenses; financial expenses; and packing expenses. The petitioner relied on its own production experience to calculate the raw material, packing, and freight costs included in the calculation of COM. The petitioner adjusted these inputs to account for known differences between U.S. and Mexican prices and for differences in weights and technologies between the petitioner's U.S. washing machine models and those of the Mexican producers' washing machine models sold in the comparison market and the United States. Inbound freight costs associated with procuring material inputs were calculated based on the petitioner's own experience adjusted for differences in weight between the washing machine models used to calculate COP/CV and the Mexican models.

The petitioner relied on its own labor costs, adjusted for known differences between the U.S. and Mexican hourly compensation rates for electrical equipment, appliance, and component manufacturing in 2007, as reported by the U.S. Bureau of Labor Statistics. The petitioner relied on its own experience to determine the per-unit factory overhead costs (exclusive of labor) associated with the production of washing machines.

The petitioner stated that the washing machine manufacturing processes in Mexico are very similar to its own manufacturing processes, and therefore it is reasonable to estimate the Mexican producers' usage rates based on the usage rates experienced by a U.S. washing machine producer. *See* Volume I of the petition, at 21.

To determine SG&A expense rates, the petitioner relied on the FY 2010 unconsolidated financial statements of a Mexican producer of washing machines. The petitioner relied on the FY 2010 unconsolidated financial statements of the same producer of washing machines to determine the financial expense rate. Consistent with Department practice, we revised the petitioner's calculation of the financial expense rate to reflect the FY 2010 consolidated financial statements of the Mexican producer's parent company. *See* Mexican Initiation Checklist for further discussion.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Normal Value Based on Constructed Value

Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner calculated NV based on CV. The petitioner calculated CV using the same average COM, SG&A, financial expense, and packing figures used to compute the COP. As discussed above, we revised the financial expenses included in the petitioner's calculation of CV to reflect the financial expenses based on the FY 2010 consolidated financial statements of the Mexican producer's parent company. Because the producer did not incur a profit, the petitioner did not include profit in the calculation of CV.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of washing machines from Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. price to home market price, as discussed above, the estimated dumping margins are 27.21 percent and 58.62 percent. Based on a comparison of U.S. price to CV, as discussed above, the estimated dumping margins are 62.64 percent and 72.41 percent. *See id.*

Initiation of Antidumping Investigations

Based upon the examination of the petitions on washing machines from Korea and Mexico and other information reasonably available to the Department, the Department finds that these petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of washing machines from Korea and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008). The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' *See id.,* 73 at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

Respondent Selection

Korea

The petition identifies three Korean producers that export washing machines to the United States: Samsung Electronics Co., Ltd. (Samsung), LG Electronics, Inc. (LG), and Daewoo Electronics Corporation (Daewoo). There is no information indicating that there are other Korean producers/exporters of the subject merchandise. Accordingly, the Department is selecting Samsung, LG, and Daewoo as mandatory respondents in this investigation pursuant to section 777A(e)(1) of the Act. Interested parties may submit comments regarding respondent selection within five calendar days of publication of this notice. Comments should be filed electronically using IA ACCESS.

Mexico

For this investigation, the Department intends to select respondents based on CBP data for U.S. imports under the Harmonized Tariff Schedule of the United States (''HTSUS'') number 8450.20.0090. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within ten days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions and amendments thereto have been provided to the representatives of the Governments of Korea and Mexico. To the extent practicable, we will attempt to provide a copy of the public version of the petitions to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petitions were filed, whether there is a reasonable indication that imports of washing machines from Korea and Mexico materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination with respect to either country would result in the termination of the investigation with respect to that country; *see* section 703(a)(1) of the Act. Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: January 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigations

The products covered by these investigations are all large residential washers and certain subassemblies thereof from Korea and Mexico.

For purposes of these investigations, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs [2] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets [3] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[4] (b) a base; and (c) a drive hub;[5] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics;[6] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[7] *or*

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[8] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to these investigations are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these investigations may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the

[2] A ''tub'' is the part of the washer designed to hold water.

[3] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[4] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[5] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[6] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[7] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[8] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

merchandise subject to this scope is dispositive.

[FR Doc. 2012–1679 Filed 1–25–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–869]

Large Residential Washers From the Republic of Korea: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 27, 2012.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0486 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 30, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of large residential washers (washing machines) from the Republic of Korea (Korea) filed in proper form by Whirlpool Corporation (the petitioner), a domestic producer of washing machines. *See* ''Large Residential Washers from the Republic of Korea and Mexico: Antidumping and Countervailing Duty Petitions on Behalf of Whirlpool Corporation,'' dated December 30, 2011 (Korea CVD Petition). On January 5 and 6, 2012, the Department issued additional requests for information and clarification of certain areas of the Korea CVD Petition. Based on the Department's requests, the petitioner timely filed additional information pertaining to the Korea CVD Petition on January 9, 2012 (First Supplement to the AD/CVD Petitions). The Department made an additional request for information on January 9, 2012, to which the petitioner timely filed additional information pertaining to the Korea CVD Petition on January 11, 2012 (Second Supplement to the AD/CVD Petitions).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended, (the Act), the petitioner alleges that producers/exporters of washing machines in Korea received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner has filed this CVD petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and the petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (*see* ''Determination of Industry Support for the CVD Petition'' below).

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations in Washington, DC with the Government of Korea (GOK) with respect to the Korea CVD Petition on January 12, 2012. *See* Memorandum to The File, ''Consultations with the Government of Korea Regarding the Countervailing Duty Petition on Large Residential Washers from Korea,'' dated January 17, 2012, a public document on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

Period of Investigation

The period of investigation (POI) is calendar year 2011, *i.e.,* January 1, 2011, through December 31, 2011. *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are washing machines from Korea. For a full description of the scope of this investigation, please see the ''Scope of the Investigation'' Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Korea CVD Petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by the close of business February 8, 2012, 20 calendar days from the signature date of this notice. All comments must be filed on the records of the simultaneously initiated Korea (A–580–868) and Mexico (A–201–841) antidumping duty investigations as well as the Korea CVD investigation. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[1] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the

[1] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that washing machines constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Large Residential Washers from the Republic of Korea (Korea CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Petitions Covering Large Residential Washers from the Republic of Korea and Mexico, on file electronically in the CRU via IA ACCESS.

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the petition with reference to the domestic like product as defined in the ''Scope of the Investigation'' section above. To establish industry support, the petitioner provided its shipments of the domestic like product in 2010, and compared its shipments to the estimated total shipments of the domestic like product for the entire domestic industry. *See* Volume I of the petition, at 10–14; Volume II of the petition, at Exhibits 2–3, 5–8, and 9; First Supplement to the AD/CVD Petitions, at 4–8 and Exhibits A–C; and Second Supplement to the AD/CVD Petitions, at 4–5 and Exhibits Q–R. Because total industry production data for the domestic like product for 2010 is not reasonably available and the petitioner has established that shipments are a reasonable proxy for production data, we have relied upon the shipment data provided by the petitioner for purposes of measuring industry support. For further discussion, *see* Korea CVD Initiation Checklist, at Attachment II.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the petition established support from domestic producers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 702(c)(4)(D) of the Act and Korea CVD Initiation Checklist, at Attachment II. Second, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. *See* Korea CVD Initiation Checklist, at Attachment II. Finally, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See id.*

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, and an increase in the volume of imports and import penetration. *See* Volume I of the Korea CVD Petition, at 1–6 and 156–181; Volume II of the petitions, at Exhibits 1–4, 9, 33–38, and 49; and First Supplement to the AD/CVD Petitions, at 8–13 and Exhibits C–L. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by information reasonable available to the petitioner and meet the statutory requirements for initiation. *See* Korea CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Large Residential Washers from the Republic of Korea and Mexico.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

The Department has examined the countervailing duty petition on washing machines from Korea and finds that it complies with the requirements of

section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether Korean producers/exporters of washing machines receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Korea CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the Korea CVD Petition to provide countervailable subsidies to producers/exporters of the subject merchandise:

1. Daewoo Electronics Corporation (Daewoo) Restructuring

a. GOK-Directed Equity Infusions under the Daewoo Workout

b. GOK-Directed Ongoing Preferential Lending under the Daewoo Workout

2. GOK Facilities Investment Support: Article 26 of the Restriction of Special Taxation Act (RSTA)

3. Tax Reduction for Research and Manpower Development: RSTA Article 10(1)(3)

4. GOK Targeted Green ''Stimulus'' Subsidies

a. Research, Supply, or Workforce Development Investment Tax Deductions for ''New Growth Engines'' Under RSTA Art. 10(1)(1)

b. Research, Supply, or Workforce Development Expense Tax Deductions for ''Core Technologies'' Under RSTA Art. 10(1)(2)

c. RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities

d. GOK Subsidies for ''Green Technology R&D'' and its Commercialization

e. Industrial Bank of Korea (IBK) Preferential Loans to Green Enterprises

f. Support for SME ''Green Partnerships''

5. Korea Trade Insurance Corporation—Short-Term Export Credit Insurance

6. Korea Export-Import Bank—Export Factoring

7. Korea Development Bank and IBK Short-Term Discounted Loans for Export Receivables

8. GOK 21st Century Frontier and Other R&D Programs

9. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act

10. GOK Supplier Support Fund Tax Deduction

For a description of each of these programs and a full discussion of the Department's decision to initiate an investigation of these programs, see Korea CVD Initiation Checklist.

Respondent Selection

The petition identifies three Korean producers that export washing machines to the United States: Samsung Electronics Co., Ltd. (Samsung), LG Electronics, Inc. (LG), and Daewoo Electronics Corporation (Daewoo). There is no information indicating that there are other Korean producers/exporters of the subject merchandise. Accordingly, the Department is selecting Samsung, LG, and Daewoo as mandatory respondents in this investigation pursuant to section 777A(e)(1) of the Act. Interested parties may submit comments regarding respondent selection within five calendar days of publication of this notice. Comments should be filed electronically using IA ACCESS.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f) copies of the public versions of the Korea CVD Petition and amendments thereto have been provided to the GOK. To the extent practicable, we will attempt to provide a copy of the public version of the Korea CVD Petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of allegedly subsidized washing machines from Korea materially injure, or threaten material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated. *See* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) and *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011) (*Supplement*) (amending 19 CFR 351.303(g)). The formats for the revised certifications are provided at the end of the *Interim Final Rule* and the *Supplement*. In this proceeding, the Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs [2] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets [3] designed for use in large

[2] A ''tub'' is the part of the washer designed to hold water.

[3] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

residential washers which incorporate, at a minimum: (a) A side wrapper;[4] (b) a base; and (c) a drive hub;[5] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1) (a) It contains payment system electronics;[6] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[7] *or*

(2) (a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[8] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

[FR Doc. 2012–1697 Filed 1–26–12; 8:45 am]

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[4] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[5] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[6] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[7] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

APPENDIX B

CALENDAR OF PUBLIC CONFERENCE

CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's preliminary conference:

Subject: Large Residential Washers from Korea and Mexico

Inv. Nos.: 701-TA-488 and 731-TA-1199-1200 (Preliminary)

Date and Time: January 20, 2012 - 9:30 a.m.

Sessions were held in connection with these preliminary investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioner (**John D. Greenwald**, Cassidy Levy Kent (USA) LLP)
Respondents (**Warren E. Connelly**, Akin Gump Strauss Hauer & Feld LLP)

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Cassidy Levy Kent (USA) LLP
Washington, D.C.
on behalf of

Whirlpool Corporation

Marc Bitzer, President, North America Region, Whirlpool Corporation

Thomas Schwyn, Vice President & Associate General Counsel, North America Region, Whirlpool Corporation

Norbert Schmidt, Senior Director, Fabric Care, Whirlpool Corporation

In Support of the Imposition of
Antidumping and Countervailing Duty Orders (continued):

Casey Tubman, Director of Merchandising, Fabric Care,
Whirlpool Corporation

Dr. Richard L. Boyce, Economist, Econometrica
International, Inc.

Carl Moyer, Economist, Cassidy Levy Kent (USA) LLP

John D. Greenwald)
) – OF COUNSEL
Jack Levy)

In Opposition to the Imposition of
Antidumping and Countervailing Duty Orders:

Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
on behalf of

Samsung Electronics Co., Ltd. ("SEC")
Samsung Electronics Mexico S.A. de C.V. ("SEM")
Samsung Electronics America, Inc. ("SEA")

Kevin Dexter, Senior Vice President, Home Appliances, SEA

Kurt Jovais, Director of Marketing, Home Appliances, SEA

Dean Brindle, Director, Laundry Products, SEA

Dan Witte, Assistant Manager, Laundry Marketing, SEA

Soon Choi, Business Manager, Laundry Marketing, SEA

Warren E. Connelly)
) – OF COUNSEL
Jarrod M. Goldfeder)

In Opposition to the Imposition of
Antidumping and Countervailing Duty Orders (continued):

Steptoe & Johnson LLP
Washington, D.C.
on behalf of

LG Electronics USA, Inc. ("LGEUS")

John Herring, Vice President of Sales, Home Appliances, National Accounts, LGEUS

Sung Han (Andrew) Kim, Product Manager for Laundry, LGEUS

Daniel W. Klett, Economist, Capital Trade Inc.

Richard O. Cunningham)
) – OF COUNSEL
Thomas J. Trendl)

CLOSING REMARKS:

Petitioner (**John D. Greenwald**, Cassidy Levy Kent (USA) LLP)
Respondents (**Richard O. Cunningham**, Steptoe & Johnson LLP;
and **Warren E. Connelly**, Akin Gump Strauss Hauer & Feld LLP)

APPENDIX C

SUMMARY DATA

Table C-1
LRWs: Summary data concerning the U.S. market, 2008-10, January-September 2010, and January-September 2011

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Table C-2
High efficiency front load washers: Summary data concerning the U.S. market, 2008-10, January-September 2010, and January-September 2011

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Table C-3
High efficiency top load washers: Summary data concerning the U.S. market, 2008-10, January-September 2010, and January-September 2011

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Table C-4
Conventional top load washers: Summary data concerning the U.S. market, 2008-10, January-September 2010, and January-September 2011

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