

UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
) 701-TA-477 and
) 731-TA-1180-1181
BOTTOM MOUNT COMBINATION) (Preliminary)
REFRIGERATOR-FREEZERS)
FROM KOREA AND MEXICO)

REVISED AND CORRECTED COPY

Pages: 1 through 209
Place: Washington, D.C.
Date: April 20, 2011

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
) 701-TA-477 and
) 731-TA-1180-1181
 BOTTOM MOUNT COMBINATION) (Preliminary)
 REFRIGERATOR-FREEZERS)
 FROM KOREA AND MEXICO)

Wednesday,
 April 20, 2011

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The preliminary conference commenced, pursuant to Notice, at 1:07 p.m., at the United States International Trade Commission, CATHERINE DEFILIPPO, Acting Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

CATHERINE DEFILIPPO, DIRECTOR OF INVESTIGATIONS
 JAMES McCLURE, SUPERVISORY INVESTIGATOR
 CHRIS CASSISE, INVESTIGATOR
 KARL VON SCHRILTZ, ATTORNEY
 JOHN BENEDETTO, ECONOMIST
 JUSTIN JEE, ACCOUNTANT/AUDITOR
 RUBEN MATA, INTERNATIONAL TRADE ANALYST
 JENNA LEARY, INTERNATIONAL TRADE ANALYST
 BILL BISHOP, HEARINGS AND MEETING COORDINATOR
 SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT

APPEARANCES: (Cont'd.)

In Support of the Imposition of Antidumping and
Countervailing Duties:

On behalf of Whirlpool Corporation:

MARC BITZER, President, Whirlpool North America
ANDREW BATSON, Senior Director of Sales

Operations, North America

Region

JUSTIN REINKE, Category Director, Refrigeration,
North America Region
B. BRANDON BULLOCK, III, Director of Strategy,
North American Refrigeration
THOMAS A. SCHWYN, Vice President and Associate
General Counsel, North America Region
ADRIAN ESTRADA MONTEMAYOR, Director of Legal
Services, North America Region.
DR. RICHARD L. BOYCE, Economic Consultant,
Econometrica International, Inc.

JOHN D. GREENWALD, Esquire
JACK A. LEVY, Esquire
Cassidy, Levy, Kent (USA) LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Antidumping and
Countervailing Duties:

On behalf of Samsung Electronics America:

JAMES POLITESKI, Senior Vice President, Home
Appliance Sales and Marketing, Samsung Electronics
America

KURT JOVAIS, Director of Marketing, Home
Appliances, Samsung Electronics America

EUGENE SEAGRIFF, Marketing Manager, Refrigerators,
Samsung Electronics America

L.S. CHOI, Business Manager, Refrigerators,
Samsung Electronics America

WARREN E. CONNELLY, Esquire

NATALYA DOBROWOLSKY, Esquire

Akin, Gump, Strauss, Hauer, and Feld, LLP
Washington, D.C.

On behalf of The Home Depot, Inc.:

ROBERT BAIRD, Merchandising Vice President,
Appliances and Kitchens, The Home Depot, Inc.

MARGUERITE TROSSEVIN, Esquire

JAMES J. JOCHUM, Esquire

Jochum, Shore, and Trossevin, P.C.
Washington, D.C.

On behalf of LG Electronics U.S.A. Inc. ("LG USA");
LG Electronics, Inc. ("LGE");
LG Electronics Monterrey Mexico, S.A. de C.V. ("LG
Mexico"):

JOHN HERRING, Vice President of Sales, Home
Appliance National Accounts, LG

JOHN I. TAYLOR, Vice President of Government
Relations and Communications, LG

KIBEOM KIM, Senior Manager, International Group,
LG

JAE WOO JEONG, Assistant Manager, International
Trade Group, LG

YOUNG NOH, Products Manager, Digital Appliances,
LG

ALLEN KIM, Product Manager, Home Appliances, LG

APPEARANCES:

Heritage Reporting Corporation
(202) 628-4888

DANIEL W. KLETT, Economic Consultant, Capital
Trade, Inc.

RICHARD O. CUNNINGHAM, Esquire
THOMAS J. TRENDL, Esquire
SUSAN LOUIE, Esquire
Steptoe & Johnson, LLP
Washington, D.C.

I N D E X

	PAGE
OPENING STATEMENT OF JOHN D. GREENWALD, ESQUIRE CASSIDY LEVY KENT	8
OPENING STATEMENT OF RICHARD O. CUNNINGHAM, ESQUIRE STEPTOE & JOHNSON	12
OPENING STATEMENT OF JACK LEVY, ESQUIRE CASSIDY LEVY KENT	17
STATEMENT OF MARC BITZER, PRESIDENT, WHIRLPOOL NORTH AMERICA	20
STATEMENT OF WARREN E. CONNELLY, ESQUIRE AKIN GUMP STRAUSS HAUER & FELD LLP	99
STATEMENT OF JOHN HERRING, VICE PRESIDENT OF SALES HOME APPLIANCE NATIONAL ACCOUNTS, LG	100
STATEMENT OF JAMES POLITESKI, SENIOR VICE PRESIDENT, HOME APPLIANCE SALES AND MARKETING, SAMSUNG ELECTRONICS AMERICA	112
STATEMENT OF ROBERT BAIRD, MERCHANDISING VICE PRESIDENT, APPLIANCES AND KITCHENS, THE HOME DEPOT, INC.	121
STATEMENT OF DANIEL W. KLETT, ECONOMIC CONSULTANT	134

I N D E X

	PAGE
CLOSING STATEMENT OF JOHN D. GREENWALD, ESQUIRE, CASSIDY, LEVY, KENT, LLP	195
CLOSING STATEMENT OF WARREN E. CONNELLY, ESQUIRE, AKIN, GUMP, STRAUSS, HAUER, AND FELD, LLP	200

P R O C E E D I N G S

(1:07 p.m.)

MS. DEFILIPPO: Good morning. Welcome to the United States International Trade Commission's conference in connection with the preliminary phase of countervailing duty and antidumping investigation Nos. 701-TA-477, and 731-TA-1180 and 1181 concerning imports of certain Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico.

My name is Catherine DeFilippo, and I am the Commission's Director of Investigations, and I will preside at today's conference. Among those present from the Commission staff from my far right are James McClure, the supervisory investigator, Chris Cassise, the Investigator, Karl von Schrittz, the Attorney-Advisor, John Benedetto, the Economist, Ruben Mata, the Industry Analyst, and Jenna Leary, an Industry Analyst.

I understand that parties are aware of their time allocations. I would remind speakers not to refer in your remarks to business proprietary information, and to speak directly into the microphones.

We also ask that you state your name and affiliation for the record before beginning your

1 presentation, or in response to questions. Are there
2 any questions?

3 (No response.)

4 MS. DEFILIPPO: Hearing none, we will
5 proceed with the opening statements. Mr. Levy and Mr.
6 Greenwald, are you -- who is doing -- Mr. Greenwald?

7 MR. GREENWALD: I am going to do it, unless
8 I screw up, in which case I will be replaced
9 immediately.

10 MS. DEFILIPPO: I will be happy to notify
11 you if you screw up.

12 MR. GREENWALD: Thank you.

13 MS. DEFILIPPO: Please proceed when you are
14 ready.

15 MR. GREENWALD: Good afternoon. I think
16 that we owe you a thank you for your stamina, having
17 just watched the end of the earlier presentation. Let
18 me try and give you an overview of what we will be
19 saying today in far greater detail.

20 There are a set of economic factors that
21 govern the Commission's analysis in this case, and I
22 want to go through them if you have the -- and again
23 just to give you an overview.

24 The first one is the bottom Mount
25 refrigerators are distinct from all other types of

1 refrigerators, in their physical characteristics, in
2 their thermal dynamic properties, in the way that they
3 are viewed by producers, by retailers, and consumers,
4 and frankly even in the way that they are viewed by
5 the U.S. Government, which sets different energy
6 efficiency standards for bottom mounts, top mounts,
7 and side-by-sides.

8 They are also distinct in that almost all
9 U.S. production is on dedicated assembly lines, and
10 that bottom mounts are on average priced well above
11 all other types of refrigerators.

12 The truth of the matter is that no consumer
13 would be prepared to pay, and no producer or retailer
14 could reasonably expect a consumer to pay, a premium
15 for a bottom mount refrigerator unless the consumer
16 considered it a distinct product.

17 Second, subject imports and the domestic
18 like product are the only high volume sources of
19 bottom mount supply in the U.S. market. Subject
20 imports have gained significant market share over the
21 past three years, and their market share gains have
22 come entirely at the expense of U.S. made bottom
23 mounts.

24 Third, demand for any particular bottom
25 mount refrigerator is shaped by perceptions of value.

1 This is a key point for us. By perception of value, I
2 mean it is a perception about quality, storage
3 capacity, and features, at a particular price point,
4 and again let me repeat that, at a particular price
5 point, that drives purchase decisions.

6 Fourth, because price is an essential part
7 of the value -- of the equation. The demand for any
8 particular bottom mount is sensitive to changes in
9 price. One of the characteristics of this industry is
10 the widespread use of promotional discounts and other
11 incentives.

12 And as the data show, when Samsung or LG
13 lower price of their bottom mounts via promotional
14 pricing the volume of sales jumps significantly. On
15 the evidence, the correlation between promotional
16 pricing and higher sales volume is irrefutable.

17 When Whirlpool loses volume, and when it has
18 had to reduce its own price to compete, it has caused
19 immediate injury, and as significant -- and again this
20 is a point that we will repeat throughout the
21 presentation -- it undermines the case, the economic
22 case, for reinvestment.

23 Under present market conditions the
24 economics of Whirlpool's bottom mount business do not
25 justify reinvestment. On these facts there are only

1 -- the only possible conclusions that you can reach
2 are, one, that bottom mount refrigerators produced in
3 the United States are a domestic like product.

4 Two, that the pricing of subject imports
5 matters greatly. That dumping and subsidization
6 therefore not only matter greatly, but have been key
7 to the market share gains by the subject imports, and
8 that those market share gains have, one, come at
9 Whirlpool's expense; and two, have depressed Whirlpool
10 prices; and three, have been a direct and substantial
11 cause of the period of investigation decline in
12 Whirlpool's bottom mount business.

13 Now, let me turn to threat. Both Samsung
14 and LG have stated publicly their intention to become
15 the world's largest appliance producer. The threat
16 that things will get worse, not better, without
17 antidumping and countervailing duty discipline on
18 subject imports is real and it is imminent.

19 We will elaborate on all of these points in
20 our testimony. My best guess, and frankly it is only
21 a guess, is that the testimony that you will hear
22 today on behalf of Samsung, LG, and other opponents of
23 the petition, will be more of an attempt to divert
24 your attention from the key issues in this case,
25 rather than a focus on the basic economic truths that

1 drive this market.

2 The only issue before you is whether there
3 is a reasonable indication of material injury. I do
4 not expect them to do anything other than present
5 arguments that are frankly beside the central point of
6 your investigation. Thank you.

7 MS. DEFILIPPO: Thank you, Mr. Greenwald.
8 As a quick administrative matter, Mr. Bishop had asked
9 me if there were any changes to your witness lists.
10 If you could please let him know at some point. Thank
11 you. Otherwise, Mr. Cunningham, welcome, and please
12 proceed with your opening statement.

13 MR. CUNNINGHAM: Good afternoon, Ms.
14 DeFilippo. I am Dick Cunningham, Steptoe and Johnson,
15 counsel for LG Electronics in this proceeding. The
16 Petitioners counsel walks somewhat unsteadily into a
17 bar, orders a drink, tells the bartender that I want
18 to tell you a story.

19 I want to tell you a story about the great
20 argument that I am going to make to the International
21 Trade Commission, and wait until you hear about this
22 case.

23 It is not about imports taking a market away
24 from the domestic industry. In fact, I carefully
25 defined this case so that the market areas in which

1 the domestic producer has real presence, side-by-side
2 refrigerators, top mount refrigerators, are hardly in
3 the case.

4 Instead, the case focuses on the multi-door
5 bottom mount refrigerators, French Doors sometimes
6 they are called, a market that the foreign producers
7 developed, and where they are regarded by U.S.
8 consumers as having better quality, better design,
9 better finishes, better technology than Whirlpool, the
10 U.S. producer.

11 So this is all about a market that the
12 domestic producers are trying to get into, not that it
13 is losing. And you know what? Domestic producers
14 are trying to make headway in the multi-door top
15 mount, or bottom mount market, by offering prices that
16 are consistently lower than the import prices.

17 And, of course, that is my really big
18 problem in the case as the domestic counsel. Imports
19 are not underselling the domestic price. I am up
20 against a long line of ITC proceedings that say that
21 these proceedings are about injury caused by low
22 pricing.

23 And where the imports are priced higher than
24 the U.S. product, dumping and subsidies are not the
25 cause of the injury. Here that is just not the case.

1 Even in periods of price promotion campaigns, like
2 Black Friday, and you are going to hear a lot about
3 Black Friday, the domestic production prices have been
4 lower than the import promotion prices, and domestic
5 product price reductions were greater than the import
6 price reductions.

7 I am also up against cases in which even
8 where there was some underselling the Commission went
9 negative because product superiority and other non-
10 price factors were the main reason for the imports
11 success.

12 And you are going to hear that that is
13 exactly the case today, but you know what says the
14 Petitioner's counsel, I have come up with a great
15 theory, an entirely new principle.

16 I call it the unfair good stuff principle.
17 I am going to convince the International Trade
18 Commission that when a foreign company sells better
19 products in the U.S., it is required to do so -- and
20 this is Mr. Greenwald talking about this value pricing
21 stuff, it is required to do so at a high enough price
22 that the domestic competitors can still sell their
23 inferior products.

24 And they have to move to those higher prices
25 even when they already have their good stuff on the

1 market, and the domestic firm later brings in an
2 inferior product at a lower price.

3 Finally, if the foreign producer fails to
4 charge a price for its good stuff that is high enough
5 to eliminate its non-price advantage, we will slap on
6 duties.

7 Now, of course we can't call them
8 antidumping or countervailing duties, and so

9 we will call them good product duties. So
10 the Petitioner's counsel stops the story, takes a swig
11 of the drink, and you know what the bartender says?
12 That's the funniest walks into a bar joke that I have
13 ever heard.

14 Sadly, however, this case is real, not
15 presented to you as a joke, and that makes the Staff's
16 function in a preliminary investigation really
17 important.

18 It is your job to serve up to the Commission
19 the facts of this case so they understand what the
20 issues are in the context of the principles that the
21 Commission has historically applied.

22 Where pricing is not what causes the success
23 of the imports, and where import pricing is
24 consistently above the pricing of domestic products,
25 you must through the Commission -- and you will find

1 it on the record, both in your questionnaire responses
2 and in the data -- this is a well analyzed industry by
3 all sorts of research organizations, and we will show
4 you the data -- absolutely and consistently no
5 underselling in this industry.

6 But one small footnote there. There is a
7 part that is in this bottom mount category called two-
8 door bottom mount. It is very different from the
9 multi-door French Door stuff. A very small part of
10 the bottom mount market, and somewhere south of 15
11 percent certainly, and there is mixed underselling and
12 overselling there.

13 And what you find there though is that the
14 import market share has gone down consistently. There
15 is on case here that dumping or dumped imports, or
16 subsidized imports, have caused injury in any way that
17 this Commission has ever recognized as the basis for
18 an affirmative determination. Thank you.

19 MS. DEFILIPPO: Thank you, Mr. Cunningham.
20 We will now move to the direct testimony by those in
21 support of imposition of the antidumping and
22 countervailing duty orders.

23 Mr. Levy and Mr. Greenwald, if you and your
24 panel would like to come up and start when you are
25 ready, that would be great. Thank you.

1 We just had a request from Mr. Bishop for
2 those on the panel to remember to repeat their names
3 as you are presenting testimony, and then when we are
4 asking questions. That would be helpful for us.
5 Thank you.

6 MR. LEVY: Good afternoon. It's good to see
7 you all again. For the record, my name is Jack Levy,
8 of the law firm of Cassidy, Levy, and Kent, Counsel
9 for the Petitioner, Whirlpool Corporation.

10 We have assembled an expert panel of
11 industry witnesses for you today. Let me briefly
12 introduce each of them for you. Leading our panel is
13 Marc Bitzer, President of Whirlpool North America, and
14 executive vice president of Whirlpool Corporation, who
15 will be providing our affirmative presentation for the
16 ITC staff conference.

17 He is joined by several of his colleagues
18 with particular subject matter expertise, and I trust
19 that you will find them to be a valuable resource
20 during the question and answer period.

21 We have Justin Reinke, Category Director for
22 Refrigeration for the North America Region; and Andrew
23 Batson, Senior Director of Sales Operations for the
24 North America Region.

25 These gentlemen have expert knowledge in the

1 area of product development, and in the marketing,
2 merchandising, and sales areas relating to bottom
3 mount refrigeration in the U.S. market during the
4 period of investigation.

5 We also have here Brandon Bullock, Director
6 of Strategy for the North America Refrigeration, who
7 is thoroughly familiar with all aspects of strategic
8 planning for the bottom mount refrigeration business,
9 including issues surrounding reinvestment economics.

10 We also have with us two members of
11 Whirlpool's in-house legal team, Tom Schwyn, Vice
12 President and Associate General Counsel for the North
13 America Region, who has been with the company for 25
14 years; and Adrian Estrada Montemayor, who has been
15 with the company for some time.

16 These gentlemen have relevant knowledge on
17 issues such as the evolution of the Department of
18 Energy's E-Star efficiency standards, and regulations
19 governing the calculation and declaration of features,
20 such as capacity, for bottom mount refrigerators.

21 And finally we have our economic consultant,
22 Dr. Richard Boyce, of Econometrica, and of course, my
23 partner, John Greenwald of Cassidy, Levy, Kent.

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

1 mount combination refrigerator-freezers, which is a
2 single like product, and discuss why demand for bottom
3 mounts is rising, while demand for other refrigerators
4 has fallen.

5 He will describe the economics of
6 reinvestment that govern this industry, and he will
7 provide you with an overview of the structure of the
8 market, including the producers in the U.S. and
9 overseas, and the channels of distribution.

10 He will explain the way in which bottom
11 mounts are sold, and he will briefly explain the role
12 that features, such as capacity, the LED lighting, or
13 dual-cooling, the role that they play in consumer
14 purchasing decisions.

15 That is, consumers look to a combination of
16 features and price to assess the total value of a
17 bottom mount. Using publicly available retail data,
18 he will provide you with some very specific
19 illustrations of how subject imports have depressed
20 U.S. prices, and he will describe for you how subject
21 imports have captured significant market share during
22 the period of investigation, and how this was at the
23 direct expense of the U.S. industry.

24 Finally, he will describe for you how
25 Whirlpool has been injured, and how they are

1 threatened with continued future injury if the current
2 situation is not remedied.

3 Whirlpool has worked very hard to prepare
4 its petition, and to assemble the questionnaire data
5 that you required for your analysis, and I trust that
6 you will find today's presentation helpful and
7 informative.

8 So with that introduction, I would like to
9 turn things over to Mr. Marc Bitzer, President of
10 Whirlpool North America.

11 MR. BITZER: Good afternoon. My name is
12 Marc Bitzer, and I am the President of Whirlpool North
13 America. I am appearing before you today because what
14 was once a highly profitable category in the premium
15 refrigeration market has now become a very
16 unprofitable business for us.

17 As I will explain to you in detail in a
18 moment, imports from two Korean conglomerates, Samsung
19 and LG, with plants in both Korea and Mexico, are the
20 root cause of the problem.

21 Now, before I go any further, and I am
22 respectful of your time with all the hearings you
23 have, but I also want to extend my appreciation and
24 thanks for just taking the time to listening to our
25 case, which is very important for us as a company, and

1 for our many employees.

2 Let me first start to talk a little bit
3 about Whirlpool. Whirlpool was founded in 1911, and
4 actually this year we are celebrating on November 11th
5 our hundredth year birthday, and we are very proud of
6 that.

7 Our brands, as you see on the chart, include
8 Whirlpool, Maytag, Jenn-Air, KitchenAid, Amana, just to
9 name a few. We are a global manufacturer, with annual
10 revenues in excess of \$18 billion, and we are the
11 world's leading household appliance manufacturer.

12 But even as we have globalized, and we
13 started that globalization in the '80s, our American
14 roots have actually grown deeper. Whirlpool is even
15 today still headquartered in Michigan, just a few
16 miles away from our birthplace, where we started a
17 hundred years ago.

18 As you will see on that chart, first of all,
19 I want to point out that we employ 23 thousand
20 American employees, and that is more than all
21 competitors combined employed in North America.

22 And we have operations, major operations, in
23 15 States in the U.S., and big manufacturing
24 operations in our facilities in Ohio, Iowa, Tennessee,
25 Arkansas, Michigan, Indiana, and Oklahoma. But again

1 we have a major presence in over 15 States, and you
2 see that on this chart.

3 Our company would not have been successful
4 for more than a century if we would not have had a
5 track record of quality, service, and product
6 innovation. You would not survive in this competitive
7 industry.

8 And you don't need to believe me at this
9 point, but just go to your local newsstands, and there
10 is typically one authority in our industry, and that
11 is Consumer Reports, and Consumer Reports, in its most
12 recent copy, the May 2, 2011, rates several of our
13 products as number one, one, the bottom mount
14 refrigerators which we will talk about. So, so much
15 about an inferior product.

16 Now, Whirlpool is also not a company that
17 stands still. We are continuing to invest in our
18 manufacturing and in our technology, and actually just
19 recently we announced that we have invested more than
20 a billion dollars in the U.S. in both factories,
21 tooling equipment, R&D, in our facilities.

22 Among that are millions for our facilities
23 in Amana, Iowa, where bottom mount refrigerators are
24 being produced. So at a time when many are declaring
25 that American manufacturing is dead, we are proud of

1 our commitments to the future of American
2 manufacturing jobs.

3 Let me zoom in a little bit and talk about
4 the product, bottom mount refrigerators.
5 Fundamentally, and let me try to explain it in very
6 simple terms.

7 The entire industry falls into three main
8 categories, and the reference point for these three
9 categories are separate -- and actually it is the
10 freezer. And let me explain about that a little bit.

11 First of all, as you can already see from
12 the namesake, the freezer pretty much defines how a
13 category is commonly called. So the top mount
14 refrigerator freezer is on the top, and a bottom mount
15 freezer is on the bottom, and side-by-side, it is on
16 the side.

17 That has been the names of the entire
18 industry. The reason why the freezer is so critical
19 in that definition is that you need the coldest air
20 around the freezer, and that governs the entire way
21 how you structure, how you design, how you engineer
22 such a product, and it is basically dynamics where air
23 travels down.

24 So with the top mount refrigerator, you
25 first bring the coldest air up to the freezer, and

1 where it slowly travels down. The bottom mount is the
2 exact opposite. That is also the reason why, for
3 example, the Department of Energy has fundamentally
4 different energy standards for top mount, versus side-
5 by-side, versus bottom mount.

6 It is common knowledge that these are
7 fundamental structural design principles. The
8 question of how many doors you have, or how you
9 configure the doors, is more how you assemble the
10 products. The key factor is what happens behind the
11 door and where you have the freezer, because that
12 governs the entire design of your product.

13 The other key difference, and that is almost
14 opposite to the energy attractiveness, is the consumer
15 side. Consumers nowadays like to see a refrigerator
16 at eye level, and that is very simple, because you use
17 the refrigerator more often than the freezer. You
18 just open it more than the other side.

19 So consumers actually have an increasing
20 preference to eye level refrigerators, which are
21 typically at the bottom. First of all, you can have
22 it at eye level and you store for the refridge.

23 The other thing which I want to point out is
24 that bottom mounts in our case, and in many other
25 cases, are assembled on distinct assembly lines. The

1 way that our production process works is that you have
2 metal stamping, and then you have cabinet foaming, and
3 cabinet foaming is already fundamentally different
4 between the top mount and the bottom mount, and then
5 you assemble it.

6 So it is run on completely different
7 assembly lines, and in different foaming tools, and in
8 our case, in completely different factories. If you
9 also look at Consumer Reports, or any internet site,
10 any retailer website, you would just look up
11 refrigeration, and you would always see first top
12 mounts, bottom mounts, side-by-sides, and you may
13 occasionally see built-in's, but typically these are
14 the three things that you will see always separated.

15 Now, just to clarify, there are several
16 subcategories in each of these main categories. So,
17 for example, in bottom mounts, yes, there are French
18 Door bottom mounts, which are today about 90 percent
19 of the market, and then there is two-door bottom
20 mounts.

21 The fundamental design principle of having
22 the freezer at the bottom is exactly the same. It is
23 exactly the same. You have a compressor and
24 evaporator at the same location.

25 The other thing which I really want to point

1 out, and it is interesting to hear, that I just
2 learned that foreign producers have created that
3 category, and when we talk about bar jokes, not all
4 bar jokes are true.

5 If you could go a bit back in history,
6 French Door bottom mounts have actually been around
7 since the '60s and '70s in the U.S., largely produced
8 by RCA, Whirlpool, and some other U.S. producers.

9 The market pretty much died off, and in 2003
10 it was sort of revived, and for the first time
11 launched massively, and produced in Amana, Iowa, and
12 sold under the Kenmore brand.

13 In 2006 the market gained even more
14 popularity after we introduced the external ice and
15 water. In 2007, and so just roughly 4 years after
16 they were first introduced, LG entered the market in
17 the French Door bottom mount market.

18 So just in terms of everybody knows where
19 the information is coming from. In any event, when we
20 talk about two-door, three-door, and four-door models,
21 and whatever, or if you talk about built-in's, the
22 fundamental thing is that the bottom mount has a
23 different thermal dynamic engineering, and the
24 consumers look at the product very differently.

25 And let me also just show on the next

1 exhibit, which shows some basic demands over a time
2 horizon. First of all, you see at the very bottom,
3 you see the bottom mount.

4 That market has been growing quite steadily,
5 and bear in mind that in 2006 that we basically
6 introduced the external ice and water, and expanded
7 into 2006 and 2007, and before that, we saw a rapid
8 growth beforehand.

9 And growth was already around for quite a
10 while in that segment, which largely evolved because
11 of consumer preference. Side-by-side and top mount at
12 the same time have been going down.

13 I think the critical point which I want to
14 make at this point is that there are two very
15 important aspects. One, the decline or injury in
16 bottom mount has nothing to do with whatever
17 macroeconomic factors you may hear about.

18 The U.S. housing market, which unfortunately
19 I am very well aware of, and because that market was
20 not impacted as you can obviously see by the growth
21 number. So any material injury has nothing to do with
22 macroeconomic factors because we are talking about a
23 growing segment.

24 The second point, and that even underlines
25 the fundamental difference between these categories

1 with consumer perspectives. If you see growth in one
2 category and not growth in the other ones, it shows
3 that you have a fundamentally different consumer
4 preference. Consumers look at it in a different way.

5 Let me briefly talk about some fundamental
6 investment economics which Jack already was referring
7 to, and I am trying to not get into too much
8 proprietary data, which we are more than happy to
9 provide in our post-hearing briefing.

10 When we talk about investments, typically
11 you talk about an investment, for example, to build a
12 new French Door bottom mount, a two-door bottom mount,
13 platform, you are talking about investments which are
14 massive.

15 Typically in the case of around a hundred-
16 million dollars behind engineering and capital, and it
17 is a very thick asset intensive business. As a result
18 of it, you have two very important business
19 implications. One is that on an ongoing basis, you
20 need to maximize your capacity utilization, because
21 you basically essentially already have a big fixed-
22 cost basis.

23 If you don't get capacity utilization, you
24 have significant cost disadvantages because you never
25 run at a certain capacity.

1 The second point, and that is more how any
2 company who is out there to make a decent profit,
3 looks at any investment decision. You expect a return
4 on your investments after a certain time period.

5 In our business, typically you are talking
6 about an expectation of 4 to 5 years, until the
7 initial cash layouts are basically being recovered in
8 the marketplace. And that is not only for us, but it
9 is for any company that would look at it that way.

10 Now, obviously when we have material injury,
11 and it is typically happening in the market, and you
12 don't get an economic return, you question any future
13 investments. You don't have a business case, and you
14 don't have a business case to invest any more in
15 future U.S. jobs, and these are long term decisions.

16 Let me just also spend a little bit of time
17 talking about the structure of the market, and the
18 fundamental structure. In the United States today,
19 and it was different some decades ago, almost a
20 hundred percent of U.S. production was basically done
21 by us, by Whirlpool.

22 There are some smaller volumes produced by
23 companies like Subzero and Viking, which basically
24 create a ultra-premium segment, but it is probably not
25 more than one or two percent of the total market.

1 So, Whirlpool is pretty much roughly a third
2 of the U.S. production side, or market side. The
3 other two-thirds are subject imports from Korea and
4 Mexico.

5 In Korea, Samsung and LG are the major U.S.
6 exporters, and in Mexico, Samsung and LG are also
7 major exporters, although there are some shipments
8 from Mabe and Electrolux.

9 The fundamental point that I wanted to make
10 at this point is that in a certain way this is a very
11 simple market. It is basically Whirlpool and the
12 subject imports. There is not a lot of noise around
13 that, and so it is basically us against them.

14 So whenever something happens to one side,
15 the other side gets the benefit, and vice versa. It
16 is very simple.

17 Finally, I also want to describe a little
18 bit how the distribution in our business works. Most
19 bottom mounts are typically sold through what we call
20 retail channels. That would be a Sears, a Lowe's,
21 Home Depot, Best Buy, hhgregg, or smaller players,
22 such as Bray and Scarff as in the D.C. area.

23 There is also a portion of bottom mounts
24 sold in what we call the contract channel, which is
25 typically new housing markets, and the way in which

1 bottom mounts are marketed to retailers, and in our
2 terminology, to the trade, is very typical for all
3 household appliances.

4 Typically the manufacturers suggest a non-
5 binding retail price for products, and also we offer a
6 retailer an expected profit margin, which is
7 calculated as a percentage of what we call the minimum
8 advertised prices, or MAP. You will hear a lot of
9 references to MAP.

10 So typically a retailer expects a profit
11 margin as the percentage of that map. During
12 promotional periods manufacturers generally either
13 lower the MAPs, or take it away altogether, and
14 provide additional promotional support to somewhat
15 preserve the retailer's profit margin.

16 Now, in addition, because this is all under
17 the SKU specific prices, there are other incentives,
18 which we usually call back end incentives, and they
19 are not tied to specific sales, and they are not tied
20 to specific SKUs.

21 These are back end incentives which could be
22 a balance of sales, and it could be advertising
23 support in general terms, and which any manufacturer
24 would give to a retailer.

25 Now, I have explained that to you in general

1 terms. Let me get a little more specific on product
2 or SKU level, and the first point that I want to make,
3 and you will hear a lot about features, before you
4 even get into pricing and SKU, you have to look at the
5 feature load which you want to have at a certain
6 price, and that is fundamental to this industry.

7 It is not only fundamental to bottom mounts.
8 It is fundamental to washing machines, and it is
9 fundamental to computers. Actually, last week I was
10 ordering an Apple Air Mac Pro, and I am not sure if
11 you have done that recently.

12 So you go in there, and \$999, very good
13 prices. Once you feature screen size, memory, flash
14 memory, processor, you have a variation between \$999
15 and \$2,199.

16 So do features matter? Yes, a big deal.
17 You always make the decision first in terms of what
18 features do you load. You will also hear a lot, and
19 you will hear about average prices.

20 Average prices in that analysis are
21 interesting at best. They are more a reflection of
22 the average feature load that you sell at a certain
23 price point. So if you don't de-average down to a SKU
24 feature load comparable, you cannot say that somebody
25 has been more cheaper or more expensive.

1 Don't get confused by averages. They can be
2 very misleading, and they just reflect how much
3 features you load in your product. Now, to be a
4 little more specific, I am going to give you an
5 illustration about why it matters to our
6 refrigerators.

7 If we go to the next page, the next page
8 actually comes from Samsung home appliances product
9 overview. This is typically how it has been explained
10 to any retailer or consumer.

11 So, there are features in bottom mounts
12 which are typically referred to as energy efficiency
13 or E-Star, and you refer to capacity, and that is
14 expressed in cubic foot.

15 External ice and water, and some times
16 internal, and dual evaporators are twin-cooling or LED
17 light. So these are features which every manufacturer
18 works around, and that is basically how you compose an
19 SKU to a certain price point.

20 You go to the next point and I gave you a
21 computer example. Features matter significantly in
22 the price value equation in our industry, and let me
23 just explain.

24 You see sources from Whirlpool, and you see
25 sources from Samsung, and they come from a typical

1 product line review, and they are very comparable
2 across many different players.

3 Typically E-Star, having E-Star or not is
4 typically a \$50 price difference, expressed in retail
5 value. Capacity uses the old rule of thumb, and it is
6 still very valid, per cubic foot is roughly a hundred
7 dollars more in retail value.

8 Twin cooling or dual evaporators are \$150,
9 and external ice and water is roughly around \$700, and
10 LED lighting is roughly around a hundred dollars. So
11 you just add or not add these features to any bottom
12 mount, you can easily explain the variation of a
13 thousand dollars.

14 That is why I made the point earlier that an
15 average price shows you more about how many features
16 have been in there as opposed to anything else. Now,
17 also, let me be perfectly clear, because you will hear
18 a lot about innovative features.

19 The features are not rocket science. They
20 are not. And many of these features have been around
21 for a long time. It is just a cost question. These
22 features come with the costs, and they are not just a
23 gimmick. They come with a serious cost.

24 So always, and we are happy to provide
25 detailed data in the post-briefing, there are

1 significant costs behind these features. It is a pure
2 economic choice on how many of these features do I
3 want to load. It is just how much costs do you
4 typically load in your bill of materials.

5 So unfortunately obviously by dumping
6 features with bottom mounts, Samsung and LG have
7 essentially destroyed the value of this market. The
8 second point which I want to make at this point, and
9 it should be fairly obvious, price also matters.

10 Once you have established a certain feature
11 configuration, i.e., you have to find a certain
12 capacity, a certain feature load, then price matters
13 significantly, and establishes a strong price
14 elasticity.

15 And let me just illustrate the point with
16 two examples. The first one that I want to give is --
17 and that is the typical -- and I also want to give you
18 a little bit of perspective. In this specific
19 category, it almost represented 80 percent of annual
20 volume, 70 percent. So we're talking about very
21 significant volumes here. So it's not a one-day
22 event.

23 And what you basically see here is clippings
24 from three different retailers from Black Friday.
25 During that promotion period, LG slashed its prices

1 for four-door refrigerator which was previously above
2 \$2,000 to less than \$1,200. So some retailers refer to
3 it as 50 percent less, some of them would refer to it
4 as 40 percent less. But in any case, very significant
5 in the space of a single week.

6 Now at the same periods and typically in
7 these kinds of sales you sell 2,000 or 3,000 units a
8 month, there were 20,000 units. Some people would
9 suggest 30,000 units sold in that single week. So
10 there is a strong and clear correlation on price on a
11 certain SKU element.

12 Another example which we don't have an
13 exhibit here, in 2008 the Department of Energy caught
14 LG cheating on its energy star compliance and LG
15 needed to remove the E-star claims for certain SKUs.
16 Actually, we were expecting their volume would drop.
17 That's what you would expect if you all of a sudden
18 you can't sell E-Star any more. Instead, the volume
19 went up. Why did it happen? Because all products
20 went down \$300 or \$200. And so there is a very
21 significant price correlation on a certain SKU level.
22 Let me move on and explain a little bit how we view
23 whether LG and Samsung have depressed U.S. market
24 prices and captured U.S. market share, and I'm using
25 what we call retail price data from NPD which comes

1 directly from cash registers from retailers. And I
2 want to give you two very specific examples. So let's
3 turn to Exhibit 7.

4 And basically, let me first explain to you
5 the products, and we're comparing here a Maytag
6 French-door Centerpiece, 25 cubic foot, four-door
7 bottom mount and the features which are probably
8 somewhat similar to the LG one which you see on the
9 sides. Now they're somewhat comparable from a feature
10 load and distinctiveness. On the right side, you see
11 Samsung products. They're 28 cubic foot and dual
12 evaporator. If you would take the logic from the
13 previous charts, you would expect that the Samsung
14 unit at any given price sells about \$300-400 more.
15 It's just applying the same feature price logic which
16 everybody uses in there. So that's just how they're
17 set up.

18 We were originally planning to launch our
19 product at \$2899. We now expect it with trades, it
20 was previously public knowledge on the markets. A
21 week before we launched it, Samsung lowered its price
22 and as a result of that, the average price of a
23 Samsung unit in that market, despite a \$300-400 higher
24 feature load, went down to what you see here, \$2319.
25 Now obviously there's few consumers who would buy at a

1 higher price a Maytag unit despite having significant
2 feature inferiority.

3 So as a result of that, we had to lower our
4 price because, again, we're competing with a lower
5 feature product. At the same time or later
6 subsequently, LG had a very aggressive Black Friday
7 promotion. That's the one which I showed before where
8 they slashed the price from average price from \$1900
9 to \$1174. Now obviously that drew a significant
10 amount of volume and subsequently it allowed them to
11 gain significant market share on this one.

12 Another example, let's go to the next one,
13 Exhibit Number 8. And here, you see a three-door
14 bottom mount, and here you see in the centerpiece that
15 is a Whirlpool product, 27 cubic foot. On the left
16 side, you see a Samsung 26 cubic foot. So it's
17 slightly lower capacity on the left and Samsung has
18 dual evaporator. We have a single evaporator. Some
19 features loads somewhat comparable, and you could
20 argue that Samsung should be at a little bit higher
21 price. On the right side, you see a high capacity
22 dual-evap Samsung unit which again should give you
23 about roughly \$250-300 feature benefits.

24 Now obviously and without going into too
25 much detail, we launched at \$2,187 while Samsung

1 already lowered its price down to on the right of a
2 high of \$2,139 and below or a similar featured one to
3 \$1733. Subsequently, we're trying to follow them down
4 in the market price down to what ultimately ended in
5 \$1,616, a significant price drop. Again, these are
6 somewhat comparable products.

7 Now one piece of additional data I want to
8 give, and again it's somewhat proprietary information.
9 Just to give you a little bit of reference in terms of
10 profit margin and economics. When we have a product
11 in the green circle, \$2187, we made a profit margin of
12 \$50-70 on that product which is not big, but it's not
13 destructive. You can obviously imagine what happens
14 to your economics in five quarters when the retail
15 price goes down by \$500. Within five quarters, I mean
16 you go from these margins to high loss making. So
17 there is a significant impact on us. Okay.

18 Now, again, when you analyze what's going on
19 at the SKU level, I mean you take into account feature
20 difference which you have to do whenever you do a
21 comparison, it is unmistakable that subject imports
22 have depressed price in U.S. markets. And results of
23 unfairly priced imports from Korea and Mexico have
24 been to take significant market share from the U.S.
25 industry. And now let's look at Exhibit No. 9.

1 The chart is based on TraQline Survey data,
2 and you need to be a little bit careful. It's not
3 exact data. It is a consumer panel, but it's
4 directionally accurate and obviously you have data
5 from the questionnaire. But for 20 years in any case
6 still running. So you basically see the gray one.
7 These are U.S. producers by and large, Whirlpool, and
8 the black and gray one is subject markets, largely LG,
9 Samsung. So over that period of time, there has been a
10 significant market share gain by subject imports and
11 obviously at the expense of Whirlpool.

12 Let me talk about our injury. And obviously
13 because it's a public forum, I cannot say too much
14 about the impact of the unfairly traded imports had on
15 our P&L, imports from Korea and Mexico. And you have
16 our questionnaire data. But it's sufficient to say
17 that we're clearly injured, and we have lost sales.
18 We have lost revenues due to the price depression. We
19 have lost employment opportunities for our workers in
20 Iowa, and our business which once was pretty highly
21 profitable is now unprofitable.

22 Now the current situation is very simply not
23 sustainable, and that impacts an entire factory in
24 Amana, Iowa. But we're also threatened with future
25 injury. And as bad as the current situation is, all

1 indications are that Samsung, LG intend to make it
2 even worse. And let's quickly look at Exhibit No. 10.

3 What you see here are a series of quotes
4 from Samsung and LG about their plans to become the
5 number one appliance industry almost at any price.
6 And without going into specifics and most of these
7 quotes are coming from earning calls, so pretty public
8 forums. Samsung has largely invested \$1 trillion or
9 \$100 billion dollars in its appliance business, and
10 they expect it will eventually pay off somewhat.
11 Along the same lines in January earnings call, Samsung
12 reported that in the next one, two or three years they
13 expect their appliance business to eventually become
14 profitable. So we're talking about loss making
15 business which on top of it are protected by a
16 profitable Korean home market.

17 Both Samsung and LG have each proclaimed the
18 same goal to become the dominant producer for home
19 appliances including bottom mount refrigerators.

20 What is so disturbing is that they're
21 apparently willing to accomplish this by selling below
22 cost effectively buying U.S. market share via future
23 dumping. This behavior is uneconomic and is only made
24 possible by a combination of government subsidies,
25 protected home market in Korea which Samsung and LG

1 are using to support the exports.

2 We believe that without the discipline of
3 anti-dumping and countervailing duty orders, the
4 problem will only get worse. And without the
5 discipline of anti-dumping orders, you essentially
6 give them license to destroy U.S. manufacturing, and
7 we will not be able to sustain that manufacturing.

8 With that, I just want to thank you for your
9 attention, looking forward to your questions.

10 MR. LEVY: Jack Levy again from Cassidy Levy
11 Kent for Petitioner. There really isn't that much
12 more to add in our affirmative presentation.
13 Whirlpool has painted a picture for you of an American
14 business that's going through a difficult period, and
15 I think they've drawn the link that you require by
16 statute between subject imports and the problems that
17 they've encountered.

18 In closing, I'd like to reiterate just three
19 points that are fundamental to this case. Point
20 number one, not only do features matter in the total
21 value equation, but this is a market that is highly
22 sensitive to changes in price. Whirlpool provided you
23 with two very clear examples, the first being the 2010
24 Black Friday promotion of LG's four-door bottom mount
25 where a retail price drop of more than \$750 caused

1 consumer demand to jump by more than 400 percent from
2 one quarter to the next. And the economic effects of
3 that promotion are lingering to this very day.

4 Also, Whirlpool cited the examples from 2008
5 where LG lost its energy star rating for certain
6 products but actually managed to increase demand for
7 those products even though the features were
8 effectively diminished. It was no longer E-Star
9 qualified. How did they do that? By lowering prices.

10 So for a given feature load, a reduction in
11 price will increase consumer demand. And similarly,
12 at a given price point consumers will prefer a
13 refrigerator with more features. I would simply urge
14 you in conducting your price analysis to always look
15 at prices and features in conjunction with one
16 another. Otherwise, your analysis will miss the total
17 value equation that governs consumer purchasing
18 decisions in the bottom mount market.

19 Point number two, the fact that Whirlpool
20 represents nearly the entire U.S. industry and subject
21 imports represent nearly all imports, I think, is
22 quite helpful. As Whirlpool, helpful for your
23 analysis because it brings clarity. As Whirlpool put
24 it, it's just us and them. So when subject imports
25 are dumped and subsidized, when they grow U.S. market

1 share, when they depress U.S. prices, the causal link
2 to injury of the domestic industry should be clear and
3 unmistakable.

4 Point number three, when you look at the
5 facts in this case, I don't think there's any serious
6 doubt that as bad as the current situation is, the
7 future threat is even greater. Samsung and LG are
8 perfectly clear in their ambitions to become the
9 number one appliance producer, and they are perfectly
10 clear in their willingness to lose money to realize
11 their market share ambitions. If left unchecked, they
12 will continue their drive to grow U.S. market share
13 through dumped and subsidized pricing. They will
14 continue to suck value out of the market, and they
15 will continue to injure American producers and their
16 workers. In short, as Whirlpool explained, without
17 the discipline of anti-dumping and countervailing duty
18 orders, this situation will only get worse.

19 So thank you for your time, and the panel
20 looks forward to your questions.

21 MS. DOBROWOLSKY: Thank you, Mr. Levy, and
22 thank you very much to all of you for coming today and
23 presenting testimony and then being available for our
24 questions. It is very helpful in learning about the
25 product. While we all probably have a refrigerator in

1 the house, I don't spend too much time looking at it
2 other than opening it and closing it. So this will be
3 helpful, and for that we will turn to Mr. Cacease, our
4 investigator, for questions first.

5 MR. CASSISE: Good afternoon, everyone. My
6 name is Chris Cassise, and I want to welcome everyone.
7 Mr. Bitzer, your testimony was very helpful. And I
8 would like to ask just a few follow-up questions and
9 feel free to either answer them or delegate them to
10 someone else.

11 The first line of questioning, I think, will
12 go to something that Mr. Greenwald started to discuss
13 in his opening which what we call the domestic like
14 product issue, whether or not bottom-mount
15 refrigerators are a distinct product or whether or not
16 the Commission should look at a wider market.

17 And, of course, there are a number of
18 factors that we look at. The first one and you
19 started to describe some of this was you stated that
20 bottom-mount have distinct production lines and
21 production facilities. And I was just wondering if
22 you could tell me on your Exhibit 1, the map, of all
23 of the manufacturing facilities that you show in
24 Exhibit 1, do you produce bottom mounts at all of
25 those facilities or some of those facilities?

1 MR. BITZER: Mr. Cassise, again it's Marc
2 Bitzer. So typically we have all our factories and
3 I'm not talking now outside refrigeration. Every
4 household appliance is typically produced in dedicated
5 factories. So fly to Ohio, we produce top-load
6 washers and now some front load Marion dryers. So you
7 typically have dedicated production facilities, and
8 that's simply due to the fact you have high capacity
9 investment. It's very capital intensive, and you kind
10 of have it in multiple sites.

11 Now specifically on refrigerators on the
12 ones you have seen before, and I talk about ruling out
13 some small niches, way more than 90 or 95 percent of
14 our bottom mount products are produced in Amana, Iowa.
15 There's some small units which are produced in Fort
16 Smith and they're dedicated built which are highly
17 labor intensive. Typically, top mounts are produced
18 in our Evansville or in our Supsa, Mexico factory, and
19 side-by-sides are produced in Fort Smith, Arkansas or
20 Ramos Arizpe, Mexico. So they typically are in
21 distinct factories.

22 Now but that may not necessarily be
23 required. In terms of production processes which they
24 share or could theoretically share, any refrigerator
25 you first are replacing metal pressing and stamping.

1 It's pure metal pressing. It could theoretically be
2 shared.

3 But then given that the fundamental
4 structure where you have a freezer compartment is
5 pretty much after the metal pressing already ends
6 because you have to fundamentally decide which cabinet
7 form you have which determines the metal pressing and
8 then the cabinet foaming. So cabinet forming, which
9 is a very intensive process, is completely different
10 line. I mean you can have it's basically determined
11 by the cabinet mold which you use. So these are
12 dedicated tools. And then from thereafter the entire
13 rest of the process is down to assembly lines you have
14 completely different lines. So they run on completely
15 different lines.

16 MR. CASSISE: And you stated also that you --
17 - that Whirlpool's a global manufacturer. Do you
18 produce bottom mount or any other types of
19 refrigerators in any other country besides the United
20 States?

21 MR. BITZER: We do. I know some of these
22 production sites where I was in charge of our Europe,
23 Middle Eastern and Africa operations. So we produce,
24 without spending too much time, we produce
25 refrigerators in both some top mounts but bottom

1 mounts a lot in Azerbjan(?), Mexico. We produce some
2 products around the entire refrigeration category in
3 Cassinetta, Italy, Trento, Italy on dedicated lines,
4 in some cases dedicated factories and we have also
5 some production in India and some production in China.
6 But by typically the same logic as here because
7 they're more governed by economic principles.
8 Dedicated lines are mostly in dedicated factories.

9 MR. CACEASE: Okay, I'm not sure I heard you
10 clearly. Do you produce bottom mounts in Mexico?

11 MR. BITZER: No, no bottom mounts.

12 MR. CACEASE: Okay.

13 MR. BITZER: Okay, in Mexico we produce side-
14 by-side refrigerators some, and we produce some top-
15 mount refrigerators.

16 MR. CASSISE: And what markets would those
17 serve, the refrigerators you produce in those markets?
18 Do they serve those home markets?

19 MR. BITZER: They serve a number of markets.
20 But Mexico typically, if you go and see significantly
21 U.S. exports, there's a Mexico domestic market and
22 there's also some typically you would see quite a bit
23 of exports to the Caribbean markets and some parts of
24 Latin America.

25 MR. CASSISE: Now you've mentioned a couple

1 of the production processes, the metal stamping and
2 the cabinet forming, I believe. And in the petition,
3 I think you said there were ten modules, ten
4 production modules that occur in the production of a
5 bottom mount. I don't know if you want to go name
6 those and go into a little bit more about what happens
7 in the production process and whether or not any of
8 those production processes are distinct to bottom
9 mount, or are they also true for the side-by-side and
10 the top-mount refrigerators? More of a general
11 overview.

12 MR. BITZER: Let me first give a general
13 answer and then maybe Justin can provide a little bit
14 more detail. Again, it's Marc Bitzer. In principle,
15 if you recall assembly, you know you can assemble
16 anything. But the moment you have specific assembly
17 tools, these are dedicated for bottom mounts, I mean,
18 and the same thing for forming. Most metal presses,
19 the way they are distinct tools. But maybe, Justin,
20 you want to give a little bit more specific detail.

21 MR. REINKE: I can try to, and I've -- this
22 is Justin Reinke. I'm category director for bottom-
23 out refrigeration at Whirlpool. Without giving a whole
24 bio, I've been at Whirlpool 11 years and been in
25 refrigeration for call it the last six years or so,

1 different jobs but in refrigeration.

2 I've got the copy of the petition in front
3 of you because I don't pretend to have memorized all
4 ten of these modules. But if you talk about the
5 cabinet and it's hard --- I don't have a manufacturing
6 background before I got into this job. So it's hard to
7 kind of imagine these things. But when Marc talks
8 about, you know, cabinets and I look here and I see
9 control systems and cooling systems and we talk about
10 forming, these formers are as big as this room. These
11 are giant machines that make this product.

12 If we want to go into detail, the cabinets,
13 if you think about it kind of as a 69-inch tall
14 product by kind of a 36 inch wide product, as Marc
15 mentioned, some of that tooling could be shared
16 between different platforms.

17 When you look at cooling systems, the
18 cooling systems are very different in terms of
19 operation and in terms of where the different
20 components are placed in the refrigerator. And a lot
21 of that is relative to what Marc mentioned in his
22 opening which is where the freezer location is. The
23 cooling system, though, in terms of compressor or
24 condenser, evaporator, these type of components, they
25 all have the same call them name components, although

1 the components are different from platform to platform
2 if that makes sense to you. When we talk about ice
3 and water systems, top-mount refrigerators typically
4 do not have an external ice and water dispenser,
5 although there have been models in the market in years
6 past that have had those. French door and side-by-
7 sides both can have external ice and water dispensers,
8 and some of those parts can be shared between those
9 platforms.

10 When you talk about doors, doors are
11 extremely different. And when we talk about equipment
12 and machines to make doors, doors are also foamed as
13 well. That's all unique tooling. That's all separate
14 tooling. You couldn't share doors between these
15 platforms just because of the sheer size and
16 difference of that.

17 Looking through the rest of this literature,
18 labels, packaging, literature and labels some of that,
19 some of that could, I mean, these are labels and books
20 and use and care guides. Those are separate and not
21 much capital investment. Their interior features
22 which would be door bends, shelves, crispers,
23 pantries, things like this, again those are unique to
24 the different platforms.

25 I don't know if I answered all ten of them

1 or not. But the answer is of the ten, the vast
2 majority of them are not shared between the different
3 platforms.

4 MR. CASSISE: Okay, no, that's helpful. And
5 again, this is a point of clarification. Mr. Bitzer,
6 you had mentioned categories of bottom-mount
7 refrigerators, the french door, the two-door, the
8 three-door. Respondents mentioned another one in
9 their opening. I believe it was a two-door. What are
10 the categories, I guess, just list them. Does that
11 cover them all? Is there the French door, the two-
12 door, the three-door, or is there overlap.

13 MR. BITZER: And Marc by and large covered
14 them all. Let me explain again. You basically in the
15 factory --- you build basically the cabinet,
16 everything behind the door, and then you basically
17 attach a door which typically come even before -- what
18 we call door factories. But bottom-mount
19 characteristics across all these ones are the same.
20 The freezer in the bottom and fundamental design
21 principles are the same. But then you have some
22 differences. First of all, the way how the door is
23 being attached. And if you would go back into 40
24 years of history of the bottom mount, you sometimes
25 see even the bottom freezer with a swing door to open

1 the door. So that is a fundamental difference, and
2 also what you typically see is the upper door can also
3 be a swing door or so-called French door. That's how
4 we fold the French door. Subsequently, there was also
5 a bottom freezer. You sometimes have models where the
6 bottom is just one big drawer with basically freezer
7 wire to kind of hold things which are split up in two
8 different subdoors. What is always fundamental, a
9 bottom freezer because you have freezer compartment
10 largely at the bottom.

11 MR. CASSISE: So just to illustrate using
12 your exhibits, could you show me. I think you have
13 all different --- all the different categories are
14 pictured in your exhibits. I just -- well, for
15 example, in Exhibit 2, is that the ---

16 MR. BITZER: So what I was --- again, it's
17 Marc Bitzer. What I was referring to in my comments
18 referred to products on the right side. The bottom
19 mount refrigerators which in your exhibit you've seen
20 on line 211 referred to as a roughly \$2.4 million
21 market. And this bottom-mount refrigerator we have a
22 subcategory of French door bottom mounts or
23 traditionally two-door bottom mounts or now offer some
24 four-door bottom mounts.

25 MR. REINKE: If you look at Exhibit 2 on the

1 right hand -- this is Justin Reinke, on the right hand
2 side of Exhibit 2, that would be what we would call a
3 French door three-door refrigerator.

4 MR. CASSISE: Okay.

5 MR. REINKE: If you go to Exhibit 7, you can
6 see an extra drawer above the freezer section or
7 sometimes it can be a part of the freezer section.
8 That's what we would call a four-door. If you go ---
9 I don't know that we have a picture of a two-door.
10 But if you went back to Exhibit 2 and used your
11 imagination and kind of got rid of the middle doors
12 that open there and made that one door, that would
13 then be a two-door.

14 A way that I think about it and as you look
15 at this Exhibit 2, another way that I would say you
16 can easily distinguish the platforms or another way to
17 think about how they're different is if you took the
18 doors off of all of these pictures that you see here,
19 they would look very different, okay. So you'd have a
20 freezer section on the top of the top mount or a
21 refrigerator section on the bottom. On the side-by-
22 side one on each side. As far as bottom mount
23 refrigeration, though, if you took these doors off
24 this product, you couldn't tell me or I couldn't tell
25 you if it was a French door or if it was a two-door.

1 Maybe you could tell if it was a four-door, though,
2 because the construction again in the bottom mount
3 platform is very similar.

4 MR. GREENWALD: Mr. Casise, if I could just
5 make a point here, when people talk about two-door or
6 three-door or four-door, it's always two-door bottom
7 mount, three-door bottom mount and four-door bottom
8 mount because it's the bottom mount that is really the
9 defining characteristic.

10 MR. CASSISE: I understand. I just wanted to
11 --- Mr. Bitzer had mentioned that there were
12 categories. I just wanted to clear that up.

13 Mr. Bitzer, you had also mentioned that it
14 took four to five years and \$100 million of investment
15 to build a manufacturing facility that would produce
16 bottom mounts. Again, I wanted to clarify, is that an
17 accurate depiction of your statement? I mean is this
18 a green field project that you would build for \$100
19 million in four to five years or if you could clarify
20 that statement, it would help.

21 MR. BITZER: Apparently we have some
22 confusion here. It's good that we clarify it. I was
23 referring to investment expected pay back periods of
24 what any economic decision is based upon. Let me just
25 clarify. You asked how long does it take to build a

1 green field factory and an entirely new platform.
2 That would be typically fast. So you can do it in
3 two, two and a half years if you're really fast. It
4 could take three years. But that's just how long it
5 takes you to build the factory on a green field and
6 then just build the product.

7 What I was referring to is the fundamental
8 investment decision. And as a company, you need to
9 decide to invest in this product or in this factory or
10 do I not invest. When we typically bring investment
11 decisions to our boards, there's an expectation around
12 how long does it take until I get investment back.
13 That's just the governing principle of any economic
14 investment decision. In our expectation, our company
15 and other companies may be different. But we would
16 expect that these investments get a payback after
17 four, five years. Same thing if you bring money to
18 the bank, you also have certain interest expectations.
19 That's basically everything just expressed slightly
20 differently. So when we invest \$100 million, you need
21 to have an understanding at what time do I get the
22 money back through sales and revenues and margins. So
23 that is typically four to five years as a guideline
24 for investment decisions.

25 So, of course, if we then have a business

1 which turns from profitable to unprofitable, you
2 eventually never get the money back because you never
3 make a profit and that then is a very important point
4 about future decisions because that's a category where
5 I don't get my investment back, do I ever want to
6 invest in this category again.

7 MR. CASSISE: Okay, so that's your time
8 window. But the \$100 million, is that to retool
9 existing facilities, to expand and build new capacity?
10 What is the \$100 million.

11 MR. BITZER: That \$100 million is the typical
12 investment which it would take. For example, if we
13 would take the bottom mount French door which just say
14 in actuality we are right now in the process. We say
15 we want to develop a new platform for the next energy
16 standards, break through products, the French door,
17 the potentially all four-doors, that investment
18 decision will be roughly \$100 million and that
19 typically will be roughly you could spend \$60 million
20 maybe capital, maybe \$40 million engineering because
21 there's a lot of engineering, and the capital
22 typically goes into tools, molds, all these dedicated
23 lines which you would have to associate with that
24 because whenever you have a different structure, you
25 have different molds and different tools.

1 MR. CASSISE: Also, Mr. Bitzer, you had
2 mentioned that there were two major channels of
3 distribution. Of course, the vast majority is this
4 retail channel distribution. But you also mentioned
5 another one. I believe you called it the contract
6 channel for new construction. Could you just give me
7 an estimate on how large that channel is, what share
8 of your total sales that channel is, and then how it's
9 been affected in the POI with the housing market.

10 MR. BITZER: Let me just in general terms, we
11 refer to it as contract channel and that is typically
12 a business which goes directly to large builders like
13 Pulte Homes or Linear or somebody, and there's some
14 part of the business which goes to so-called builder
15 wholesalers. That's where the local architect may get
16 its supplies from. It could be a Ferguson's or
17 somebody else. So that is what we typically refer to
18 as contract channel. That contract channel, it's
19 difficult to get the precise data because it's a not
20 very well documented market. You can roughly gauge
21 it. But I would say, and Justin, correct me if I'm
22 wrong, bottom mount markets today represents less than
23 15 percent of the total market.

24 Now our contract side, of course, in total
25 has been impacted by the housing market. I mean you

1 have housing starts 600,000, that has been impacted.
2 But it's been way, way more of a mitigated offset than
3 a rapid growth in retail markets on bottom mounts.
4 But it's today a small part of the total bottom mount
5 market.

6 MR. CASSISE: I guess we should talk a
7 little bit about the features that we are most likely
8 going to hear a lot about from the other panel. Is
9 there -- the first question is is there any features
10 that Whirlpool doesn't offer that LG and Samsung do.
11 And I noticed -- just off the top of my head that the
12 dual evaporators seem to be available on the Korean
13 product and I didn't see any dual evaporators on the
14 Whirlpool product. Can you explain any features that
15 you don't offer that the Koreans do?

16 MR. BITZER: Again, on these features, most
17 of them you will see on many refrigeration products
18 that have been around for some time. So even if you
19 take LED lighting, it first appeared on some built-in
20 refrigerators in Switzerland like eight years ago.
21 The features, there is nothing breakthrough in
22 technology. It's the costs associated. If you have
23 one or two evaporators, it's just a question of do you
24 have the cost of one or two. There is no magic in the
25 design.

1 External door, ice. It's just a question of
2 do you put it in, and we hold the majority of patents
3 that results in -- you know, it's a known technology.
4 It's just a question of do you put it in or not.
5 Capacity, you just design a larger or smaller product.
6 I mean, it's just a decision, and how do you go, and
7 how big do you go. And is the consumer willing to go
8 to a 30 or 35 cubic-foot because at one point we don't
9 get in the door of the house anymore.

10 So it's a decision -- you know, it's where a
11 consumer benefits, and in our case also, do you want
12 to incur the costs which are associated with these
13 features because there is a cost by adding these
14 features, adding LED lights or dual-evaporated, it's a
15 cost in your manufacturing.

16 MR. CASSISE: No. And I understand that
17 technologically you could put any of these features in
18 your products. But my question is, do your existing
19 products not offer features that the Korean existing
20 products do?

21 MR. REINKE: Yeah. This is Justin Reinke
22 again. So without going through a list of the dozens
23 of features on each model -- and there are many models
24 in the market. You mentioned dual-evap. And I'd
25 answer consistent with what Marc said. These aren't

1 features that we can't do. But if the specific
2 question is are there features that are in market from
3 LG or Samsung that are not on Whirlpool Corporation,
4 French door, or two-door bottom-mounts today, dual-
5 evap is one, is one that we do not have in market
6 today that they do have. That is correct.

7 MR. LEVY: And you're referring to Samsung,
8 not LG.

9 MR. REINKE: Correct, Samsung.

10 MR. LEVY: LG does not have dual-evaporator
11 or twin-cooling technology in the market?

12 MR. REINKE: Correct.

13 MR. CASSISE: Now, in your Exhibit 5, is
14 twin cooling the same as dual evaporator?

15 MR. REINKE: Yes. Without -- this is Justin
16 Reinke again. Without going into too many details on
17 it, there is different executions of dual evaporators.
18 Twin cooling would be what I would say is Samsung's
19 execution of dual evaporators.

20 MR. CASSISE: And so it's your estimate that
21 that adds \$150 to their suggested retail value?

22 MR. REINKE: Correct.

23 MR. LEVY: Just to give you one other
24 example, the difference between what Whirlpool has in
25 the market and what Samsung has in the market. You'll

1 see in Exhibit -- I believe it's Exhibit 7. To the
2 right, you'll see the Samsung model RF4287HARS, and
3 that's a four door, bottom-mount configuration. The
4 top drawer in the Samsung unit is actually
5 convertible. It can be configured as a refrigerator
6 or for soft freezing.

7 By contrast, in the middle, the Maytag unit
8 is actually an extension of -- that top drawer is an
9 extension of the refrigeration compartment. And then
10 moving all the way over to the left, the LG top drawer
11 is actually an extension of the freezer compartment.
12 And again, just to sort of emphasize the point that
13 Marc made, this is simply an investment decision.
14 It's a cost equation.

15 Is there a return on investment in adding
16 these features? I think that Whirlpool has or is now
17 putting in the market a product that has a convertible
18 drawer for one its SKUs, but the point is has there
19 been in the period of investigation an economic
20 incentive to add more features. And the answer
21 regrettably of late has been no in the case of
22 Whirlpool. And the language that Marc uses, which I
23 think is a bit novel but quite apt, is that subject
24 imports Samsung and LG, they're dumping features.
25 They're putting these very feature-laden products into

1 the marketplace, but they are not attributing to those
2 features fair value.

3 MR. CASSISE: So, Jack, is that supposed to
4 be the second feature that Whirlpool doesn't offer
5 then, this convertible second compartment?

6 MR. LEVY: I think the answer is during the
7 period of investigation, that's correct. I think that
8 a convertible compartment now exists in the
9 marketplace. Is that accurate, Justin?

10 MR. REINKE: That's correct. If by
11 definition convertible means the ability to change the
12 temperature, then correct.

13 MR. CASSISE: Okay. So I'm just going to go
14 through a quick list, and, Justin, if you could answer
15 whether or not a Whirlpool product from 2008 to 2010
16 had this feature. We'll just go down a list, I mean.

17 MR. REINKE: Sure.

18 MR. CASSISE: You already answered the
19 convertible compartments. I guess the answer is no,
20 from 2008 to 2010 Whirlpool did not have that feature
21 compartment.

22 MR. REINKE: Again, if we define that as a
23 drawer that's open from the exterior, like the Samsung
24 piece on Exhibit 7 in the right, and controls
25 temperature, then that's correct.

1 MR. CASSISE: Okay. All Whirlpool's
2 products were Energy Star rated, the bottom mount?

3 MR. REINKE: I believe that answer is true.
4 There may have been a few that were not. We can check
5 and get back to you on that one.

6 MR. CASSISE: Okay.

7 MR. LEVY: And just as a point of
8 clarification on Energy Star, the Department of
9 Energy's E-star standard changed in April of 2008.
10 Prior to April of 2008, in order to -- for a bottom
11 mount, because remember the standards were different,
12 sort of platform-specific. But in the bottom-mount
13 context, in order to be E-star qualified prior to
14 April 2008, your energy efficiency had to be -- or
15 your electrical usage had to be 15 percent better than
16 the DOE minimum.

17 After April of 2008, it had to be 20 percent
18 better. And so I'm aware of some situations where the
19 legacy Whirlpool products that were E-star in the
20 first and second quarter of 2008 ceased to be for
21 another quarter or more until the follow-on models
22 were introduced into the marketplace.

23 MR. CASSISE: Okay. But there were E-star
24 rated Whirlpool products in the marketplace --

25 MR. LEVY: Yes, absolutely.

1 MR. REINKE: Oh, absolutely, the vast
2 majority of them.

3 MR. CASSISE: Right. LED lighting.

4 MR. REINKE: Yes. Whirlpool Corp. offers
5 that.

6 MR. CASSISE: And LCD interface?

7 MR. REINKE: Yes.

8 MR. CASSISE: Premium shelving. Although if
9 you could define that first, that would be helpful.

10 MR. REINKE: Good question. I guess it can
11 be defined in different ways. A common way that I
12 would think of -- I mean, say you're in a focus group
13 situation, and you're asking people if they would like
14 premium shelving or not premium shelving. Premium
15 shelving in that case would typically be defined as a
16 shelf with some sort of a metal trim on it, so metal
17 kind of accents to make the product or the shelf look
18 better.

19 There are also different things you can do
20 in terms of -- call it kind of the feel of the shelves
21 as they may slide in and out, and there are other
22 kinds of specialty shelves and things like that as
23 well. But the answer is yes.

24 MR. CASSISE: And the last one, a stainless
25 steel exterior.

1 MR. REINKE: Yes.

2 MR. CASSISE: Okay. I do want to talk a
3 little bit about the energy efficient ratings, well,
4 actually as they relate to the energy efficient
5 appliance tax credits. First, Mr. Bitzer, I guess I'd
6 ask you in a public forum whether or not you claim
7 these tax credits.

8 MR. BITZER: Mr. Cassise -- and it's Marc
9 Bitzer. What basically happened during this
10 investigation period, two sort of tax incentives in
11 the market. The one was a consumer rebate, commonly
12 known as the cash-for-appliance program, which ran
13 last year, executing state by state, which was given
14 to the consumer, accessible to any producer.

15 So, yes, we had access to this one because
16 the consumer claimed it, it was open. It was governed
17 by the different states. It was a \$300 million
18 program, of which \$225 million was handed to
19 consumers. Then there is the other part, which is
20 energy tax credits granted to producers. This was a
21 program started by the U.S. Government because they
22 want to incentivize the production of energy efficient
23 appliances. And, yes, we earned these tax credits,
24 okay.

25 Given that this is a public forum, I don't

1 want to get into too much specific, but we publicly
2 every year now show how much energy tax credits we
3 earned. I can tell you that on the subject which we
4 talk about, less than 4 percent of our total tax
5 credits were on bottom mounts. The vast majority are
6 washing machines made in Ohio.

7 The other point I want to make is also the
8 notion that tax credits help you mitigate losses is a
9 little bit contradictory. Very simply you can't claim
10 a tax credit on a loss. I mean, you can only get the
11 benefit of a tax credit in future years once you have
12 it against a profit.

13 MR. CASSISE: Right.

14 MR. BITZER: So if you make a loss, a tax
15 credit, you can basically just write it off. It's
16 just the logic of tax credits.

17 MR. CASSISE: And I think, Mr. Levy, you
18 already answered this question, that there are
19 different standards for the top mounts, the bottom
20 mounts, and the side by sides promulgated by the
21 Department of Energy. And, Mr. Estrada, I think that
22 Jack had mentioned in the opening that you could tell
23 us how the Department of Energy promulgates these
24 standards or how you interpret these standards.

25 MR. LEVY: Can he say something? Tom

1 Schwyn.

2 MR. CASSISE: Sure.

3 MR. SCHWYN: Yeah. This is Tom Schwyn.
4 Maybe you could clarify your question a little bit.

5 MR. CASSISE: The Department of Energy
6 promulgates standards for Whirlpool to meet in order
7 to get this tax credit. I mean, could you just give
8 me a little background on how these regulations are
9 promulgated and what they are, really?

10 MR. SCHWYN: I think we may be mixing two
11 different areas here, if somebody else wants to answer
12 as to how we earn the tax credits.

13 MR. BITZER: I can give you a general
14 answer. So first of all, the Department of Energy
15 defines a minimum energy standard for certain product
16 configurations. So, for example, on top mounts, they
17 have a different standard than on bottom mounts, very
18 simply because the inherent energy efficiency of top
19 mounts is better than bottom mounts. It's very
20 simple. So they set a minimum standard.

21 To Jack's earlier point, in 2008, to earn or
22 to call your product an Energy Star, you need to be 15
23 percent better than that standard. And subsequently,
24 they raised that standard. And it's the expectation
25 that in 2013 or 2014, they may raise that standard to

1 30 or 45 percent, which just every year is raising the
2 bar.

3 So it is against a minimum standard, which
4 is defined by certain product configuration. The tax
5 credit part -- and again, without getting too much
6 into tax law, because there are capped and uncapped
7 tax credits, et cetera. And they're basically saying
8 you get a tax credit depending on how many energy star
9 products you actually produce in facilities in the
10 United States.

11 MR. CASSISE: But, I mean, is the Department
12 of Energy coming up with so many kilowatts per hour
13 that an appliance needs to be consuming?

14 MR. BITZER: Yes, exactly.

15 MR. REINKE: Yeah. So this is Justin
16 Reinke. That's absolutely correct. And we can
17 provide or you can access, right, all the details.
18 But they're not insignificant differences, right? So
19 a bottom mount is roughly 578 kilowatt hours per year.
20 Again, not to know all the numbers, but a top mount is
21 521, and a side-by-side is 672. So they're not one or
22 two kilowatt-hour differences between the three.
23 They're, you know, 10 percent difference, 15 percent
24 difference.

25 MR. CASSISE: The last question I have for

1 right now, Mr. Bitzer or anyone on the panel, are you
2 aware of any other U.S. imports coming in from any
3 other country besides Korea and Mexico? Is there
4 anything from China at all that you know of?

5 MR. LEVY: We're not aware of any material
6 quantities coming from China. We do believe that
7 there are small quantities coming from Europe perhaps
8 under the Bosch label. But further details are not
9 publicly available.

10 MR. CASSISE: Okay. Thank you. That's all
11 I have for right now.

12 MR. DeFILIPPO: Thank you, Mr. Cassise.
13 We'll know turn to Mr. von Schriltz.

14 MR. VON SCHRILTZ: Thank you, Cathy.
15 Welcome to everyone. Thanks for coming and giving us
16 -- sharing your expertise with us on bottom mount
17 refrigerators. Karl von Schriltz, Office of the
18 General Counsel. I have a few questions for you,
19 starting with the like-product issue.

20 It seems to me that no matter what type of
21 refrigerator you're talking about, they're all used to
22 cool food and store food. So one question that I have
23 is to what extent do consumers cross-shop the
24 different types of refrigerators. In other words, to
25 what extent will consumers choose between, say, a

1 side-by-side refrigerator and a bottom mount
2 refrigerator, because I see that a lot of times they
3 contain a lot of the same features, like stainless
4 steel exterior, for instance, or external ice and
5 water dispensers.

6 In fact, I believe Mr. Reinke even mentioned
7 that you can sometimes use the same water/ice
8 dispenser components between side-by-side and bottom
9 mount refrigerators. So to what extent do consumers
10 cross shop across these three general types of
11 refrigerators?

12 MR. BITZER: Mr. von Schrittz, it's Marc
13 Bitzer. I can take the first answer. Maybe, Justin,
14 you can complement me on this one.

15 First of all, yes, consumers essentially
16 want to store food. But the first issue which we need
17 to make is do I store frozen or normal foods. And
18 that's a fundamental decision. So until the consumer
19 decides in terms of do I need a freezer compartment,
20 what size of freezer compartment, and do I want to
21 have it on top, or the bottom. And that is a
22 fundamental difference in terms of ergonomics because
23 if you have a refrigerator cabinet at the bottom, you
24 always have to bend down, and you do that typically
25 more when you get food out than freeze. That's a

1 fundamental consumer difference.

2 The other thing a consumer fundamentally
3 defines is what is the storage capacity I need for my
4 family, okay? And it's just a five-person household
5 will have a hard time having the storage capacity of I
6 would say less than 14 or 12 cubic foot or 15 cubic
7 foot. So capacity.

8 So typically from a consumer perspective --
9 but again, Justin can -- there is very little moves
10 between top mount and bottom mount. Could you have
11 some spillover move between French door or bottom
12 mount, multi-door, and side-by-side? You could. But
13 it's not that frequently. So it's -- I mean, also if
14 you look at the fundamental growth dynamics of the
15 segments, they developed in a completely different
16 direction.

17 If the consumers would easily spill between
18 the two of them, you would see a more similar growth
19 dynamic on these different categories.

20 To your question about features appearing in
21 similar or other categories, that is not surprising
22 because as I said before, you fundamentally use
23 features to define your lineup in that category. So
24 that's why I said, you almost put together a menu. So
25 you have one course, two course, three course menu.

1 So you use the features that define that product
2 lineup within the top-mount segment, within the side-
3 by-side segment, within French door, multi-door, or
4 bottom-mount segment. Justin?

5 MR. REINKE: I think you covered it, Marc.

6 MR. GREENWALD: Let me expand on that a bit
7 by asking you to look at average pricing. You have
8 NPD data. We provided it in the petition. It is
9 impossible to argue seriously that there is a lot of
10 crossover from one to the other when the price
11 differences are as pronounced as they are on average.
12 The only conclusion you can reach is a consumer wants
13 a bottom-mount, he is willing to pay -- he or she is
14 willing to pay for it, and that in fact is borne out
15 by the data.

16 MR. LEVY: And that's on Exhibit 2. You can
17 see the differences.

18 MR. VON SCHRILTZ: A follow-up question.
19 Why are bottom-mount refrigerators so much more
20 expensive on average than side-by-side and top
21 freezer-refrigerators?

22 MR. BITZER: There are a number of factors.
23 First of all, the average capacity -- that's why I
24 always said the average feature load is a reflection
25 of prices -- is significant for a French door than,

1 for example, top mounts. You would rarely ever see a
2 25-cubic foot or 28 top mount. So capacity, which is
3 a fundamental in terms of your product costs, are
4 completely different.

5 The construction cost difference in a bottom
6 mount are higher than a top mount because the cooling
7 system is a little bit more complicated because it is
8 different from a top mount, where the cold air travels
9 down. You have to repump the cold air, the less cold
10 air up in the refrigeration compartment. So the
11 cooling system from design is different.

12 And on top of that, if you would
13 particularly look at the bottom-mount configuration,
14 the drawer at the bottom, the drawer set of mechanics
15 are fairly expensive. They're much more expensive
16 than just a swing door. So it's larger capacity. It
17 is typical -- they come with much higher feature
18 loads, and the cooling system differences explain the
19 big difference.

20 MR. VON SCHRILTZ: Thank you.

21 MR. BOYCE: But I think fundamentally --
22 this is Richard Boyce. Fundamentally, consumers
23 perceive a higher value and have been willing to pay a
24 higher value for the advantages in the ergonomics.

25 MR. VON SCHRILTZ: Which actually brings to

1 mind a question that's maybe not related to the like-
2 product question. But it is something that came to
3 mind when you were talking about your Exhibit 7 here,
4 this Maytag model that you introduced recently, and
5 you planned to price it at \$2,899 when it was launched
6 in 2010, and then you had to drop the price allegedly
7 to compete with LG and Samsung.

8 My question is why did you introduce this
9 model as a Maytag and not as a Jennair or a
10 KitchenAid, which are your higher end brands?
11 Wouldn't consumers be willing to pay more for a
12 KitchenAid or a Jennair?

13 MR. BITZER: It's actually a very good
14 question. Again, Marc Bitzer. You wouldn't introduce
15 it on a Jenn-Air because Jenn-Air would never capture
16 the volume. It's a very supreme segment. You could
17 argue, why did you not introduce it on a KitchenAid.
18 We want to give Maytag, which is also a typical brand,
19 which commands some sort of a premium market, an
20 opportunity to also have a launch lead. And Maytag in
21 particular is associated with the Amana, Iowa
22 facility. A lot of initial French door were Maytag
23 products. That's why we felt there is a better
24 heritage link with that brand.

25 But, yes, between KitchenAid and Maytag, you

1 could have argued. So it's a fair point.

2 MR. VON SCHRILTZ: Thank you. So back to
3 like product. Do the three types of refrigerators,
4 the top mount, the bottom mount, and the side-by-side,
5 do they share the same channels of distribution?

6 MR. BITZER: Yes. Typically, there is some
7 slight weight difference across the same channels. So
8 an individual trade partner -- some trade partners
9 have a slightly higher percentage of top mount series,
10 and others a slightly higher percentage of bottom
11 mounts. But it is minor difference. But it's
12 fundamentally the same distribution channels.

13 MR. BOYCE: But -- again, this is Richard
14 Boyce. Those same distribution channels take care of
15 laundry, ice makers, trash compactors, all household
16 appliances.

17 MR. VON SCHRILTZ: All right. Thanks for
18 your answers. Is there some overlap in terms of
19 price? Now, you've emphasized price quite a bit in
20 arguing that bottom mount refrigerators should be --
21 that the Commission shouldn't expand the domestic
22 like-product definition beyond the scope. You
23 emphasized price. Is there some price overlap between
24 the cheapest bottom-mount refrigerators and the most
25 expensive side-by-side refrigerators?

1 MR. BITZER: Yes. You would see, for
2 example, if you would take again this example which we
3 cite on page 7, which dropped down to 1,100. You
4 would see side-by-sides in that price category, yes.
5 But in general terms of a price span and where you
6 have both a median and the average of a market, it's
7 different. But there is no overlap.

8 MR. GREENWALD: I think it's also fair to
9 say there is almost no overlap with top mounts and
10 bottom mounts. Is that fair?

11 MR. BITZER: Yeah. You rarely see a top
12 mount above \$1,000, rarely.

13 MR. VON SCHRILTZ: All right. I have a
14 question about the dual evaporator feature. I mean,
15 it seems like that's the one feature that subject
16 imports offer that Whirlpool currently doesn't offer.
17 And I'm wondering, approximately what share of the
18 bottom-mount refrigerator market is accounted for by
19 the dual evaporator model sold by Samsung? And does
20 Lucky Gold Star not offer the dual evaporation?

21 MR. GREENWALD: I think Lucky Gold Star is
22 now referred to as LG. I don't want to speak for
23 them.

24 MR. VON SCHRILTZ: Oh, I'm sorry, yes. LG,
25 of course.

1 MR. GREENWALD: Our understanding is that
2 virtually all of the Samsung models, not necessarily
3 all, but virtually all, are dual evaporator, and none
4 of the LG models are, and none of the Whirlpool models
5 are.

6 MR. VON SCHRILTZ: And, Marc, correct me if
7 I'm mistaken, but Whirlpool does have dual evaporators
8 in some of its other refrigerators produced in Europe.
9 Is that correct?

10 MR. BITZER: Yeah. And again, it's just a
11 decision, do you put one or two evaporators. It's the
12 same logic. I mean, it's basically a fundamental
13 tradeoff between the benefits you will get from a dual
14 evaporators, you can be more precise about the
15 temperature regulation between different compartments.
16 You can technically overcome it with very good
17 sensors, which we typically do, and you could make the
18 argument about cold air dissemination between
19 different compartments.

20 In the past, we felt the cost of adding it
21 doesn't outweigh the consumer benefits of this one.
22 So it's just a decision, do you add the cost to it or
23 not. It's just do you have one or two.

24 MR. VON SCHRILTZ: Would it be expensive for
25 you to add dual evaporators to your bottom-mount

1 refrigerator model?

2 MR. BITZER: Justin, correct me if I'm
3 wrong, but it's roughly a \$30-40 product cost
4 investment.

5 MR. REINKE: That's correct.

6 MR. BITZER: And the engineering associated
7 with that.

8 MR. VON SCHRILTZ: So that's \$30 to \$40
9 extra per refrigerator?

10 MR. BITZER: That is just the bill of
11 material, and then you need to obviously put it with
12 some engineering resources. But you have real cost of
13 it. And if you had -- earlier I said a \$50 or \$70
14 profit, you think twice about do you want to add a
15 feature with \$30, \$40.

16 MR. VON SCHRILTZ: All right. Let's see.
17 Are there any -- now, you say Whirlpool accounts for
18 most all bottom-mount refrigerator production during
19 the period that we're examining here. Now, are there
20 any U.S. manufacturers with plans to produce bottom-
21 mount refrigerators in the United States?

22 MR. BITZER: It's Marc Bitzer again.
23 Obviously, manufacturers unfortunately don't tell me
24 what they intend to do. We hear rumors that GE may
25 consider, but these are nothing but rumors, and I

1 suspect you would have to point to them directly. But
2 we are not aware of an immediate, imminent ramp-up
3 production of a major competitor in the U.S.

4 MR. VON SCHRILTZ: I have no further
5 questions at this time. Thank you for your responses.

6 MR. DeFILIPPO: Thank you, Karl. We'll now
7 turn to our economist on the case, Mr. Benedetto.

8 MR. BENEDETTO: Thank you all very much for
9 your testimony. When I ask my questions, as with
10 everyone else, if any of them touch on any business
11 proprietary information, please feel free to just say
12 so and answer in the briefs.

13 The first question is in the petition, there
14 is a discussion of lost sales at retailers. And I'm
15 wondering if you could spell out for me, when you have
16 a lost sale, in selling to a retailer, is it lost when
17 you sell to the retailer, or does it happen on the
18 showroom floor. For example, what I mean is if I go
19 to the retailer, and I place an order for a bottom-
20 mount refrigerator, has that sale to the retailer
21 already happened, or they ordering it from you and
22 then -- or from the supplier?

23 MR. BITZER: I can answer. It's different
24 retailer by retailer. And that difference is largely
25 driven by how much inventory a retailer holds. For

1 some retailers who hold very little to no inventory,
2 and some ones will hold quite a bit, several weeks of
3 inventory, in the long term -- and in that case, I
4 would even say over a period of one or two months
5 already, the two numbers are closely linked. If you
6 don't sell them on the floor, you don't sell into the
7 retailer. So it's just a question of weeks where you
8 may have a disconnect.

9 MR. BENEDETTO: And the retailer always
10 takes ownership of it, no matter whether it's a floor
11 sale or a sale out of inventory?

12 MR. BITZER: Again, I can only refer to the
13 terms which we have at our company. Typically, they
14 take ownership the moment it leaves our warehouses, or
15 when we have loaded it into their warehouses. That's
16 when they take risk and ownership, typically.

17 MR. BENEDETTO: Okay, thank you. Based on
18 Exhibit 3 of your presentation, is it safe to say that
19 you do not believe that we could forecast consumption
20 of bottom-mount refrigerators using some sort of
21 widely published economic data like housing starts or
22 GDP or consumer confidence? Is it safe to say that I
23 can read from that that would be your take?

24 MR. BITZER: Not on bottom mounts, not on
25 macroeconomic data. You can, if you would look at

1 household appliances in totality, and we're talking
2 about the 35 million of household appliances sold,
3 yes, we have an overall correlation with existing
4 homes sales, all household appliances. Once you go
5 down into categories, you cannot make that. The
6 different categories evolve at very different growth
7 dynamics, very, very different growth dynamics. And
8 as evidence here is the bottom mount, it has nothing
9 to do with housing markets.

10 MR. BENEDETTO: Okay. Now, understanding
11 that feature loads are going to make comparisons
12 difficult, is there any general difference in energy
13 efficiency between U.S.-produced bottom mounts and
14 subject import bottom mounts?

15 MR. BITZER: Not from my knowledge. Justin?

16 MR. REINKE: No. I believe not from the
17 rated levels, no.

18 MR. BENEDETTO: Thank you. Now, this is
19 sort of more for the record. I think you've sort of
20 already answered this a little in your opening
21 statement. But which firms, if any, are sort of
22 regarded as the innovators in the industry? And by
23 that, I mean which firms are the most likely to
24 introduce new features, improvements, stylistic or
25 aesthetic changes? Are there any, and if so, which

1 firms are they?

2 MR. BITZER: Are you referring to bottom-
3 mount refrigerators or house appliance --

4 MR. BENEDETTO: Bottom-mount refrigerators.

5 MR. BITZER: It probably depends on whom you
6 ask, how long do they go back in history. As I said
7 before -- and actually, we would have a fun picture
8 here of a 1960 Whirlpool bottom-mount refrigerator.
9 It looked a little bit odd. It had only 16-cubic
10 foot. Actually, we still have it. Not in my house,
11 but the company.

12 But the market then kind of -- and it was
13 RCA, Whirlpool, and some other ones also. So, yes,
14 U.S. producers had it in the sixties, seventies. They
15 died down a little bit because they were not energy
16 efficient. You almost needed a nuclear power plant
17 next to it to really run it. And it was small in
18 usable capacity.

19 Then the real breakthrough in the market was
20 in 2003. That's where -- back when Maytag, Amana
21 produced it for the Kenmore brand. That was the first
22 really big one. That's when the market took off
23 significantly. Then the market got another boost,
24 that was in 2006. Then Maytag introduced what we call
25 the ICE-2-0, which was the external water. That was

1 another boost in the market.

2 So I think anybody who has been around for
3 more than a year in the market would say, yeah, it's
4 probably Maytag by and large which drove a lot of
5 innovation around this product category.

6 MR. BENEDETTO: Thank you. And then one
7 last very small question. In terms of built-in
8 bottom-mount refrigerators, are these considered
9 premium products, over -- yes?

10 MR. BITZER: Yes. The answer is yes, and
11 there is also premium costs. Built-in, they share the
12 same basic design principles in terms of bottom
13 freezer, where you have the compressor, evaporator, et
14 cetera. But the way -- because then they're basically
15 kind of shifted out of the wall, if you want to say
16 so. There is a lot of manual assembly as you put
17 together a built-in refrigerator. So a freestanding
18 refrigerator has a certain higher labor content than a
19 built-in, which is much higher. It's almost done in a
20 workshop. So that's a very premium product. It's
21 very expensive to produce it.

22 MR. BENEDETTO: Okay. Thank you very much.
23 That's all my questions.

24 MR. DeFILIPPO: Thank you, Mr. Benedetto.
25 Mr. Mata, do you have questions for this panel?

1 MR. MATA: Yes, I do. I'd like to revisit
2 the section on features, product features, and in
3 particular I guess this question is directed to Mr.
4 Reinke. In the area of exterior features, are we
5 talking just ice and water systems and maybe LED
6 touchpads, or is there other features that I should
7 consider?

8 MR. REINKE: No. I mean, those are the
9 vast, vast majority of the big ones when you think
10 about exterior features. You could get into things
11 like hidden hinges. You could get into things like
12 different handle shapes and sizes. But from a
13 consumer value standpoint, those are the majority of
14 the ones that you already hit.

15 MR. BITZER: Mr. Mata, again to clarify on
16 the external display, yes, you could have LED, you
17 could have LCD, and you could have a touch LCD. They
18 all have a different cost and they have a different
19 consumer value. We offer all of them and often in the
20 same period.

21 MR. MATA: Mr. Bitzer, staying on the same
22 topic regarding LEDs and LCDs, do all of these premium
23 refrigerators contain the same -- do they all contain
24 LED lights or LCD lights?

25 MR. BITZER: Just for clarification again.

1 It's Marc Bitzer. There is LED lights inside the
2 products. Typically, historically, you would have
3 seen just a light bulb inside a refrigerator. So
4 there is LED lights, which give a brighter light, and
5 they are little bit -- they actually -- they almost
6 stay there forever. They don't typically burn out.
7 They are a little bit more energy efficient.

8 On the exterior side, that's referring to
9 display, i.e., what the information is displayed to
10 the consumer, which historically would have been a
11 very simple LED light. Then it was in some cases up-
12 featured to an LCD lights, or in the most extreme
13 cases, to an LCD that had a touch panel. We had even
14 one execution which was an LCD with a memory pad that
15 you could upload your pictures so you can -- whatever
16 creativity you want to have on the display.

17 MR. MATA: Okay. And I have one last
18 question, a simple question, and that is, how long --
19 when did Whirlpool begin to produce two, three, or
20 four door bottom-mount refrigerators, in what year?

21 MR. BITZER: Bottom mounts?

22 MR. MATA: Yes.

23 MR. BITZER: Bottom mounts -- we're 100
24 years old. I think -- globally or U.S.?

25 MR. MATA: U.S.

1 MR. BITZER: The first bottom mount probably
2 was produced in 1925, 1930, that ballpark.

3 MR. MATA: A long, long time ago. That is
4 the multi-door?

5 MR. BITZER: Well, if you refer to a French
6 door subcategory, we can go back and send you -- I
7 think it was the early sixties.

8 MR. MATA: That's what you said. Okay.

9 MR. BITZER: Yeah. Again, we're more than
10 happy to give you exact data. But it's --

11 MR. MATA: Fine. Thank you very much.

12 MR. DeFILIPPO: Ms. Leary, questions for
13 this panel?

14 MS. LEARY: Yes, thanks. I'd just like to
15 clarify something here, the discussion about
16 production. So we've discussed that top mount, side-
17 by-side, and bottom mounts have different production
18 practices, starting with cabinet forming. But I'm
19 wondering how capacity within the bottom-mount
20 category affects production. Does that all take place
21 on the same line, or how does capacity -- how do
22 capacity and width affect --

23 MR. BITZER: Again, it's Marc Bitzer. For
24 capacity, yes, you also have to use different molds
25 and different forming presses. So they're also -- and

1 typically what you would see in -- take our Amana
2 facility. Within Amana, we have a number of different
3 production lines, which tend to produce different
4 capacities.

5 MS. LEARY: Okay, thank you.

6 MR. BOYCE: This is Richard Boyce. I refer
7 you to page 16 of the petition. And there was some
8 confusion earlier about modules, which had to do with
9 the division of the components of a refrigerator into
10 ten sets and the five areas in the plant where things
11 are made: materials receiving, cabinet forming,
12 fabrication support, plastics forming, and door foam.

13 We have told you which of these five
14 production areas provides the capacity constraint at
15 Amana. You heard some discussion about the door
16 foaming section. These sections, these five plant
17 areas, are almost exclusively dedicated to bottom-
18 mount refrigerator production.

19 MR. DeFILIPPO: Thank you, Ms. Leary. Mr.
20 McClure?

21 MR. McCLURE: Jim McClure, Office of
22 Investigations. No questions really. I just wanted
23 to thank everybody for coming in, and this is sort of
24 a new and different procedure, trying to cram all of
25 these conferences into two days.

1 One observation I would make, I think
2 everybody who sells bottom mounts is missing a good
3 advertising promotion. It reduces the wife
4 aggravation factor. When you have the refrigerator at
5 eye level -- and every one of you who is married in
6 here can relate to this. For 35 years, because we
7 have a top mount, Jim, you have to bend down and look
8 at the back at the shelf. If we had an eye level, I'd
9 never get yelled at. So try that in your --

10 MR. LEVY: I'll write that one down. Don't
11 worry.

12 MR. DeFILIPPO: Good marketing campaign.
13 Thank you. I scratched out most of my questions,
14 meaning staff has gotten to them. But I did have a
15 couple things to follow up on because we don't get
16 retail products that often, and so I do find them
17 interesting. And I expected to hear a lot about Black
18 Friday, Black Friday, Black Friday. So we haven't,
19 and it's not necessarily Black Friday specific. But I
20 guess in this product, perhaps giving me a little bit
21 of information. When you talk about the Black Friday,
22 and we have the Black Friday price reductions, and we
23 had a slide in here that talked about that -- when
24 you're negotiating with a retailer, are you talking
25 about different promotions over the course of the

1 year? Is that set, or as you come up to Black Friday,
2 are you sitting down and saying, okay, what is our
3 range, and how much are you going to sell it for?

4 Do you have any control per se over how much
5 they can discount that? I know you talked about that
6 MAP, and it may tie into that.

7 MR. BITZER: And again, it's Marc Bitzer,
8 just to be clear. The retailers set the prices and
9 they define the ultimate promotion. Typically, it
10 depends retailer by retailer. You have a rolling
11 discussion about a promotional calendar. So with most
12 retailers, you talk three to five months out. Black
13 Friday, because it's just a little bit more volume,
14 you typically go a little bit earlier because it
15 typically requires some production capacity early. It
16 just absorbs a little bit more volume.

17 But, yes, you have an ongoing discussion
18 about promotion calendar. Certain retailers have a
19 certain thing in mind, may look at a certain washer at
20 a certain capacity, and they want to have it at a
21 certain price. And you say yes or no in very
22 simplified terms. But, yes, you have a dialogue.
23 That's the retail decision in terms of what they want
24 and do I take you or somebody else.

25 MR. GREENWALD: Let me expand on that a

1 little bit. If you look at the exhibit that has the
2 Black Friday promotions of the LG product, they're all
3 at the same prices. They're different retailers.
4 What goes on in something like that is a producer --
5 in this case, it would be LG -- has a minimum
6 advertised price that that producer is willing to take
7 down. And here, it was taken down by \$1,000. It's
8 not exclusively an issue by the retailer because if
9 the retailer had to pay what his normal price would
10 be, the retailer would be losing money with every
11 single item shipped.

12 So what actually happens is let's say an LG
13 will go and decide that it wants to promote a certain
14 product. It will go to that retailer and talk about
15 lowering the minimum advertised price of the MAP, so
16 you have a lower MAP. And it will talk to the
17 retailer about the extent to which it will lower its
18 price to the retailer to keep the retailer's margin
19 constant.

20 So what you have in fact in this example
21 with LG I suspect was a decision by LG on a national
22 level to heavily promote this particular refrigerator
23 at a very low price and did so by lowering its price
24 to the retailers.

25 MR. BITZER: Now, just to clarify, because

1 during normal promotional windows, the manufacturer
2 either compensates fully or partially for the margin
3 which the retailer would otherwise have lost to guard
4 upon holding the margin constant. But typically a
5 retailer on normal periods also invests in that
6 promotion.

7 On Black Friday, manufacturers don't fully
8 mitigate or keep the margin constant. But it's fair
9 to assume that no retailer would sell it as a
10 negative, ongoing gross margin. So it's by and large
11 paid by the manufacturer and the retailer accepts for
12 promotional periods lower margins, and by how much
13 lower, that may differ manufacturer by manufacturer.
14 They have different decision points.

15 MR. DeFILIPPO: That's helpful. Thank you.
16 And in terms of selling the product, I think Mr.
17 Benedetto was sort of getting at this a little. But
18 in terms of if I walk into a Home Depot or a Lowes, I
19 see a variety of refrigerators on the floor. So is
20 floor space something that you also negotiate in terms
21 of how many models you can get displayed on the floor?

22 MR. BITZER: And again, it's Marc Bitzer.
23 That depends on retailer by retailer. There are some
24 retailers that have floor agreements where you
25 actually have agreements to certain balance of floor.

1 Most common is where you pretty much negotiate the
2 floor spot by floor spot. And most retailers --
3 again, there are exceptions -- determine if they give
4 you floor spot based on what they call GMROI, i.e.,
5 the gross margin productivity they get on a certain
6 floor space, and taking inventory turns into account.

7 So there is a rational decision behind as
8 well as good or not good, do I place it on the floor
9 or not. That's in most cases. But again, there may
10 be exceptions where you may have an agreement. I want
11 to get X percentage of your balance of floor in all
12 refrigerator products.

13 MR. DeFILIPPO: And do you as a company keep
14 track of how much floor space you have at retailers?

15 MR. BITZER: Yes, day by day.

16 MR. DeFILIPPO: If you have any information
17 on that, that might be helpful in a post-conference
18 brief. That would be interesting. In terms of sales
19 of refrigerators, bottom mount refrigerators, are they
20 made bundled, I guess I'll use the term, with other
21 types of refrigerators, or even -- the second part of
22 that is are you selling -- are you negotiating or
23 selling with a given retailer, not just refrigerators,
24 but perhaps washers and dryers? Is there bundling of
25 common household products that goes on where it may

1 affect the price or promotions or et cetera?

2 MR. BITZER: And again, it's Marc Bitzer.
3 And maybe Andrew can also -- Andrew Batson can chime
4 in on this one. And again, it depends on retailer by
5 retailer. Typically, most retailers have their buying
6 teams grouped around refrigerator, laundry, et cetera.
7 So a vast majority of negotiations will be with a
8 refrigerator buyer, and then he decides or she
9 decides, this is my top-mount lineup, this is my side-
10 by-side lineup, this is my bottom-mount lineup.
11 That's typically.

12 Now, above and beyond, you may have
13 overriding -- overall annual agreements with a certain
14 retailer; we want to achieve with you X total revenue.
15 And based on X total revenue, you get an annual volume
16 rebate, or you get another incentive.

17 So there is kind of tiered agreements. Yes,
18 in the maximum tier, I even talk about total revenue
19 dollars. That applies typically to all appliances.

20 MR. BATSON: Hi. This is Andrew Batson.
21 Just to elaborate on that just a bit, in the petition
22 we actually talked about the importance of tracking
23 front-side margins to the retailer and back-side
24 dollars or support. And some of those back-side
25 dollars, like buying rebates, like balance of sale

1 agreements, like balance of floor agreements, could
2 all cut across categories.

3 So it could cut across refrigeration. It
4 could cut across all appliances. In the case of LG
5 and Samsung, it might cut across brown goods, TVs,
6 electronics, other things that a given retailer may be
7 buying. So it's really important to distinguish those
8 front-end margins from the back-end support which may
9 not and in fact probably isn't accurately tracked to a
10 given bottom-mount refrigerator SKU, either by the
11 retailer or by the manufacturer.

12 MR. DeFILIPPO: Last question. Is there any
13 regionality in sales of bottom mount? As I listen
14 today and look at the prices, I'm like, well, maybe
15 there is more sales in sort of urban, higher income
16 areas. Do you see any pattern like that, or is it
17 generally disbursed pretty evenly throughout the
18 country?

19 MR. BITZER: Again, it's Marc Bitzer. There
20 are slight differences. Actually, on a global level,
21 there are differences. There are countries which are
22 top-mount countries and countries which are bottom-
23 mount countries. So there are differences. Even the
24 United States, between the Northeast and some other
25 regions you have some differences. Cosmopolitan areas

1 are just sometimes limited by the size of the kitchen.
2 So to have a 30-cubic foot bottom-mount is just
3 difficult because sometimes it is placed in a
4 different kitchen.

5 So, yes, there are regional differences, and
6 also the South has some slight differences. But they
7 are not massive. But, Justin, correct me if I'm
8 wrong.

9 MR. REINKE: That's correct, Marc.

10 MR. DeFILIPPO: That's helpful. Thank you.
11 I'll just look up and down the line.

12 MR. VON SCHRILTZ: I have another question.

13 MR. DeFILIPPO: We'll turn to Mr. von
14 Schrilzt for another question, and then I'll head to
15 Mr. McClure.

16 MR. VON SCHRILTZ: Yes. Karl von Schrilzt
17 again. I do have a question. I believe Mr.
18 Cunningham, during his opening statement, alleged that
19 Whirlpool's discounts were even steeper than LG's and
20 Samsung's discounts. I believe that's what I heard
21 him say. And so my question to you is what was the
22 range of Whirlpool's discounts on its bottom-mount
23 refrigerators during Black Friday 2010, if you can say
24 it publicly. Or if not, you can put it in your post-
25 hearing brief. But I assume it was publicly

1 advertised.

2 MR. GREENWALD: Well, the prices were
3 publicly advertised, but discounts to the retailer are
4 not. So we'd be happy to give you public pricing, or
5 advertised pricing. What we cannot do in a public
6 forum is give you an indication of discounts that may
7 or may not have been given to the retailers.

8 That said, you have collected pricing data.
9 And rather than rely on us to give you data that you
10 have, you know, they're asking for in general form,
11 what I would like to do in the post-conference brief
12 is draw your attention to our analysis of the pricing
13 data that you have been given in response to the
14 questionnaires.

15 MR. VON SCHRILTZ: Okay. Thank you very
16 much.

17 MR. DeFILIPPO: Mr. McClure.

18 MR. McCLURE: Jim McClure, Office of
19 Investigations. Mr. Bitzer, in talking about Black
20 Friday discounts, obviously Black Friday is more than
21 one day, as you said. It's two or three days, and I
22 think you went on to say it's two or three or four
23 weeks as an advertising or discount period. And did I
24 hear you say that that period accounted for maybe 80
25 percent of the volume?

1 MR. BITZER: Again, it's Marc Bitzer.
2 Typically, Black Friday has changed over the years.
3 It morphed into a three-week promotional period that
4 we refer to as the Black November. That's what it
5 means to -- I hope it doesn't become a black quarter.
6 But anyway, let's not go down that path.

7 Typically, a Black Friday, if you would say
8 a three-week -- or let's take the entire November.
9 That would not then attract 80 percent of the annual
10 volume. It does not. It typically lifts it by 30 to
11 40 percent, typically. So, yes, it represents across
12 all appliances a higher amount than you would expect
13 just from a calendar period, but not three or four or
14 five times.

15 In the case of what we refer to in
16 particular -- and this one was a specific segment
17 subcategory of four doors. It was like 70 percent of
18 the annual volume. So it was unheard of volumes. And
19 that's why a promotion was way more than just a Black
20 Friday promotion because it represented a very
21 specific portion of the annual volume. And that's
22 very untypical for, I mean, appliances. You would not
23 sell 70 percent of your washers on Black Friday.

24 MR. McCLURE: And this was just in 2010?

25 MR. BITZER: 2010 I think probably marked an

1 extreme point in the history of Black Fridays.

2 MR. McCLURE: Okay, okay. Thank you.

3 MR. DeFILIPPO: Thank you very much. And
4 with that, I think we have concluded our staff
5 questions. I would thank all of you for coming and
6 taking time out of your day and away from your
7 business. I know that's hard to do. But we very much
8 appreciate it. It has helped answer a lot of
9 questions, and we thank you very much. So with that,
10 this panel is adjourned.

11 All right. We'll take a quick five-minute
12 break to stretch our legs, and we'll come back at
13 3:10. Thank you.

14 (Whereupon, a brief recess was taken.)

15 MR. DeFILIPPO: Welcome, Mr. Connelly and
16 everyone on the panel. Thank you all for coming. And
17 with that, please proceed with your direct testimony
18 when you're ready.

19 MR. CONNELLY: Thank you very much. My name
20 is Warren Connelly. I'm with the Aiken Gump Law Firm.
21 We represent Samsung in this proceeding. I'm just
22 going to tell you the order of our witnesses and who
23 they are with. Our first witness is going to be John
24 Herring with LG. Our second witness will be James
25 Politeski from Samsung. Our third witness will be Bob

1 Baird from the Home Depot. Then our economist, Dan
2 Klett, with Capital Trade will have some remarks. And
3 finally, Dick Cunningham and I will have a few remarks
4 on both some of the legal issues that you've already
5 inquired about today, as well as some specific
6 requests that we have for you to make of Whirlpool.

7 So without further ado.

8 MR. HERRING: Good afternoon. My name is
9 John Herring. I'm with LG Electronics. I'm the vice
10 president of sales for our national account sales for
11 home appliances. I've been with LG almost five years.
12 So today during the time I have, I want to spend a few
13 moments and just talk about the refrigeration industry
14 in terms of a little of an overview; the second item,
15 to focus more on the French door and some of the
16 drivers of the growth of that segment; in the third,
17 talk about the promotional dynamics within the
18 appliance industry.

19 So with that said, I don't want to be
20 redundant on a lot of what has already been said. So
21 I'll try to focus on some of things that may be new
22 information. As was pointed out, you know, we look at
23 it as four different categories: top mount, side-by-
24 side, but we take the bottom-mount refrigerator
25 business and we subdivide that even more so, similar

1 to what was described earlier in terms of a two-door
2 configuration, and then French door configuration.

3 They are different segments, even though
4 from a production standpoint, they may come off of the
5 same platform. The consumer appeal is very different.
6 The first thing that wasn't really discussed or
7 described was space constraints. Consumers today,
8 when they purchase a refrigerator, the first thing
9 actually they need to find out is what size opening
10 they have because that can restrict what refrigerator
11 they have.

12 So typically refrigerator sizes are 30-inch
13 width, 33-inch width, and 36. So the 36-inch width
14 mentioned is the largest. But within the two-door
15 category, the biggest volume is in 30- and 33-inch.
16 So that is a key differentiator in terms of consumers
17 because their home or their kitchen may not have an
18 opening big enough for a 36-inch product.

19 The second key differentiation is average
20 selling prices. So the average selling price on a
21 two-door bottom mount, because it -- I wouldn't call
22 it a traditional consumer, but it's certainly not the
23 same consumer that is spending over \$2,000 for a
24 French door product. So different average selling
25 prices, different space constraints.

1 A little bit more on the French door
2 business in terms of what else differentiates it. The
3 other key components is the configuration in terms of
4 ice and water. You really can't get an ice and water
5 dispenser on a two-door bottom mount. There may have
6 been at different points in time, and there may be one
7 model out there right now, but for the most part, it's
8 virtually not really available to have an ice and
9 water on a two-door bottom-mount refrigerator, where
10 in the 36-inch or the French door segment, you're
11 going to find ice and water configurations, you know,
12 pretty widely available.

13 The next key component is about innovations.
14 Manufacturers bring out a lot of their innovations on
15 their premium products. And so in French door, that's
16 where a lot of those innovations would come to market.
17 And I'm going to spend a little bit more time in the
18 next section around some of the innovations in that
19 area.

20 Briefly, to just talk about the industry in
21 terms of the trends, last year in 2010, most of the
22 categories saw pretty modest growth, top-mount
23 refrigerators, side-by-sides, and two-door bottom-
24 mount were pretty much single digit growth in the
25 industry. French door was clearly the darling and the

1 bright spot in the business, with substantial
2 increases in industry growth year over year, very high
3 double digit growth.

4 So that's where we spend a lot of our time
5 because that's where the industry is going. That's
6 where the consumers are going, and it's a more premium
7 segment delivering higher average selling prices.

8 So that leads me to the next key component,
9 the second point I wanted to talk about, and that was
10 the French door, bottom-mount growth. What are the
11 drivers that are stimulating that type of industry
12 growth? One was touched on earlier, and that's the
13 configuration. The fact that the fresh food section
14 is on the top of the refrigerator. It products or,
15 you know, the most popular used items at eye level, as
16 you pointed out earlier. And so no question consumers
17 are voting for the French door configuration in a big
18 way because it's a more convenient way to access the
19 foods that they access most often.

20 The second big item, which really hasn't --
21 wasn't discussed, and that's the fact that the
22 refrigerator is really the centerpiece of the kitchen.
23 So more and more consumers are upgrading, remodeling.
24 When they go to purchase a refrigerator, it's
25 typically the most expensive appliance in their

1 kitchen. And so it's a little bit of a statement
2 about them, about their home, about entertaining. And
3 so style and design is a pretty significant driver in
4 that segment.

5 So we'll spend a little bit more time on
6 that, which is the next point, actually, style and
7 design. There are ways to differentiate product other
8 than just purely features. I guess it depends how you
9 define features, but things like stylish handles.
10 Consumers do touch those. They're touch points. They
11 do appreciate a good-looking refrigerator in the
12 centerpiece of their kitchen. Contoured doors,
13 another way to differentiate from a style and design
14 standpoint. Hidden hinges was referred to earlier,
15 another way to differentiate from a style standpoint.
16 The displays, the ice and water display, is another
17 way to differentiate and make an attractive-looking
18 refrigerator that consumers are drawn towards.

19 The other item is the LED lighting which was
20 referred to as well. So these are all different, you
21 know, style and design components that consumers
22 gravitate towards during their purchase process.

23 The next item I wanted to talk about within
24 the French door drivers of growth is really the
25 innovation. LG, for example, if you look at French

1 doors available in the market today, we took the
2 icemaker out of the fresh food section and put it onto
3 the door. What that did is freed up the fresh food
4 section so when you open it up, you get that clean,
5 big, open opening. And that's something that we
6 brought to market.

7 We took that the next step further and
8 actually reduced the size of the icemaker to give more
9 usable shelf space in the refrigerator. As was
10 mentioned earlier, capacity is a big driver for
11 customers. Consumers want to fit more in the same
12 opening. And so by having innovative designs that
13 allow consumers to fit more product in their same
14 space or same opening is a big benefit. So those are
15 the kind of innovations that are coming to market.

16 The second key area around innovations is
17 around a thin wall construction. So as I mentioned
18 earlier, capacity is a big driver for consumers.
19 They're constrained by space. I mean, everyone wants
20 a bigger is better kind of thing, right, fit more in
21 it. But you only have a 36-inch wide opening, and so
22 one of the innovations that has come out from some of
23 the manufacturers is to have thinner walls, which
24 provides interior capacity, and therefore more shelf
25 space and more usability. And so that's a design or

1 an innovation in the French door segment that some
2 manufacturers have come out with, such as LG and
3 Samsung.

4 One of the things to attach to that is the
5 fact that we aren't just giving those away. Those are
6 premiums. So in the case of thin-wall product, we
7 actually collect a premium in the marketplace. So
8 there were some references to MAP earlier, and clearly
9 the manufacturers that do offer that thin-wall
10 construction do collect a premium at a MAP price. And
11 even when you look at the average selling price, which
12 is the actual transaction, which is captured through
13 NPD, they have a higher average selling price as well.
14 So it's not being given away. It's actually being
15 collected for, and the consumer desires that feature,
16 and they're paying for it.

17 What I'd like to do is point you to the
18 first slide that I have. There are two charts called
19 "Regular Capacity" and "Big Capacity."

20 MR. DeFILIPPO: Mr Herring, should we mark
21 these as an exhibit and include them in the
22 transcript? Mr. Cunningham?

23 MR. CUNNINGHAM: Please do that.

24 MR. DeFILIPPO: Okay. Thank you. We'll
25 call this Exhibit 2 then.

1 MR. CUNNINGHAM: Exhibit 2.

2 MR. HERRING: This is a chart of NPD data.
3 And I don't know how familiar you are with it, but
4 it's basically tracking the average selling price that
5 is reported from retailers to NPD. And it's a common
6 way of us tracking average selling prices in the
7 industry. And so the top section is three comparable
8 models from LG, Samsung, and Whirlpool, tracking the
9 average selling prices during four distinct quarters,
10 Q1, 2, 3, and 4 of last year.

11 This is what we call regular capacity, our
12 standard capacity, not the thin wall, which I'll get
13 into here shortly. And what you see here is on
14 comparable products, LG and Samsung have higher
15 average selling prices than Whirlpool, by a pretty
16 substantial amount.

17 When you look below, which is the big
18 capacity or thin-wall construction, again you see a
19 similar trend that Samsung and LG have higher average
20 selling prices than Whirlpool comparable products.

21 Now, these aren't insularly examples of
22 models that aren't significant. These are the
23 industry's -- in French door, the industry's top-
24 selling models, number one or number two selling
25 models for these manufacturers. So these are pretty

1 significant charts for our best-selling models,
2 reflecting average selling price.

3 MR. CUNNINGHAM: If I might interrupt you.
4 I wonder if I can interrupt for just one second to
5 point out one other thing about these charts. And you
6 will notice not only that the Whirlpool price is
7 lower, consistently, but you'll notice that when the
8 prices decline, Whirlpool begins its decline from a
9 lower level, starts earlier, starts the decline
10 earlier, and goes down quicker. It's no question here
11 who leads prices downward in this marketplace.

12 MR. HERRING: Thank you. So I want to move
13 on to the third point that I wanted to share with you,
14 and that's around the promotional dynamics of the
15 appliance industry. And I think it's good to take a
16 step back for a second and say, you know, what drives
17 consumer purchases.

18 There is really -- you can put them into two
19 buckets, replacement and upgrade. A replace, or some
20 people call it distress purchases, means my
21 refrigerator broke, I need one now. Or my
22 refrigerator broke, I have a service call, and I'd
23 rather just go ahead and invest that money in a new
24 purchase as opposed to having that one repaired.

25 Depending on the stats you're looking at, it

1 ranges 55 to 60 percent of the industry is in that
2 replacement business. So those consumers, you know,
3 they look for a deal, but it's more urgent for them to
4 get a refrigerator pretty quickly.

5 The other segment, roughly 40, 45 percent of
6 the business, they're consumers that, you know, it's
7 doing okay, but I, you know, want to get by with the
8 one I have, or maybe I'm thinking about remodeling.
9 Those are the consumers that can be stimulated through
10 promotional activity, brought into the marketplace,
11 and offered, you know, an upgrade, an exciting new
12 product to upgrade their refrigerator that they have
13 today.

14 So a lot of the promotional holiday events
15 really drive around getting that other 40 off the
16 couch, into the stores, and to purchase an appliance
17 to stimulate the business. Memorial Day, Fourth of
18 July, Labor Day, they're all big holiday events. And
19 like many industries, they become more and more
20 important in terms of the promotional activity and the
21 ability to hit your sales plan. Not unique to the
22 appliance business. You pick up the paper, and you
23 can read about it, any industry, a lot more
24 discounting taking place in a variety of industries to
25 continue to hit bottom lines, revenues, share targets,

1 and keep the ball rolling down the court.

2 So one of those most significant ones is
3 Black Friday. And as was mentioned earlier, it has
4 become more and more significant each year, typically,
5 you know, it's Christmas shopping, right? And it has
6 been a consumer electronics holiday for many years.
7 But what we discovered over the last three or four
8 years is there is an appetite for consumers to
9 purchases appliances on that event. So all the
10 manufacturers have participated, retailers have
11 participated, because they want to capture a larger
12 share of that business.

13 So I think I want to -- I don't think; I
14 know. I want to show you the next chart, which a lot
15 of attention around Black Friday, a lot of attention
16 around the promotional nature that took place. And
17 what I have here is average selling price, as reported
18 by track line. And this is for LG brand, LG corporate
19 brands, and Whirlpool corporate brands. And what is
20 not always good to do is look at the prior quarter
21 because you've got to compare Black Friday to Black
22 Friday because it's a totally different event, unlike
23 anything else during the course of the year. And so
24 what we have captured is the average selling price for
25 Black Friday '09, which is included in Q4 '09, and

1 Black Friday of this past year, which is Q4 of 2010.

2 And what you see is the average selling
3 price for LG, including all of our promotional
4 activity, only declined \$72. The average selling
5 price for the Whirlpool-produced brands actually
6 declined far greater, at \$226 during that period.

7 So in spite of what, you know, may be shared
8 around promotional activity, the evidence that we're
9 presenting is Whirlpool has a lower average selling
10 price day in and day out, even during the promotional
11 period they included, Black Friday. It was far lower
12 than where we were participating.

13 So I just want to summarize, and we'll move
14 on. The segments -- the French door segment can
15 clearly be subdivided into two-door and French door.
16 French door is a rapidly growing segment of the
17 industry. It's driven by consumers' appetite for the
18 configuration, consumers' appetite for style and
19 design, beautiful-looking products to be the
20 centerpiece of their refrigeration -- or their home.
21 And it is driven by innovation, such as the icemaker
22 design of LG or thin-wall construction for an LG and
23 Samsung.

24 And the last point is, in terms of the
25 pricing, the average selling price for Whirlpool

1 brands are consistently lower, even during promotional
2 periods. And so we're just a little perplexed on why
3 we're here from a petition standpoint.

4 MR. CUNNINGHAM: Mr. Herring has told us --
5 Dick Cunningham. Mr. Herring has told me that he has
6 some comments that he can make -- we'd like to do it
7 in questions -- on the Black Friday promotional
8 examples that Whirlpool gave during their
9 presentation. Thank you. That concludes Mr.
10 Herring's testimony.

11 MR. POLITESKI: Good afternoon. My name is
12 James Politeski. I'm the senior vice president of
13 sales and marketing for Samsung Electronics America.
14 In this capacity, I have overall responsibility for
15 Samsung's U.S. sales and marketing of refrigerators.
16 I have been with Samsung for a little over five years,
17 and previous to that, I was at GE's appliance division
18 for many years.

19 Today, I'd like to talk about three key
20 areas of the bottom-mount market. First, I want to
21 discuss Samsung's entry into this market, the growth
22 of the segment, and the innovation that Samsung has
23 driven, which has spurred the growth of the segment.

24 Second, I'd like to explain Samsung's
25 recognized style and design leadership, and how this

1 affects consumers' decision to buy Samsung. And
2 finally, I'd like to explain how Samsung has
3 established and maintained our market share position,
4 even though it has the highest average retail prices
5 in the industry.

6 So first, let me talk a little bit about
7 entry into the market. In June 2007, when Samsung
8 entered the bottom-mount segment, Samsung saw a market
9 with significant growth potential, and one which
10 Samsung could pursue a premium price strategy by
11 providing a more innovative, energy-efficient, and
12 attractively styled product. And that's exactly what
13 happened.

14 Samsung entered and has seen growth in this
15 category. According to NPD, which we've talked about
16 here today, the bottom-mount segment grew nearly 30
17 percent in units between 2008 and 2010. Samsung's
18 unit sales also grew during this time, but the
19 increase was due mostly to the expansion of the market
20 segment. We did not take any sales volume away from
21 Whirlpool. In fact, if you look at Whirlpool, Maytag,
22 and KitchenAid brands, they enjoyed double digit
23 growth over the same period of time.

24 Samsung drove the expansion of the bottom-
25 mount market segment by offering innovation and

1 superior design. We introduced thin-wall insulation
2 technology, which allows us to build a higher capacity
3 refrigerator on the inside, with the same dimensions
4 on the outside. We also introduced LED lighting,
5 which is brighter and more energy efficient than
6 traditional incandescent bulbs.

7 We also are the first and only fourth door,
8 drawer, convertible refrigerator-freezer model that
9 pulls out for easy access to beverages and other
10 foods. We introduced slide-and-go shelving, which is
11 a unique storage shelf that slides out, and is also
12 portable to the dinner table. We have easy-open
13 handles, which make it a lot easier to open the
14 freezer compartment of your bottom freezer. And just
15 this year, we're in the process of launching
16 touchscreen LCD models that have WiFi-enabled apps,
17 apps just like on your Smartphone, but these apps are
18 suited to the kitchen environment, things that you
19 would use around the kitchen.

20 At the same time, due to our considerable
21 knowledge of consumer preferences on Samsung products
22 that extend far beyond home appliances like TVs and
23 cell phones, we are able to also craft products that
24 have leading edge technology and are aesthetically
25 beautiful. The combination of innovation and high

1 style has enabled us to win consumers over. As a
2 result, we have found that U.S. consumers are willing
3 to pay a price premium for our products.

4 So let's talk about style and design. Style
5 and design are critical in influencing consumer
6 choice. At Samsung, we take price in our attention to
7 detail and fit, feel, and finish. In an independent
8 consumer survey, Samsung and LG ranked much higher
9 than Whirlpool's brands when it comes to satisfaction
10 on styling and feel.

11 In contrast, consumers were far less
12 satisfied with Samsung's higher prices. Samsung is
13 the recognized leader in bottom-out refrigerator
14 design and style. Whirlpool simply is not. And in
15 fact, prior to Samsung's entrance in 2007, Whirlpool
16 had not updated their design since 2002-2003, and was
17 competing primarily based on price.

18 Samsung demonstrated that our strategy of
19 offering an innovative and high-style product could be
20 successful, and in fact, the consumers preferred our
21 products over Whirlpool, even at a premium price. For
22 many consumers, the comfort of knowing that a product
23 is highly rated brings confidence when making choices.
24 Samsung has been recognized both nationally and
25 globally in many areas relating to refrigerator

1 design, performance, and satisfaction. The examples
2 are numerous, but a key mention should be made of our
3 six consecutive years ranking as J.D. Power number one
4 highest in customer satisfaction in refrigerators.

5 This honor is a product of consumer voting,
6 and no other appliance brand has received this level
7 of recognition this many years in a row. Moreover,
8 consumer reports consistently rates Samsung highly,
9 and recently gave Samsung top honors in the four-door
10 French door segment.

11 A recent study also stated that, one,
12 salespeople at Best Buy recommend our models much more
13 frequently than our competitors' models, and they do
14 so based on both features and that we offer -- with
15 the positive reviews and awards that we have received.
16 Second, purchasers of Samsung refrigerators considered
17 a competing Whirlpool model only 23 percent of the
18 time. Purchasers of Whirlpool brands selected them
19 over Samsung much more frequently based on Whirlpool's
20 lower prices. And finally, the average household
21 income of French door buyers is over \$100,000, and
22 buyers at this level of income tend to be a little
23 less price sensitive.

24 Similarly, when we commissioned a survey of
25 our four-door French door model, we learned that just

1 2 percent of Samsung buyers chose Samsung over other
2 brands due to the price that the retailer charged.

3 So let's talk a little bit about how Samsung
4 has the highest average retail prices in the segment.
5 Due to the accolades and our superior fit, feel, and
6 finish, we not only have grown market share, but we've
7 been able to do this at higher prices than our
8 competitors. Samsung currently sells 22 different
9 bottom-out models in the U.S. However, we are
10 concentrating our sales efforts on the very high end
11 of the product range, which is French door models,
12 which represent over 94 percent of our total bottom-
13 mount sales in 2010, according to NPD.

14 Currently, none of our national accounts
15 display our two-door bottom-mount models because we
16 refuse to sacrifice profitability in this much smaller
17 stagnant segment.

18 We're confident that when the Commission
19 examines the prices that both we and Whirlpool have
20 charged, net of all direct and allocated discounts,
21 you'll find that Whirlpool is far more aggressive on
22 price. Let me give you the most recent example,
23 showing how Whirlpool is the price leader. I note
24 this, that this is the very same example that
25 Whirlpool discusses on both pages 128 and 133 of the

1 petition.

2 Last May, we were the first company to
3 introduce a true four-door French door bottom-mount,
4 meaning a separate compartment for that fourth drawer,
5 separate from both the refrigerator and the freezer.
6 Whirlpool followed us at the very end of September
7 with their version. The first month of complete
8 retail sales data for Whirlpool is October. And this
9 data shows that the average price that retailers
10 charged for Whirlpool's product was \$2,172, while ours
11 was \$2,212, or \$40 higher.

12 Whirlpool quickly dropped their price to
13 \$1,857 by December and created a \$271 gap to Samsung's
14 higher price. This gap still exists today, and our
15 Samsung model continues as the highest grossing
16 bottom-mount refrigerator in the U.S.

17 Whirlpool gives two other examples of
18 alleged aggressive pricing by Samsung in its petition.
19 In our brief, we will demonstrate why neither of these
20 examples has any factual basis. In addition, please
21 bear in mind that when you review Whirlpool's pricing
22 allegations, that prices for refrigerators, just like
23 prices for cars, TVs, and other big ticket items,
24 naturally decline over the life of the model.
25 Whirlpool ignores this well-understood aspect of

1 pricing and product life cycle in its pricing
2 analysis. It ignores the fact that when a model
3 reaches its end of life, retailers need to clear the
4 floor to make room for new models, and to do this,
5 they have to charge clearance prices.

6 In fact, when you consider Whirlpool's
7 allegations in context over the millions of bottom-
8 mounts that have been sold during the period of this
9 investigation, the fact that they could come up with
10 only three allegations, all of which are incorrect,
11 underscores how weak this petition is, especially
12 given the wealth of data that's available on retail
13 pricing.

14 Although the Commission is going to examine
15 the actual net prices that U.S. producers and
16 importers charge to retailers, it is also highly
17 relevant to examine the prices retailers charge to
18 consumers because those are the prices that the
19 ultimate buyers actually see. Samsung, like other
20 market participants, makes extensive use of NPD point-
21 of-sale data, which overwhelmingly shows that
22 Whirlpool's prices are both much lower than Samsung's
23 at retail, and show a trend of leading the market
24 down.

25 In our handout, we have an analysis of the

1 average monthly price charged at retail for all of the
2 French door models sold by Samsung and LG, compared to
3 the Whirlpool brand in 2009 and 2010. The NPD prices
4 can be indexed to the average price charged for all
5 brands. You will see that throughout 2009 and 2010,
6 Samsung's prices were always considerably higher at
7 retail than the average price charged for all brands.
8 More importantly, Samsung's prices were always much
9 higher than Whirlpool prices, which tended to fall
10 below the average price. LG's prices, while lower
11 than Samsung's, were also considerably higher than
12 Whirlpool's.

13 To put this another way, when Whirlpool
14 charges a lower price to the retailer, the retailer is
15 in turn able to drop the price to the consumer. It is
16 clear that Whirlpool's pricing, discounts, and
17 promotion policies allow the retailers to charge much
18 lower prices than Samsung and LG. Feature differences
19 simply do not account for the higher prices that we
20 charge. As we've discussed, it's much more a matter
21 of superior design, fit, and feel, and finish.

22 The average actual retail selling price in
23 2010 for all of our Samsung French door models
24 exceeded \$1,650 per unit, while Whirlpool's average
25 retail selling price for its own French door models

1 was just a little over \$1,300 per unit, or \$350 lower
2 than Samsung. One of our largest customers told us
3 that Whirlpool has been frustrated by the success of
4 our models, and has resorted to an aggressive pricing
5 strategy in order to catch up to us.

6 In summary, Samsung strongly believes that
7 the Commission should reach a negative preliminary
8 determination. We do not compete on the basis of
9 price, but rather on the basis of design, quality,
10 features, and reliability. Independently-conducted
11 surveys consistently show that consumers prefer our
12 products for a wide variety of nonprice reasons.
13 Whirlpool has consistently trailed Samsung on all of
14 these factors that influence buying behavior. For all
15 of these reasons, this is a case that should end right
16 now. Thanks for your time and attention.

17 MR. BAIRD: Okay. My name is Bob Baird.
18 I'm with Home Depot. I'll try to make it reasonably
19 snappy because, one, you've heard a lot about French
20 door refrigerators, and two, I've got a feeling you're
21 going to want to ask me a lot of questions when we get
22 done here. So I apologize for the dress. I'm kind of
23 a casual guy, and I'm old, and I haven't got much to
24 worry about, so I'm kind of a casual guy.

25 I'm extremely uncomfortable being here

1 today. I didn't sleep but about two minutes last
2 night because I have three suppliers. There are two
3 in the room on different sides of the table. The
4 third supplier in the room is an arch competitor. So
5 it's just awkward all the way around.

6 So the question is why did I come today.
7 One, I think you need to talk to a retailer. I think
8 that's important. Two, you probably need to talk to
9 me. I mean, I probably -- you probably -- somebody
10 got lucky because I probably know more than most
11 people. Marc Bitzer was talking about the -- he
12 wasn't sure about the first French door. It was May
13 of 1967, and it was a Whirlpool, and it was an ED19AK.
14 So I have a lot of information, a lot of worthless
15 information in my head, but a lot of information.

16 Two, my company wants me here because I
17 think we have a very strong interest in our customers,
18 and to the standpoint that ultimately this could
19 result in higher prices that our customers pay for
20 without more value. They wanted me in this chair, so
21 here I am, okay? And lastly, though, I would say that
22 we also support a fair playing field. So it's our
23 intention that manufacturers win or lose based on
24 their own merits.

25 Okay. A little about me. I started in the

1 business in 1966, so I've done a lot of things. I
2 don't know if it's that important, but I spent a lot
3 of time with Maytag. I worked for Maytag for 15
4 years, so I'm in fact a retiree and a pensioner from
5 Maytag. I don't know how relevant that is, but I am.
6 I also worked for GE for five years, so I've done
7 that. But most of my career has been spent in retail.

8 I'm at Home Depot now. We have 2,000
9 stores. We have 300,000 employees in the United
10 States. We for all practical matter started in the
11 appliance business in the year 2000, so we're
12 relatively new into the business. We're about the
13 number three retailer, and I will tell you Sears is
14 number one, Lowe's is number two, and we're number
15 three.

16 There are a couple of differences in our
17 model. Probably the biggest difference is we're what
18 I would call a fair floor. So, you know, our 6,000
19 salespeople in the store have no idea what our costs
20 are. They have no idea what the margins are. All
21 they see is the product and the price, and the price
22 primarily is MAP that I'll talk about in a while. So
23 there is no motivation for them to sell one thing over
24 the other. Their motivation is to sell the product
25 that best fits the needs and wants of the customer and

1 what the customer wants. And there is not a lot of
2 floors like that. Quite frankly, of the four large
3 retailers, two are like that, two are not. And the
4 two that are like that would be Home Depot and Best
5 Buy. They're both what I would call fair floors.
6 There is no commissions, no incentives involved.

7 The other thing that is unusual about us,
8 and that's why Marc Bitzer had to kind of do some
9 qualifying, but as big as we are, we don't have any
10 warehouses, which is a great model. But what happens
11 is we sell something, the manufacturer delivers it to
12 one of 108 delivery agents, and the next delivery
13 agent takes it to the customer's home. The difference
14 that really makes is it's reasonably difficult for
15 them to influence what we sell by loading us up with
16 inventory. I mean, that's a key strategy in the
17 business. And the old saying, a loaded dealer is a
18 loyal dealer. With us, we have a fair floor, and you
19 can't load us. So it is what it is. The customer
20 determines what happens at Home Depot.

21 Okay. I would tell you that we added LG in
22 2005, and the primary reason we added LG in 2005 was
23 that in 2003, Whirlpool rejected us. They didn't want
24 to have us as a retailer. You should know that. So
25 we told them because of that we're going to have to do

1 something different, so we added LG in 2005.

2 Now talking about refrigerators real quick.
3 Configurations, they went through. I won't repeat
4 that. Top freezer, I would tell Mr. McClure, the
5 question he had, why was the original refrigerator a
6 top freezer and why was it like -- given the fact what
7 you said. The fact is my guess is a bunch of guys
8 designed it.

9 And then side-by-sides came in in the late
10 sixties, as everybody knows, and eventually when they
11 added the ice and water dispenser, which is critical
12 in this whole discussion, the side-by-sides got real
13 huge. There was also bottom freezers all along. And
14 the problem with the bottom freezer, it did not have a
15 dispenser. I will tell you in terms of a two-door
16 bottom freezer, I think I agree with LG's contention,
17 that really is relatively irrelevant to this
18 conversation. It's 6 percent of the business for us.
19 We carry a couple of models. I mean, that's not where
20 the activity is. I mean, I think French doors is
21 probably where you ought to limit the discussion.

22 Just the history that -- you know, there was
23 always French doors since 1967. The problem with the
24 French door, if you look at the configuration, is the
25 freezer is on the bottom. So if you're going to have

1 an ice and water dispenser, you have to dispense it
2 from the middle of the refrigerator. So the ice needs
3 to stay frozen in the freezer and made it in the
4 freezer. The nice thing about a side-by-side is you
5 can put the icemaker on top of the dispenser, and it
6 just drops the ice down.

7 So the challenge always in French doors was
8 how to get the ice from here to there. And I agree
9 with Marc Bitzer again. I'm sure there is a lot of
10 people working on it, but the first actual product
11 that came out like that was in fact produced by the
12 Whirlpool Corporation. It was called the Trio. And
13 for some reason I still don't understand, they decided
14 to give it as an exclusive to Sears for a full year.
15 That was a shot, okay.

16 But the good news about that is when they
17 decided to actually release to the rest of the
18 retailers, they gave it to us first. So it was a
19 Maytag brand, and we introduced that model in March of
20 2005, I believe. I might be a year off, but I think
21 it was 2005. 2006. It was March of 2006. The MAP,
22 and we'll talk about MAPs, because MAPs is I think
23 important. The MAP on that piece was introduced as
24 2449.

25 So they introduced that price at that point

1 in time. There was no competition. It was 2449.
2 About three months later, in fact right around
3 Memorial Day, LG came out with their version, and it
4 was similar. It was a three-door. They had a little
5 different treatment of how you do the ice, but it was
6 a three-door French door. And the MAP on that piece
7 was 2499. So at that point in time there -- I don't
8 know much about Samsung, but I think it was just LG
9 and Maytag at that point in time.

10 And one thing that I just want to make a
11 point that I'm still kind of amazed at. If you had
12 asked me in 2005 what would their prices be like five
13 or six years from now in these French doors, I would
14 have given you numbers that are way lower than they
15 are today because if you look at what the premium --
16 one of you asked that question. But we sell a French
17 door non-dispense LG for 1799 in stainless steel. A
18 similar version with a dispenser is 2399. So, I mean,
19 if somebody would have told me in 2005 that I could
20 still get \$600 for the dispenser, knowing that in a
21 side-by-side it's worth about \$50, I'm amazed that the
22 prices have held as well as they have. I would make
23 that contention, and that has to do with the premium
24 of side-by-sides relative to French doors and a
25 dispenser in the French door. They are still huge

1 premiums that are still out there.

2 And probably the most important thing I'm
3 going to say -- well, let me say two more things. I
4 just want to -- one, that GE has announced, in fact
5 publicly made a big deal of it, they are investing
6 \$100 million to make French door refrigerators in
7 Louisville, Kentucky. That's public, out there, and
8 it's a big announcement. And I ask quite frankly -- I
9 mean, because they know the same economics that Marc
10 talked about. And I actually called the CEO, Jim
11 Campbell, why are you going to invest \$100 million to
12 do this when you can just buy them from somebody else.
13 And his response was to me was that he thinks his
14 acquisition cost is going to be way down. He'll be
15 able to make them and sell them at a lower cost, and
16 he can buy them from Samsung and Maytag. And they're
17 going to start actually -- they'll be for sale in May
18 of next year.

19 Secondly, the reason the French door -- and
20 Marc talks about Maytag. I think Whirlpool bought
21 Maytag in 2005. And quite frankly, the Amana plant,
22 Maytag had bought Amana by that time, and that's where
23 French doors are made in. Since the time, I will tell
24 you that Whirlpool has closed every other Maytag plant
25 in existence except that one plant. They moved

1 production elsewhere.

2 Okay. Now, talking about the customer
3 buying decision, which I think is important, I think I
4 heard a lot about features. And I agree again with
5 Marc that features are not rocket science. They're
6 just a bunch of features, if you've got LD or you
7 don't. I think the primary reason people buy things
8 these days -- and it switched in about 2005. It's all
9 cosmetics. It's fit and feel. And quite frankly,
10 I've been giving that same lecture that I just gave
11 there. So Whirlpool and Marc Bitzer and his people
12 for the last five years, it's all about knobs. It's
13 about touch points. Features are just the ante in the
14 thing. It's not about features. It's about what the
15 product looks like. It's not about quality. I have
16 no reason to believe that LG makes a better product
17 quality-wise than Whirlpool does. And particularly,
18 it's not about price. Once you get above \$2,000,
19 there is not a lot of price sensitivity. You know,
20 it's about how the product looks. Whether that's
21 right or not, I'm just telling you, that's the
22 American consumer today, is buying on how the product
23 looks, okay?

24 We started selling LG washers in 2005. I
25 think we sold 300,000, and that it was nothing

1 different than the other frontload washers. It just
2 looked a lot better. It didn't wash any better, in my
3 opinion. It just looked a lot better. And I'm amazed
4 at that because I've been doing laundry all my life.
5 I've been selling washers all my life. I don't
6 actually do the laundry. It amazes me that 300,000
7 people who obviously didn't have an LG in their house
8 would come to our stores and buy an LG. To me, it has
9 been pretty amazing, and I've been giving this lecture
10 quite frankly to GE and Whirlpool for a long time. I
11 mean, the LG knob on their washer in 2005 probably
12 cost 40 cents. The knob on the Whirlpool probably
13 costs 15. But the knobs are worth \$400 in retail, is
14 what happens.

15 And features are not irrelevant, but it's
16 all about -- they're not the key thing at all. It's
17 about fit, feel, and finish, okay? And speaking of
18 features, if you go to homedepot.com today, and you
19 look at deluxe Maytag French door, three-door, with
20 LED, it's going to be 2199. If you look at the same
21 exact piece -- well, actually, it's going to be a
22 little smaller piece. It's not quite the capacity
23 from LG. It's going to be 2399. And those are MAP
24 prices.

25 When Whirlpool put the MAP of 2199 on that

1 piece, because it was relatively new, they knew that
2 LG was 2399. So there is a reason why they're 200
3 bucks below. They determined that. Either they felt
4 it wouldn't sell at the same price, or they have a
5 cost position that they can undercut LG and take
6 market shares, one of those two. But as we speak
7 today, I will tell you typically the premium for LG is
8 about 10 percent, 10 or more, and it's the same
9 premium over GE, by the way.

10 I think what I'll talk about -- I think I'll
11 just switch to Black Friday. So if everybody goes to
12 Marc's Exhibit 6, it might be easier. First I want to
13 point out that the one in the middle is Home Depot's,
14 and I think it's by far the best presentation of the
15 three. Just real quick about MAP, because MAP is a
16 curious thing. MAP stands for minimum advertised
17 price, but just so everybody knows, when you talk to a
18 retailer about MAP, what MAP means, that's the most we
19 can possibly charge. You can never charge a dime more
20 than MAP because somebody is going to be at MAP, so
21 you get killed because it's reasonably comparable.
22 The product is expensive.

23 So for all practical purpose, MAP determines
24 the most I could ever charge a customer, okay? And
25 how they enforce MAP, just so everybody knows -- I

1 don't like to talk about MAPs and prices because I've
2 been in rooms with lawyers on this discussion before,
3 and it's not something I want to spend a lot time
4 doing. But how they enforce MAP is they penalize you
5 on coop, advertising coop.

6 So you're free to advertise whatever you
7 want, Marc's exactly right. However, if you advertise
8 below that, you'll get penalized financially. So we
9 get -- it's called a coop to advertise, and they can
10 withdraw a coop. And in some cases, if you're a
11 repeat offender, they can just stop shipping you
12 product. But that's how they enforce MAP.

13 Okay. So then there are several kinds of
14 MAPs, just so we know. One is what is called a promo
15 MAP, and that's where for some length of time, a
16 limited quantity, they'll actually lower the MAP from
17 whatever it is down. They'll go from 999 to 799.
18 Then typically, as Marc said, there will be some
19 support for retailers.

20 I like the first contention, where somebody
21 said they were going to hold all your margins
22 constant. I wrote that down. That's not always the
23 case, I will tell you. So it depends on the event.
24 So that's kind of how MAP works. So you look at this
25 ad, and you say, this is curious, you know, why all

1 these would be essentially the same price, because in
2 the case of the LG there, that was in fact their MAP.
3 Their MAP was probably 1197. You get a little couple
4 of dollars to how you price conventionally. So that's
5 why they're all exactly the same price.

6 Contrary to what somebody said, this wasn't
7 a discounted product. This is what we call a non-core
8 special buy. So this product did not exist before
9 Black Friday. You had to step up way early on Black
10 Friday and make a commitment, and LG made those
11 special order for you. They went out and negotiated
12 with their suppliers. I actually committed to buy
13 those somewhere between March and May, and I can't
14 remember. So this isn't something that happened in
15 October. For Black Friday for me -- I mean, I'm
16 already well into Black Friday of this year. This is
17 not something you do two weeks before it happens.
18 It's way too big, just so everybody knows.

19 But I will tell you one thing you don't see
20 on there. That refrigerator, as good as it was, was
21 not the hottest price piece for Black Friday. The
22 hottest price piece was the Maytag ICE-20 version of
23 that, the three-door that H.H. Gray ran for 998. That
24 was by far the hottest refrigerator.

25 So they're all three -- in real life, we

1 sold all we had. But the Maytag was actually priced
2 -- and H.H. Gray is a fairly large retailer at 998,
3 and we end up matching a lot of those because we were
4 at 1198 on the Maytag also. It was a promo MAP, so
5 you were allowed to do whatever you wanted to. In the
6 case of LG -- I mean it was an open MAP, excuse me.
7 So you could do what you wanted to do. In the case of
8 the LG, it was a promo MAP.

9 But Black Friday is huge. I mean, and
10 partly it's probably my fault. And I intend to keep
11 it huge. So Marc and I have discussed that a lot.
12 But it is a big event. It's a major event. So I
13 don't know if I can add a lot. My guess is that you
14 probably have a lot of questions from the retail side.
15 I think I'll just stop.

16 MR. CUNNINGHAM: We turn now to an economic
17 analysis from Dan Klett.

18 MR. KLETT: Good afternoon. My name is
19 Daniel Klett. I'm an economist with Capital Trade,
20 Incorporated. There are just three points I want to
21 make, volume effects and market share, price
22 comparisons, and the recommendations by Petitioner to
23 measure underselling on a value rather than actual
24 price basis.

25 MR. CUNNINGHAM: Mr. Klett has a series of

1 graphs and things like that. Could we have -- this is
2 Dick Cunningham talking. Could we have that as an
3 exhibit?

4 MR. DeFILIPPO: Yes. And I also marked on
5 my copy that I would include Mr. Politeski's as
6 Exhibit 3, and then this will be Exhibit 4. SO
7 everything will be in the transcript.

8 MR. CUNNINGHAM: Good.

9 MR. DeFILIPPO: Thank you.

10 MR. CUNNINGHAM: Thank you.

11 MR. KLETT: Thank you, Dan. The available
12 data show that imports from Korea are more heavily
13 concentrated in larger capacity French door
14 refrigerators, and that U.S. volume here is minimal.
15 Although the Commission did not collect data on this
16 basis in its questionnaires, data are available from
17 other sources such as NPD.

18 Slide 1 shows the growth in subject import
19 volumes from 2007 to 2010. Over 80 percent of the
20 increase in subject import volume was for French door
21 refrigerators with capacity of 25.5 cubic meters or
22 more. Whirlpool brands were not in this size category
23 at all until 2009. And as shown in slide 2, Whirlpool
24 brands have increased their sales volumes for these
25 larger sized French door refrigerators.

1 As shown in the very large category of 26.5
2 cubic capacity or greater in slide 3, you can also see
3 that imports from Korea were a leader in the U.S.
4 market, and that Whirlpool brands followed. If
5 anything, Whirlpool's French door refrigerator sales
6 have benefitted from the introduction by Samsung and
7 LG of larger capacity refrigerators into the U.S.
8 market, which has created U.S. demand.

9 This growth is even more remarkable given
10 the weak demand conditions generally during the
11 investigation period. As shown in slide 4, based on
12 AHAM data from '07 to 2009, there were significant
13 declines across the board in U.S. appliance sales,
14 including refrigerators, and sales being relatively
15 flat from '09 to 2010.

16 Whirlpool publishes data on its North
17 American activity. And as shown in slide 5, its sales
18 units also declined from 2007 to 2009.

19 Turning now to pricing, the Commission does
20 not often conduct investigations of differentiated
21 consumer durable products, and there are important
22 implications for this investigation. First, although
23 the Commission is collecting pricing data in its
24 questionnaires from manufacturers and importers to
25 retailers, pricing from retailers to the consumer also

1 is highly relevant. That is, retailers such as Home
2 Depot, Best Buy, Lowes, and Sears offer both U.S.
3 origin and subject import refrigerators of all
4 configurations and price points.

5 The volume they purchase from refrigerator
6 manufacturers is affected by the choices made by the
7 ultimate consumer at retail. This is a different
8 dynamic, for example, than Lowes' choice of supplier
9 for a commodity product such as steel nails, which
10 largely dictates what the consumer purchases.

11 Second, nonprice factors matter, including
12 size, capacity, brand, style, technical innovations,
13 and dependability, among others. That is why, as
14 shown in slide 6, Whirlpool offers multiple brands of
15 refrigerators at different price points and styles.

16 And I want to point one thing out on this
17 slide. If you look at the vertical axis -- this is a
18 Whirlpool slide, by the way. It's style relative to
19 price. It's not dual evaporator or LED lighting. And
20 it just confirms the points made by the earlier
21 witnesses with regard to the importance of this for
22 selling product in the market.

23 Because prices and nonprice factors matter
24 at retail, I have reviewed NPD price data for
25 refrigerator sales, including the specifications for

1 which the Commission is collecting price data. It is
2 my understanding that the NPD data is the price
3 charged at the checkout counter, so it will include
4 discounts off the published retail price.

5 Slide 7 shows in graphic form the average
6 selling prices of Whirlpool, LG, and Samsung for all
7 bottom-mount refrigerators during the investigation
8 period. Note that Whirlpool's average prices, the red
9 line, were consistently lower than the average prices
10 of LG and Samsung. Slide 8 does the same thing for
11 multi-door refrigerators, which constitutes about 86
12 percent by value of the bottom-mount market, and which
13 represents all of the growth in the bottom-mount
14 market.

15 Again, note that Whirlpool's average prices
16 were on average consistently lower than the prices of
17 Samsung and LG. This is not a case where the averages
18 conceal imports underselling and specific model
19 categories, as was discussed earlier.

20 Slide 9 summarizes the comparisons from NPD
21 data for the specifications most closely matching
22 those for which the Commission requested data in its
23 questionnaires. I compared the weighted average
24 selling prices on a quarterly basis for 2010 between
25 the Whirlpool brands and the brands that represent

1 subject imports.

2 Prices for subject imports were higher
3 priced in 15 of the 20 possible comparisons, and 3 of
4 the 5 comparisons where imports were lower priced was
5 a configuration that did not include an external ice
6 and water dispenser, a relatively low-volume
7 specification for LG and Samsung. Note that in making
8 these comparisons, I have tried to be as precise as
9 possible in specifying the features, including finish,
10 whether an external ice-water dispenser is included or
11 not, and Energy Star qualification.

12 Initially, it is important to note that even
13 in the few product sectors where there has been some
14 underselling, there has been no adverse impact on
15 Whirlpool's pricing or market share. I refer here to
16 the two-door, bottom-mount refrigerators. This is a
17 lower priced, lower tech segment of the bottom-mount
18 market, and represented only about 14 percent by value
19 of sales at retail of total bottom mount refrigerators
20 in 2010.

21 As shown in slide 10, despite underselling
22 by subject imports, the market share of LG and Samsung
23 brands declined throughout the period. In short,
24 underselling had no market share impact for the two-
25 door bottom-mount refrigerators. The data will also

1 show that there have been no significant adverse price
2 effects to two-door bottom-mount refrigerator imports,
3 as we will discuss in more detail in our post-
4 conference brief.

5 All this discussion is focused on price
6 competition at the retail level, whereas the
7 Commission's questionnaires gathered prices by
8 manufacturer. I can't discuss APO questionnaire data
9 in this public forum. I can say that it does not
10 alter in any significant way the conclusions I have
11 expressed today based on retail prices to consumers.

12 I do want to say a few words about how the
13 Commission should adjust the values reported in its
14 quarterly data to account for direct and indirect
15 discounts. The appropriate methodology can vary
16 company by company based on how the value and discount
17 data were reported in your questionnaires. However, I
18 believe sufficient data has been reported by all to
19 enable all values to be adjusted to account for
20 discounts based on the discount data reported in
21 footnote 2 to the pricing tables, and in response to
22 question 3-4. We will provide specifics as to the
23 appropriate methodology in our post-conference brief.

24 Whirlpool apparently expects that the
25 pricing data will show overselling, which is why it

1 floated an approach in the petition and here today to
2 convert any nonprice features or advantages that
3 subject imports may have to a price basis and to
4 compare the values of U.S. and subject imports rather
5 than prices. In my opinion, it would be incorrect to
6 even attempt to make an adjustment in the context of
7 price -- make this adjustment in the context of your
8 price comparisons.

9 The Commission already is controlling for
10 such factors by including a number of features in the
11 specifications for which it is collecting price data
12 and which were recommended by Whirlpool. So
13 therefore, based on the data you collected in your
14 questionnaires, the feature issue that was discussed a
15 lot this morning is essentially a nonprice issue.
16 Whirlpool gave to the Commission the pricing product
17 specifications which presumably included the features
18 that they thought were important for affecting price.
19 So at least with respect to your data and your
20 questionnaires, the issue of adjusting for features is
21 essentially a nonissue.

22 That's all I have to say today. I
23 appreciate your time, and look forward to your
24 questions. Thank you.

25 MR. CUNNINGHAM: Could we have a time check,

1 please, Bill?

2 MR. BISHOP: You have eight minutes
3 remaining.

4 MR. CUNNINGHAM: Whoopee. I mean thank you,
5 Bill. I'd like to make just two quick -- actually,
6 three quick comments. One is an absence of comment,
7 which is unusual for me. First, on the issues of like
8 product and cumulation, we have quibbles, comments,
9 but frankly our position here for this phase of the
10 proceeding if you take this as a cumulated case and
11 accept the like product as Whirlpool has argued it,
12 this case still doesn't pass muster, and really
13 clearly must be terminated at this stage. So we're
14 not going to make arguments at this point now, but
15 answer questions if you want.

16 Okay. Second, as Mr. Klett indicated,
17 Whirlpool has a big no underselling problem here, and
18 has tried to deal with that by the argument that these
19 guys are dumping features. You have to make
20 adjustment for the features. I hope you listened to
21 some of the testimony today that seems to be from the
22 Whirlpool panel which seems to me totally undercuts
23 that.

24 First of all, they were very clear that
25 except for dual evaporation, and I think maybe thin-

1 wall construction is another that we've added, all the
2 manufacturers have the same features. There is not a
3 distinction among features that affects these average
4 prices, nor is there a distinction among features
5 among manufacturers. And besides, as Mr. Klett said,
6 you've controlled for features in your price
7 comparisons.

8 I hope you listened to Mr. Herring and what
9 he said about the icemaker and the water dispenser for
10 LG. It's the same feature, that is, icemaker and
11 water dispenser, that other manufacturers and
12 Whirlpool have. But LG does it better. It's smaller.
13 It takes up less room. It has better lighting. So
14 you can't adjust for a difference in features. It is
15 just one manufacturer is better than the other. You
16 can't make price adjustments for that.

17 You also listened, I hope, to what Mr.
18 Bitzer said about dual evaporation. And I loved that.
19 This is their big thing. There is dual evaporation in
20 some of those Samsung refrigerators. But listen to
21 what he said when you asked him why Whirlpool doesn't
22 have it, why doesn't have it. He said they can
23 achieve the same benefit to the consumer by other
24 design techniques. And he said that they see the cost
25 of putting in the dual evaporator as not worth the

1 benefit to the consumer.

2 If that's so, why on earth would you make an
3 adjustment between a Samsung refrigerator that has a
4 dual evaporator, which has no extra benefit to the
5 consumer, compared to a Whirlpool refrigerator that
6 achieves the same result, benefit for the consumer, by
7 other design techniques. It baffles me.

8 So I don't think dumping features makes any
9 sense here. I don't think adjusting for features in
10 the price comparisons makes any sense. I think
11 Whirlpool is just stuck with the plain, simple,
12 controlling fact in this case, and that is that
13 they're underselling, and they're the price leaders,
14 not the manufacturers from Korea and Mexico.

15 Last point. We haven't talked a lot here
16 about effect on Whirlpool's profits and things like
17 that. There is some stuff in the petition about that,
18 and there is some stuff in Whirlpool's annual report
19 about they have problems in the second half of 2010.
20 The first half of 2010 looked like a terrific year,
21 and everybody was doing really well. Demand was going
22 up, pumped up in significant part by \$300 million of
23 stimulus money that went to consumers in the cash for
24 appliances program, which ended mid-year. And as for
25 Cash for Clunkers in autos, it borrowed demand from

1 the second half.

2 Demand fell off in the second half. Nothing
3 to do with imports. Secondly, Whirlpool quite
4 clearly, as Mr. Politeski said, was frustrated at its
5 inability to make progress in their share of the
6 market, and began an aggressive price cutting
7 campaign, and Mr. Herring's chart very vividly shows
8 that that's exactly what Whirlpool did. Starting from
9 a lower base, they cut the prices earlier, more
10 rapidly, sharper, and brought the market prices down.

11 That happened at the same time, as
12 Whirlpool's annual report will tell you, that all of
13 these manufacturers got hit with substantial cost
14 increases. As we all know, commodity prices went
15 berserk beginning in the second half of 2010.
16 Whirlpool makes a lot of that in its annual report.
17 So, of course, Whirlpool had problems in the second
18 half of 2010.

19 Demand had flattened out. It, in a mistaken
20 judgment of timing as to when to do this, began an
21 aggressive price campaign in the third quarter of --
22 in the second and third quarters of 2010, so reduced
23 the revenue coming in, got hit with big cost increases
24 at the same time. Not one of those factors has a damn
25 thing to -- a gosh-darn thing to do with imports.

1 And this case, whether you look at it is as
2 a case on who is leading the market in prices, as a
3 case as who is underselling whom, or as a case of why
4 Whirlpool isn't doing as well as it would like to be
5 doing, it has nothing to do with imports, and demands
6 a negative determination.

7 MR. CONNELLY: Okay. I've got just a few
8 remarks, and I hope you will ask me in questions to
9 elaborate on them. There are four things that we
10 would like you to look at and make specific inquiry of
11 Whirlpool about. They are the amount of the tax
12 credits that they have earned on producing energy-
13 efficient refrigerators. Second, the impact if any on
14 their financial results for bottom-mount refrigerators
15 of a \$91.8 million criminal penalty, which they booked
16 in 2010 for price-fixing on refrigerator compressors.
17 Three, restructuring costs that they incurred when
18 they shut down their plant in Evansville and moved it
19 to Mexico. And fourth, higher product recall charges
20 that they incurred and booked, I believe, in 2009 or
21 2010.

22 We do not know. We cannot tell the extent
23 to which any of these charges have wound up in their
24 financial reports for bottom-mount refrigerators. We
25 would like you to ask Whirlpool about each of those

1 charges. We'll elaborate on it in our post conference
2 brief. But I think there is no time to lose. And I
3 want to make particular mention of the tax credits.

4 This tax credit is \$200 per unit on energy-
5 efficient refrigerators. Virtually all of their
6 bottom-mount refrigerators are energy-efficient
7 refrigerators. If we do the simple math and multiply
8 their retail sales of energy-efficient, bottom-mount
9 refrigerators times \$200, we get at least \$50 million
10 in earned tax credits.

11 Now, remember, what is important is did they
12 earn the credit, not whether they used it. It's a
13 cash subsidy. I'll stop right there.

14 MR. DeFILIPPO: Thank you, Mr. Connelly, and
15 thank you to everyone for your presentation and your
16 testimony here today. It has been extremely helpful.
17 We will start questions with Mr. Cassise.

18 MR. CASSISE: While it's fresh in our minds,
19 I'd like to have you elaborate on a couple of things
20 that you mentioned. I think the tax credit we're well
21 aware of, and we will follow up with Whirlpool on more
22 detail on that. The second, you mentioned the
23 criminal penalty on price fixing. If you could just
24 explain and elaborate on that.

25 MR. CONNELLY: Okay. I want to make clear

1 that nothing I'm telling you about is confidential
2 information. This is all directly from Whirlpool's
3 2010 form 10K. Now, in their form 10K -- and the
4 Justice Department issued a press release about this
5 as well, which is obviously public -- they said that
6 they recorded on their books in 2010 a fine of \$91.8
7 million. They paid this fine to the U.S. Treasury to
8 settle charges that the refrigerant compressor
9 subsidiary engaged in price fixing.

10 Now, they also recorded a \$56 million fine
11 in 2009 that it paid to the government of Brazil to
12 resolve similar charges. So what we would like you to
13 do is ask Whirlpool if any portion of either fine is
14 reflected in the financial results that Whirlpool has
15 reported for its bottom-mount refrigerators, and if
16 so, what the amount was.

17 Now, if any portion of either fine has been
18 reported in Whirlpool's financial results in their
19 questionnaire response, then what we would like you to
20 do is raise for the Commission the issue of whether it
21 is appropriate to allow a Petitioner to bolster its
22 injury claim by recording an expense that it incurred
23 solely through behavior that it has admitted was
24 illegal. We don't believe the antidumping law intends
25 this result. So that is the criminal penalty issue

1 that we'd like you to take a look at.

2 We don't know. It may be it had nothing to
3 do with Whirlpool's results on bottom-mounts, but it's
4 a question worth asking in view of the disclosure in
5 their financial results in their 10K.

6 MR. DeFILIPPO: Mr. Greenwald and Mr. Levy,
7 can we expect an answer in the post-conference briefs?

8 MR. LEVY: Absolutely.

9 MR. CASSISE: The third one you mentioned
10 was I believe restructuring costs or --

11 MR. CONNELLY: Right. Let me tell you --

12 MR. CASSISE: Can you elaborate on that?

13 MR. CONNELLY: -- a little bit about that
14 one.

15 MR. CASSISE: Yes.

16 MR. CONNELLY: Okay. So they recorded very
17 substantial restructuring costs in 2008 through 2010,
18 and they reported these costs in their 10K. And some
19 portion of these costs were attributable to shutting
20 down the Evansville plant, which you heard about in
21 their testimony, which makes refrigerators. And they
22 moved those operations to Mexico. We heard that again
23 this morning.

24 So what we would like you to do is simply
25 ask Whirlpool to explain if any portion of their

1 refrigerator restructuring cost is reflected in its
2 reported financial results for bottom-mounts, and if
3 so, what the amount was.

4 Now, if any portion of those restructuring
5 costs has been reported in Whirlpool's financial
6 results, then we would like the staff to pose for the
7 Commission the question of whether a company's
8 unilateral decision for business reasons to move its
9 operations to Mexico ought to be treated as an
10 appropriate expense in a case where the very same
11 company is protesting allegedly unfair imports from
12 Mexico.

13 Now, that's the restructuring cost issue.

14 MR. CASSISE: And the fourth category?

15 MR. CONNELLY: Recall charges.

16 MR. DeFILIPPO: Recall charges.

17 MR. CONNELLY: I thought you'd never ask.
18 Yeah. We don't know the amount of the recall charges.
19 All the 10K says -- and I must say, I read it quickly
20 last night. But it say they incurred, quote, \$43
21 million in higher product recall charges in 2010,
22 higher. I don't know what the total is. But we again
23 would like you to ask Whirlpool if any of the recall
24 charges were included in their reported financial
25 results for bottom-mount models, and if so, again what

1 the amount was.

2 Here again we don't think that the costs
3 that are incurred to recall defective products ought
4 to be used to bolster a company's injury claims.
5 That's the commission we'd like you to pose to the
6 Commission. Is it appropriate to include charges for
7 defective products as essentially increasing a
8 company's claim of injury.

9 MR. CUNNINGHAM: Could I just add one fact
10 to that? In the Whirlpool 2010 report on form 10K,
11 they note that in 2009, they had a substantial recall
12 on refrigerators, and that they took that charge into
13 their income statement in 2010. So that's the roadmap
14 for you.

15 MR. CASSISE: Okay. Thank you. That's
16 helpful. I'd like to shift and ask Mr. Herring a few
17 questions. I'd like to start with your Exhibit 2,
18 your exhibit that says "regular capacity" and "big
19 capacity." Just a couple of clarifications. Now, the
20 big capacity, if I heard you correctly, that
21 represents the premium French door models with the
22 thin wall technology and the regular capacity are
23 regular French door products without the thin-wall
24 technology.

25 MR. HERRING: John Herring. And, yes, the

1 big capacity is the thin-wall construction for LG and
2 Samsung products. Whirlpool doesn't have that
3 technology, and so they've used other means to try to
4 get a large capacity to compete in that segment. And,
5 yeah, the regular capacity below is what we consider
6 to be the standard type insulation characteristics.

7 MR. CUNNINGHAM: It would be the Whirlpool
8 27 cubic foot model and the LG 28 cubic foot model and
9 the Samsung 29 cubic foot model.

10 MR. CASSISE: Okay. Also look at this
11 exhibit, out of curiosity, you have an annual
12 quarterly here. Is this a typical seasonality of the
13 prices of refrigerators? I mean, is it standard to
14 cut prices in the fourth quarter for holiday
15 promotions? Will we see a variation of this type of
16 dip in the fourth quarter regardless of which year it
17 was?

18 MR. HERRING: Again John Herring. And I
19 think what you're seeing is the effect of Black Friday
20 in Q4. And this information, by the way, you know, is
21 provided on a monthly basis, but it was a lot of data
22 points, so we just consolidated it into four quarters.
23 But the answer to your question is Black Friday had a
24 pretty significant impact for the market in total
25 across all retailers and manufacturers.

1 MR. CASSISE: So it's fair to say that this
2 is a pretty standard chart for the last few years on
3 Black Friday, and increasingly is becoming more
4 important.

5 MR. CASSISE: Exactly. Black Friday -- you
6 know, you go back five years, I'm not sure if anybody
7 had a Black Friday offer. And so it kind of gradually
8 has taken on a life of its own, and each year
9 manufacturers and retailers have participated in a
10 bigger and bigger and more significant way.

11 MR. CUNNINGHAM: But the chart addresses who
12 is -- this is Dick Cunningham -- addresses who is the
13 most aggressive and who is the leader, at least in
14 2010, which Whirlpool is focused on.

15 MR. HERRING: And you can see in the charts
16 -- I'm sorry, John Herring again -- Q3, you know, the
17 decline even started before Black Friday. So they
18 started at a lower price point, and in Q3 they
19 dropped, started the drop, and had the most
20 significant drop in Q4.

21 MR. CASSISE: And, Mr. Herring, I may have
22 misheard, but did you want an opportunity to respond
23 to Petitioner's Black Friday pricing chart? It's
24 Exhibit 7 of their exhibit.

25 MR. HERRING: Yes. John Herring. Thank

1 you. And I think Dick referenced it a little bit
2 already. Actually, I think Bob referenced it. It was
3 a specific drop-in model. It was not part of the
4 regular assortment that was used --

5 MR. CUNNINGHAM: This is the four-door model
6 that we're talking about here.

7 MR. HERRING: Yes. If you notice on their
8 exhibit, underneath LG, they list two different model
9 numbers. And it's really an unfair comparison because
10 they're using the 25984, which is the higher -- the
11 top model is what our regular model is day in and day
12 out for that particular period. And the 25964 was
13 used for Black Friday. And so it was a different
14 model, a different offering entirely. And as we
15 talked about, cosmetic, style, and fit, a different
16 exterior appearance, different dispensers. It's not
17 really an accurate comparison to have those two put
18 together. And so it was for Black Friday or Black
19 November, as others have called, period. It was a
20 limited time offer for that set period.

21 MR. CUNNINGHAM: One other quibble on this
22 chart, and it's not a quibble of fact, but it's a
23 quibble of appearance. And I noticed that it kind of
24 caught you all up in this. They have in green the
25 \$2899 figure circled. But it's labeled a minimum

1 advertised price. That's not a price to consumers.
2 That's not directly comparable with the two figures in
3 the column below it, the 2328 and the 1995 because
4 those are actual over-the-counter to the consumer
5 price.

6 So to the extent that this seemed to create
7 an appearance that they dropped the price all the way
8 from 2899 to 1995, that's not right. They dropped the
9 price from 2328 to 1995.

10 MR. CASSISE: Mr Herring, also you had
11 listed some features that LG had developed. One was
12 the icemaker, reducing its size in the door, and then
13 the thin-wall construction. Are these two features
14 that Whirlpool does not have currently in the market,
15 or it didn't have during our period of investigation?

16 MR. HERRING: John Herring. And, yes, to my
17 knowledge, they don't have those features. They did
18 not have them during those time frames.

19 MR. CASSISE: And you mentioned that you put
20 those features on your premium French door models, the
21 three- or four-door models. Do you put those on your
22 lower end -- I think you divided up the bottom-mount
23 into two segments, the two-door and the French door.
24 And you had stated that these innovations you had put
25 on your premium French door models. Do you put the

1 icemaker innovation or the thin-wall construction
2 technology in the two-door model?

3 MR. HERRING: John Herring. And in the two-
4 door model, because there is no ice and water
5 dispenser, so there is no icemaker capability or
6 functionality in that product. So we bring out the
7 icemaker design, where we took it from the fresh food
8 and put it into the door. We brought that out at
9 launch in our premium. At the time, we didn't have a
10 huge number of assortment of models that we have
11 today. So it was brought out as a very
12 differentiated, you know, innovative way of bring that
13 to market versus what you saw from Whirlpool or
14 Maytag. And then the evolution of that is we took
15 that innovation from the fresh food section and put it
16 on the door. Then we took it and made it smaller. We
17 call it Slim Space Plus, is what our marketing
18 terminology is for it, and reduced the size of that to
19 increase the shelf space on the door, overall total
20 increase in the shelf space.

21 MR. CASSISE: Does the thin wall apply to
22 all French doors, or just to the jumbos?

23 MR. HERRING: The thin wall we launched on
24 our top end, our premium models first. And we are
25 expanding that into different sizes, width dimensions.

1 It's still in the French door. We don't currently
2 have it in the two-door configuration. But in French
3 door, we do make a 36-inch wide opening, 33, and 30.
4 And so we came out with that capability or technology
5 in the 36 inch in our premium, top-end refrigerators.
6 And then we have just recently introduced that same
7 capability in a 33-inch wide opening. So all
8 consumers can enjoy that feature in the French door.

9 Yeah. There is no thin wall in a two-door.
10 I thought I clarified that. Sorry.

11 MR. CASSISE: Okay. And just again a
12 clarification. You divided up the bottom-mount into
13 two segments, the two-door and the French door. Say
14 in 2010, what was your share of sales of the two-door
15 versus the French door?

16 MR. HERRING: I'm not sure exactly what our
17 market share is in the two-door. And as I mentioned
18 earlier, we spent very little time in that segment
19 because it's the smallest segment of the refrigerator
20 business, and it has been pretty stable. We spend a
21 lot of our time and efforts on the French door. So
22 I'd have to look up and find --

23 (Asides.)

24 MR. CUNNINGHAM: If I could refer you to Mr.
25 Klett's chart on two-door --

1 MR. HERRING: You're asking for the share of
2 our total business?

3 MR. CUNNINGHAM: Oh, you mean how much of
4 their production goes to two-door and how much to
5 French door. Is that right?

6 MR. CASSISE: Correct.

7 MR. HERRING: The two-door is less than 10
8 percent of our total bottom-mount volume.

9 MR. CASSISE: Also, just, Mr. Herring, you
10 had divided up the type of consumer purchases of in
11 replacement or stress purchases. And I just wanted to
12 make sure I heard you right. That was around 60
13 percent of the market, and kind of the upgrades were
14 around 40 percent of the market.

15 MR. HERRING: That's correct.

16 MR. CASSISE: Okay.

17 MR. HERRING: I mean, depending on when you
18 survey, but that's correct.

19 MR. CASSISE: And that would be all
20 refrigerators, or just what you had deemed bottom-
21 mount market?

22 MR. HERRING: This is John Herring. We pull
23 that for total refrigerator business.

24 MR. CASSISE: Refrigerators, okay.

25 MR. BAIRD: Just let me clarify, 60 percent

1 of the people replace because either a unit they have
2 needs service, or it's just done completely. The next
3 15 percent is because they moved. So however you want
4 to classify a move. But in real life, when you move,
5 you got to buy something. So I would say 75 percent
6 of the people don't have the luxury of waiting for a
7 lot of time. So 71 percent of all appliances are
8 bought within three days of when they start. It's a
9 short cycle purchase.

10 MR. DeFILIPPO: Okay. Thank you. Actually,
11 Mr. Baird, I had a question for you actually. If I
12 walk into a Home Depot, how would you sell me on dual
13 evaporators?

14 MR. BAIRD: We don't have dual evaporators,
15 so, I mean --

16 MALE VOICE: I was going to say I think
17 you're asking the wrong guy.

18 MR. BAIRD: You want the real answer, I'd
19 ask what is it about a dual evaporator you like. You
20 would answer something about freshness or something,
21 and I would give a pitch on what we have. We don't
22 have dual -- I don't view that as a -- but now that I
23 know it only costs \$30, it might change my opinion.

24 MR. CASSISE: So you have no sales pitch for
25 dual evaporators, okay.

1 MR. BAIRD: No.

2 MR. CASSISE: Okay.

3 MR. CONNELLY: Can I just say, Whirlpool
4 said it cost it \$30. Our questionnaire response
5 tells you what it costs Samsung. It's less.

6 MR. CASSISE: Actually, I think that is all
7 I have for right now. Thank you very much.

8 MS. DEFILIPPO: Thank you, Mr. Cassise. Mr.
9 von Schrilztz, questions for this panel?

10 MR. SCHRILTZ: Yes, thanks, Cathy. Karl von
11 Schrilztz on behalf of the General Counsel. Thank you
12 for attending our conference and providing us with and
13 giving us access to your extensive knowledge of this
14 product in this industry.

15 I have just a few products. I have been
16 looking at all of this information and trying to
17 assimilate it. It is a lot to think about all at
18 once, but one thing that I have sort of noticed about
19 your presentation is that you stress these statistics
20 from MPD, and you have got a lot of charts.

21 Well, not a lot of charts, but a couple of
22 charts that compare average prices -- here we go,
23 average selling price trends. Like, for instance, on
24 page seven of Dan Klett's exhibits, French Door
25 Refrigerators, and also page eight, and I guess we

1 have named this Exhibit 3, Samsung's Exhibit
2 Accompanying Testimony of James Politeski.

3 There is another chart comparing MPD API,
4 which I assume -- well, what does this chart show
5 exactly if I may ask, Mr. Politeski? This chart MPD
6 API, is that an index?

7 MR. POLITESKI: Yes, James here. What we do
8 is we take all of the actual average dollar prices,
9 and we convert them to an index.

10 MR. SCHRILTZ: And 100 is the average?

11 MR. POLITESKI: Correct.

12 MR. SCHRILTZ: So my question is this. I am
13 looking at this thing that you -- this chart that you
14 provided us, this interesting chart that is apparently
15 from Whirlpool itself, showing the position of
16 Whirlpool's different brands in the market. It is on
17 page six of Mr. Klett's presentation.

18 And you can see that they have different
19 brands that are positioned in different places, and
20 most of their volume seems to be in the mass market
21 brands, the Amana, and the Whirlpool, and the Maytag,
22 and you testified today, or I have heard testimony
23 today that LG and Samsung have targeted just the upper
24 range of the market. It is kind of a premium price
25 strategy.

1 So isn't it true that the Commission should
2 be very weary of comparing average prices from MPD for
3 Bottom Mount Refrigerator Doors? Wouldn't those be
4 distorted by product mix within the bottom
5 freezer/refrigerator segment?

6 In other words, if Whirlpool is selling more
7 sort of mass market bottom freezer/refrigerators, that
8 would tend to drag its average price down. Whereas,
9 Samsung and LG are mostly concentrating on the higher
10 end of the market, and that would tend to increase its
11 average prices based on MPD data.

12 I mean, it is not really an apples to apples
13 comparison; isn't that true? I am not sure who I am
14 directing this to. Perhaps Mr. Klett.

15 MR. KLETT: This is Dan Klett. It is true
16 that the -- well, first of all, the MPD data collects
17 information on a very product specific basis, and we
18 also in our testimony compared prices on a product
19 specific basis, where you don't have the potential
20 types of product mix issues that you are talking
21 about.

22 I think it was in all of our testimony, and
23 I think it is Exhibit or Slide 9 to mine, which is the
24 same data source. So the point being that on a
25 product specific basis, where you do have comparable

1 features and the kinds of specifications that you
2 asked for in your questionnaire data for products 1
3 through 7, you have by and large overselling on that
4 basis as well.

5 I think the average to average was just to
6 give you a sense of the -- I mean, I don't think it
7 was for the purpose of for you to use for your
8 traditional underselling/overselling analysis. That
9 was not the intent.

10 It was just to show an average for these
11 different categories. The Samsung and the LG products
12 tend to be premium products in the marketplace.

13 MR. CUNNINGHAM: I would refer you -- and
14 this is Dick Cunningham again -- to the two graphs,
15 Exhibit 2 of Mr. Herring. These are specific models,
16 selected for comparability, showing the trends, and so
17 that we wanted to give you something that would show
18 the same trends, and the same pattern of no
19 underselling that you get in the averages.

20 But you can't make that sort of assumption
21 that -- well, gee, averages somehow distort things --
22 about this. There is a lot of data out there on this.
23 This is a very heavily analyzed market.
24 We tried to give it to you from a number of different
25 perspectives, and I think the important thing about it

1 is that whatever perspective you look at it from,
2 whether it is averages, and whether it is specific
3 models, whether it is price comparisons, and selected
4 to be as close as possible to what the Commission is
5 looking at, all of it shows the same message.

6 MR. CONNELLY: Can I add to that just
7 briefly? This case has been in preparation for
8 months, if not years. Think about what they have put
9 in their petition. They used MPD data, MPD data on
10 specific models.

11 For Samsung, three incidents, and Mr.
12 Politeski said that they are all wrong, but that was
13 it. Three instances on only three models over the
14 course of three years. Now, we know that they scoured
15 that MPD data as hard and as long as they could to
16 come up with the very best individual model specific
17 examples that they could, and they failed.

18 And we will explain why in detail in our
19 response, and we have explained a little bit here
20 today, but I think again as Dick and Dan said, you can
21 look at it any way that you want, but if you think
22 about it, that is the best that they could do? Three
23 examples?

24 MR. SCHRILTZ: So, Mr. Klett, you agree that
25 of the product mix issue that I mentioned, probably

1 makes average selling data from MPD sort of an
2 unreliable means of comparison?

3 MR. KLETT: For purposes of your
4 traditional overselling/underselling analysis when you
5 are trying to get or match specific products, I would
6 agree with you.

7 MR. SCHRILTZ: Okay.

8 MR. CUNNINGHAM: I think Mr. Herring had
9 something to say.

10 MR. BAIRD: Actually, Mr. Baird.

11 MR. CUNNINGHAM: Bob Baird.

12 MR. BAIRD: It depends on which product you
13 are talking about. By default, a French Door -- a
14 French Door is not in the top half of the group. They
15 are not in the bottom half of these
16 freezers/refrigerators.

17 If we were talking about dishwashers, you
18 said it exactly right. It would be an unfair
19 comparison, because Whirlpool caters a lot to the
20 dishwashers below \$500, and LG starts at \$699. So by
21 default, you have got a difference in how you average
22 retail.

23 When you take a category that is by
24 definition in the top half, then they are all equal
25 players.

1 MR. HERRING: John Herring, and just one
2 more thing. Just one of the reasons why we this
3 example is because it is model specific, and you can
4 kind of take out some of those averages, and as I
5 pointed out earlier, these are the industry's best
6 selling models.

7 So these are number one or number two
8 selling models for each of the three brands that are
9 represented. This is where business is being done.
10 So either or which way we looked at it, we come up
11 with the same message.

12 MR. SCHRILTZ: Okay. Actually, I wanted to
13 discuss that next, this chart that you have with the
14 specific models, the top selling models, because it
15 conflicts somewhat with Petitioner's Exhibit A.

16 If you look at Exhibit A, it doesn't include
17 an LG model admittedly, but it has two different
18 models from Samsung that also featured on this
19 exhibit, and it includes a model from Whirlpool that
20 is included on your exhibit of specific models, which
21 isn't surprising because they are best selling models
22 as you say.

23 But Whirlpool tells a different story with
24 the same data, and if you look at their Exhibit A,
25 what their exhibit purports to show or the numbers on

1 their exhibit show that Whirlpool's models started out
2 with a price that was higher than either of the
3 Samsung models, and then Samsung cut its prices, and
4 they indicate when with little arrows, or that is how
5 I interpret those arrows.

6 And you get to the bottom in the fourth
7 quarter of 2010, and Whirlpool's price is now lower,
8 and has been forced down they allege by the price cuts
9 by Samsung. So that is telling a very different story
10 from your charts here, in-part because I see you have
11 chosen slightly different models.

12 The one on top shows the lower priced
13 Samsung on Petitioner's Exhibit A, and compares it to
14 a different Whirlpool model, and then at the bottom,
15 you are comparing the higher priced model on
16 Petitioner's Exhibit A, to the Whirlpool model on
17 Exhibit A.

18 Now, Petitioners claim that that Samsung
19 model should be priced higher than the Whirlpool model
20 because it has got more features, and they point to
21 the dual evaporation feature in particular.

22 And yet if you look at their Exhibit A, it
23 started out being priced a little less than the
24 Whirlpool model, and then the price of the Samsung was
25 cut, and the Petitioners claim that the price cuts of

1 this higher price Samsung model forced them to cut the
2 price of their model, which did not have a dual
3 evaporator feature by the fourth quarter of 2010.

4 And how do you respond to this? How do you
5 square the story that your exhibit is trying to tell
6 with the different story that the Petitioners' exhibit
7 is telling? It is the same models.

8 MR. HERRING: This is John Herring. The
9 exhibit that we put together is how they are
10 segmented, in terms of -- the bottom one is big
11 capacity, and so the exhibit that LG showed doesn't
12 even have an LG example on there.

13 The one that I have shows LG, Samsung, in
14 the largest capacity Whirlpool French Door that they
15 have. So I compared the largest segment, and what we
16 call our thin wall construction for LG and Samsung,
17 and in their response or best version of that. So we
18 consider it to be the closest apples to apples
19 comparison.

20 When you go to the top piece of that chart,
21 and what I will call our regular capacity, and Samsung
22 and LG both offer a model without thin wall
23 construction, and these would be comparable, and this
24 is Whirlpool's closest version in terms of capacity.

25 The one on Exhibit A, and I will let our

1 folks from Samsung answer, the 26 cubic foot is not
2 really an accurate comparison in terms of how these
3 are benchmarked.

4 MR. CUNNINGHAM: Could I just -- this is
5 Dick Cunningham. Could I just beg to differ with your
6 interpretation of the chart on its face? Put aside
7 the 26 cubic foot, which is as he says could be
8 compared with the 215-1/2 foot.

9 27 to 29 are in the area that the industry
10 calls the jumbo area, and except for the fact that the
11 Whirlpool starts a little bit higher in the third
12 quarter than the Samsung, and it is kind of odd that
13 it starts in the third quarter, but put that aside,
14 but if you will notice that the first decline,
15 Whirlpool goes below Samsung.

16 The next decline they are below Samsung.
17 The next decline, they are even further below Samsung,
18 and the next decline, they are even more further below
19 Samsung. And finally at the end, they have gone down
20 by far the most of Samsung's 29 cubic foot.

21 They are \$250 below Samsung's 29 cubic foot,
22 and that is exactly what Mr. Herring's chart shows.
23 Actually, they are even below the not comparable 26
24 foot. I pass it over to you, Samsung.

25 MR. POLITESKI: James Politeski here. I

1 mean, as you can see, there is probably 10 different
2 dynamics going on there on one page, and I think it is
3 fair to say that this is not a simple ABC comparison.

4 The models are all very different, and I
5 think to harken you back to what I said about that
6 this is not a simple let's compare this product to
7 that product. Every product on here is so very
8 different.

9 The other thing that you have to consider is
10 that these are quarters over quarters over a long
11 period of time, with Black Fridays on some of them,
12 and Black Fridays not on others. I will start off
13 simply by saying that none of these models are really
14 an exact comparison.

15 However, our 26 cubic foot, the one on the
16 left-hand side, that is actually the lowest feature
17 model in the group, and as you can see that by the
18 time that we get down to cube four, we are actually
19 \$30 higher than Whirlpool on a lower featured model.

20 So we have a price premium on a lower
21 featured model, and then if you compare the 29 cubic
22 foot, our model on the right, we are actually \$250
23 higher than Whirlpool. We are a premium. But I would
24 actually even go so far to say that for us thin wall
25 technology is just something that we do.

1 We have the capability and the technology to
2 do it. It is not feature or a cost. It is just
3 something that we are capable of doing. So, yes, you
4 are comparing Whirlpool's high end model, and you are
5 comparing one of our high end models, but they just
6 don't have the product.

7 We are not doing anything special there, but
8 still we are higher priced by \$250. So I am not sure
9 what this really shows other than what I said in my
10 testimony, that it is normal over the lifecycle of a
11 product, which could be 12 months, 18 months, 2 years,
12 for a Samsung, and I think even for LG, two years is
13 an awfully long time. We tend to refresh a little
14 sooner than that.

15 These show very normal, gradual declines, as
16 we move on to new models, and that is not even
17 discussed here. You don't see all of the -- remember
18 that I said that we have 22 French Door models. This
19 is only two of them, and this is only two of them in a
20 snapshot in time.

21 So I think that this actually highlights our
22 story that in fact Whirlpool is a price leader, and
23 they are not even comparing the right things, but even
24 with this example, they are missing the mark.

25 MR. SCHRILTZ: Okay. Another question for

1 Mr. Klett. In your exhibits on page 9, you have got
2 this price comparison analysis from MPD data for 2010.
3 Now, obviously the pricing data that we have collected
4 is confidential, but if there are any differences
5 between the price comparisons that are made using the
6 pricing data that the Commission has collected, and
7 your analysis on page 9, it would be great if you
8 could explain them.

9 MR. KLETT: This is Dan Klett. We plan to
10 analyze pricing at both levels, and so we will do so.

11 MR. SCHRILTZ: Thank you.

12 MR. BAIRD: May I add one thing? No one
13 ever asked the question what is MPD, but what MPD does
14 is that it is a firm, and what they do is they
15 actually collect information when you sell them at the
16 store at the register. So it is actual sales at the
17 register.

18 And basically all major retailers in
19 American participate in the MPD, except for one, and
20 that one is in the room. So that is why you don't --
21 and when it comes to MPD, we are not included in that.
22 That would exclude anything that it has to do with us.

23 Trackline by the way is actually a consumer
24 service that works on the Harris Interactive Panel,
25 and they actually survey customers quarterly, and ask

1 have you bought something in the last 90 days, and if
2 they have, then they get to participate. So it is two
3 different kinds of information.

4 MR. SCHRILTZ: Mr. Baird, I do have a
5 question for you. Since you have got this fair floor
6 policy, where your sales people are not instructed to
7 sell the products with the higher margin. They are
8 instructed, I guess, to find the refrigerator that is
9 right for a particular customer.

10 I mean, how do the features of the Whirlpool
11 model stack up with the features of the LG model sold
12 at the same price? Do you sell Whirlpool models now?
13 I know that you said that Whirlpool locked you out
14 initially, and that is why you had to turn to LG? Do
15 you sell Whirlpool now alongside LG?

16 MR. BAIRD: We sell Whirlpool like models,
17 and they are called Maytag. Maytag.

18 MR. SCHRILTZ: Right. So how do the
19 features stack up? I mean, at a given price point for
20 similar capacities, are the Whirlpool features similar
21 to the LG features? I mean, neither manufacturer
22 offers dual evaporation, but in terms of all the other
23 features, are the features comparable at the same
24 price point?

25 MR. BAIRD: Well, you have to go model by

1 model, but if you look at, for example, the French
2 Door non-dispense locks, but on our website today, you
3 can see that the Maytag would be \$1,699, and a
4 comparable LG is \$1,799, and the LG actually has less
5 features, and it doesn't have a water filter.

6 So typically given how the products are with
7 fit and finish, if in fact Whirlpool, or if Maytag,
8 had a price and had a comparable model, and similar
9 features, it would not pull the same retail.

10 MR. SCHRILTZ: And what is your explanation
11 for that?

12 MR. BAIRD: Because the fit and finish, and
13 the style. If they priced them at the same retail --
14 and there is a reason that they price them lower,
15 because they know that. They don't price them lower
16 just for kicks.

17 MR. SCHRILTZ: Thank you. I have no further
18 questions at this time.

19 MS. DEFILIPPO: Thank you, Mr. von Schrilzt.
20 Mr. Benedetto.

21 MR. BENEDETTO: Thank you all very much for
22 your testimony. If any of my questions touch on any
23 BPI information, please just say so, and you could
24 follow up with a brief, that would be great.

25 I wanted to ask a couple of questions that I

1 asked the first panel, and just get your thoughts on
2 them. On the first one, I think Mr. Politeski has
3 already weighed in on it, but if anyone else has any
4 comments, but who if anyone is regarded as -- which
5 firms are regarded as the innovators in the industry?

6 Let's just say by introducing the new
7 aesthetics, and the new technologies, and
8 improvements?

9 MR. POLITESKI: I will answer this one more
10 directly than the last panel. Clearly, Samsung is the
11 leader through innovation, consumer research, consumer
12 insights, design, aesthetics. You know, the attention
13 to details that Bob was talking about.

14 And, of course, we would hold our friends at
15 LG very close to that, and I think as I said in my
16 testimony, that we are not just appliance companies.
17 We are also in consumer electronics, and in many other
18 industries all around the world.

19 So we bring a wealth of knowledge and
20 capability, not about features, because I agree with -
21 - I think everybody said, you know what, features are
22 features. It gets hard. But what is the difference
23 between our products.

24 And I said this to Warren that if you are in
25 store, go look. Don't ask about features. Just use

1 your eyeballs and use your hands, and that is where
2 Samsung, and to a degree, that is where LG is, and we
3 exceed. We are the innovators.

4 MR. CONNELLY: I just want to add one thing
5 before we let LG answer. I listened very carefully to
6 Whirlpool's remarks about their innovations. The last
7 one I heard was an innovation in 2006. Every
8 innovation that we talked about came after 2006.

9 MR. HERRING: John Herring. I think to that
10 point, LG and Samsung didn't really exist in the U.S.
11 marketplace until the last 6, 7, 8 years, and then
12 when you start the calculators, and start the
13 calendar.

14 So up until recently that may have been the
15 case, but more recently, and I think it is good to ask
16 consumers what they think are the innovative brands.
17 We do customer research probably similar to Samsung
18 does, and asking them what they think.

19 And we have a -- and I don't have it here,
20 but we have a spider chart that basically outlines the
21 characteristics that consumers associate with the
22 brand, and there is clearly a big indication from the
23 consumers. They view LG as an innovative stylish
24 brand.

25 MR. CUNNINGHAM: Candor compels me to

1 confess that some of the following should be regarded
2 as a commercial announcement, but just as Whirlpool's
3 was.

4 MR. BAIRD: I will try to answer, and
5 obviously I disagree with the Samsung contentions, but
6 let me answer a little different way, because they are
7 talking about brand perception. In real life, if I
8 went to one of my stores and took the brands off every
9 product in the department.

10 And so all you saw was the same prices and
11 the same product, but the customer didn't know what
12 brand it was, in my opinion the Maytag share would
13 decrease. I think they get the benefit of their brand
14 in other words.

15 Left alone, LG would have a higher share,
16 but I think that Whirlpool is a good brand, or I mean
17 Maytag is a good brand. They actually get the benefit
18 of the brand. There is people that buy them because
19 it is a Maytag. So you can say it is brand
20 perception, but to me it is not brand perception. It
21 is the product, and how it looks.

22 MR. BENEDETTO: Thank you. And I need some
23 of that on the record regardless, and it is very
24 useful. Are any manufacturers considered more energy
25 efficient than others, or more energy efficient than

1 the average in the market? Mr. Baird, I thought I saw
2 you shake your head no? Are they all pretty much the
3 same?

4 MR. BAIRD: I think they -- well, no, I
5 don't think so really.

6 MR. BENEDETTO: Does anyone else have any
7 comment on that? I am not getting any. Do you all
8 agree with the consumption discussion this morning in
9 which it was talked about how bottom mount
10 refrigerators are growing in consumption even when
11 other macroeconomic variables are not necessarily
12 going in the same direction? In other words, how
13 things start to go down, and --

14 MR. CUNNINGHAM: Could you make that
15 multiple door bottom mounts, because I am not sure
16 that we would have the same view as to growing
17 consumption of two door bottoms, and indeed the charts
18 all show that like side-by-side, and French Doors, are
19 a fairly stagnant market.

20 MR. BENEDETTO: So would you all agree if we
21 changed the question and said multiple door bottom
22 mounts?

23 MR. CUNNINGHAM: The market is moving
24 towards that, and that is where the growth area is.

25 MR. BENEDETTO: Right.

1 MR. KLETT: But I would take exception with
2 the notion that macroeconomic factors had no impact at
3 all. I mean, obviously French Door was going up, and
4 so there is no correlation between macroeconomic
5 factors and the growth in French Door.

6 But it was a fairly severe recession, and so
7 really the question is did the recession have some
8 effect on demand, and maybe growth would have been
9 higher but for the recession. So I think that you
10 need to -- well, I just disagree with that general
11 notion that the demand for French Doors is completely
12 unrelated to what was going on in the overall economy,
13 even though you don't see a correlation in the trends.

14 MR. CUNNINGHAM: This is Dick Cunningham.
15 It has been in the economic and financial press a
16 number of observations over the last year or so that
17 the upper end of retailing has recovered faster than
18 the more commodity, lower priced stuff, and that would
19 suggest that works to the benefit of the French Door,
20 the Jumbos, and the higher-end stuff that are bought
21 by tassel-toed or tassel-shoed lobbyists in
22 Washington.

23 MR. HERRING: John Herring. Just one quick
24 comment on that. I think the refrigeration -- the
25 French Door segment has grown significantly, and we

1 have talked about consumers that are in that
2 replacement market, and when they come into the
3 marketplace, they have not bought a refrigerator in 10
4 or 12 years, they are upgrading to a French Door.

5 But in terms of the economic aspects, and
6 the fact that housing starts to remodel, and certainly
7 Bob is in the Home Depot do it yourself business, and
8 a lot of the kitchen remodels, cabinets, were
9 impacted, and I would say that if the economy was
10 better, and more people were upgrading or remodeling
11 their homes, the French Door business would be growing
12 even more substantially.

13 MR. BAIRD: Bob Baird. In our case, just to
14 give you some numbers. 42 percent of our refrigerator
15 doors are French Door, and that is at an all-time
16 high, and so despite the fact that the economy is bad,
17 that is an all time high, and just to give somebody
18 else a question, 42 percent is for French Door, and 6
19 percent is the two-door bottom mount.

20 So the two-door bottom mount is really a
21 niche in real life. You don't want to spent a lot of
22 time on the two-door bottom mount.

23 MR. BENEDETTO: Mr. Baird, how responsive
24 would you say consumers are to changes in price for
25 bottom mount refrigerators? I guess what I am

1 thinking about is that from various people on the
2 panel, and in the morning also, I think that we have
3 heard that a lot of purchases are emergency purchases,
4 or because somebody has moved or is moving.

5 So that sort of makes me think that somebody
6 in that situation isn't going to be as worried about
7 price, as well as having heard that maybe it is a more
8 up-brand consumer who again might not be so worried
9 about price.

10 So can I draw from that, that maybe I am
11 hearing that consumers of bottom mount refrigerators
12 are not going to respond a lot to a change in price?

13 MR. BAIRD: Bob Baird. I am not sure that I
14 got that, but I will tell you that in terms of price
15 sensitivity, the fact is that if you look at Black
16 Friday, if you get a French Door reasonably down close
17 to a side by side, it is real clear what will happen,
18 because it happened.

19 I mean, normally that gap -- if you take
20 that gap that is a thousand, and you get that gap down
21 to two or three hundred, people will opt for the
22 French Door. But I am not sure if that answers your
23 question.

24 MR. BENEDETTO: I think so. Maybe if anyone
25 else has any thoughts also. How price sensitive are

1 consumers about bottom mount refrigerators? I guess
2 what I am hearing from the panel is that maybe they
3 are not that price sensitive. Is that correct?

4 MR. BAIRD: Most people who buy a
5 refrigerator today, as John said, didn't know two days
6 ago that they were going to buy a refrigerator. Most
7 people don't have a thousand or two thousand dollars
8 waiting for their compressor to fail. But the fact is
9 that that section of the market is less price
10 sensitive.

11 MR. BENEDETTO: And that is a large segment
12 of the market I think you said, right?

13 MR. BAIRD: I would say that it is fair to
14 say that LG targets the top half. I would say that if
15 you had a continuum of zero to 100, they target 50 to
16 90. They don't target 90 to 100.

17 MR. BENEDETTO: Okay.

18 MR. KLETT: Mr. Benedetto, this is Dan
19 Klett. Also, I think that you need to distinguish
20 when you are talking about price sensitivity between
21 the kind of -- well, in terms of elasticity and
22 substitution, and elasticity of aggregate demand, and
23 you guys know what I am talking about, but we heard
24 this morning from Mr. Greenwald that with the
25 promotions, and he said it is price sensitive because

1 with the decrease in price, volumes went up.

2 I mean, the inference that he was trying to
3 make was that those volumes from Samsung and LG went
4 up at the expense of Whirlpool. Well, that is not
5 necessarily the case. I mean, especially for the
6 discretionary part of the consumer.

7 Those lower prices may generate demand that
8 would not otherwise be there. So I think you have to
9 make that distinction when you are talking about price
10 sensitivity, especially in the discretionary part of
11 the market.

12 MR. HERRING: John Herring, and just a
13 couple of points to add. There is price sensitivity
14 and the fact that this area of the 40 percent of
15 people who can be stimulated when they know that there
16 is a great offer in place, and they go shopping,
17 right?

18 But the price sensitivity, once you go above
19 \$2 thousand, the income of the consumer, or the
20 household income, I am at \$2,400 and what is another
21 hundred dollars just to get what I want. So there is
22 less sensitivity above \$2 thousand with people that
23 are in that zone, and have more flexibility to buy
24 within that zone.

25 But that doesn't mean that they don't leave

1 their homes to go buy a good deal, like shopping
2 during events, holidays, et cetera.

3 MR. BAIRD: Just as an example, LG has a 28
4 cubic foot French Door that we sell for \$2,699. Next
5 month, we are going to introduce a 31 cubic feet for
6 \$2,999, and I will guarantee you that a huge number of
7 those customers won't even think about \$300.

8 MR. BENEDETTO: Thank you. That is very
9 helpful.

10 MR. CUNNINGHAM: I know that my wife very
11 rarely thinks about that extra \$300. She is not going
12 to get a copy of this transcript is she?

13 MR. BENEDETTO: My last question. Somebody
14 said that the cash for appliances program probably
15 borrowed from consumption in the second half of 2010.
16 So I guess just what is the expectation of you all
17 about when normal levels of consumption might resume
18 if that were the case if that happened?

19 MR. BAIRD: Bob Baird. Well, the program
20 really isn't over. As a matter of fact, there is some
21 States using whatever left over money there is.
22 Missouri has one this week, but we are down to the
23 drabs, but there is still -- I think Marc said 225
24 have been spent, and I think the DOE keeps three
25 million. So there is some dollars left to spend.

1 But basically I would think that you are
2 back to normal. I mean, the first-half of this year,
3 as probably unexpected, is negative to last year. So
4 I think when you get to the second half that we are
5 expecting, I think that most people are expecting --
6 and if you talk to Whirlpool, they are expecting the
7 year to be over plus one.

8 And I can tell you that the first half is
9 going to be about minus three, and so that tells you
10 what the second half is going to be, like plus five.
11 So we would think that by the second half that you are
12 certainly into normal.

13 MR. BENEDETTO: Anyone else has some
14 thoughts on that?

15 (No response.)

16 MR. BENEDETTO: Okay. Thank you very much.
17 That is all my questions.

18 MS. DEFILIPPO: Thank you, Mr. Benedetto.
19 Mr. Mata, questions?

20 MR. MATA: Yes, I do. I have a question for
21 James over at Samsung, and what makes --

22 MR. POLITESKI: It makes it easier that way.

23 MR. MATA: Yes. It is easier that way.
24 That's true. What makes thin wall construction
25 possible? Does Samsung have the patents on this

1 process?

2 MR. POLITESKI: I have to be a little
3 careful. Things that we do with our technology is
4 very, very sensitive, and proprietary, and I can just
5 describe for you though that the concept is one of
6 having a better insulation technology, and having a
7 different kind of process.

8 Everybody talked about foaming, and it is
9 very technical, but we don't do things like everybody
10 else, and so by having a better quality insulation,
11 and doing things differently with our process, we are
12 able to for really no change in our process squeeze a
13 lot of extra space out of the same space.

14 MR. MATA: Thank you. And getting back to
15 product features, I need a clarification on the LCD
16 interfaces. Can you --

17 MR. POLITESKI: Sure. Let me -- well, I
18 noted in my testimony that we had a touch screen LCD,
19 with WiFi and apps. That is kind of the latest, and
20 Mr. McClure, your wife definitely wants one of these.

21 But that is the latest in innovation and
22 technology, and kind of bringing a convergence if you
23 will. This is becoming a very convergent world, and
24 so your refrigerator is no longer just your
25 refrigerator.

1 But then from there various manufacturers
2 have employed all different kinds of technology,
3 design, and appearance. And this is largely about
4 style, with the exception of things when they are WiFi
5 and apps, because these things actually do something.
6 You interact with them.

7 But with LCDs, some have passive LCD
8 screens, and some do LED, and some do LCD. It varies
9 across the board, but it is really a -- unless it is
10 like our apps, it is really just a style and look
11 thing.

12 MR. MATA: Thank you. And I have no further
13 questions.

14 MS. LEARY: I do have one actually.

15 MS. DEFILIPPO: Okay.

16 MS. LEARY: I have a question about capacity
17 as it relates to price, and Mr. Herring, I think you
18 mentioned that capacity was one of the drivers of the
19 growth in French Door bottom mount refrigerators.

20 So I am kind of wondering if consumers would
21 value that, and if they would pay extra for that extra
22 capacity, and if so, we are seeing that these jumbo
23 class refrigerators are generally the same. We are
24 saying that they are comparable, but there is a spread
25 of about two cubic feet.

1 So are you saying that that two cubic feet
2 is not important to the consumer, or are you saying it
3 is important to the consumer?

4 MR. HERRING: This is John Herring, and yes,
5 it is important to the consumer, and they are paying a
6 premium price for that. So both Samsung and LG charge
7 a premium for that. We do it through a map price, and
8 then through this data that you are seeing, and MPD
9 actually bears that out, that consumers actually pay a
10 premium price for thin wall or larger capacity
11 refrigerators.

12 MS. LEARY: Okay. Because in this graphs,
13 with the big capacity, you are saying there is a
14 range, and there is a 29, 28, and 27 cubic feet. So
15 couldn't that help account for some of this price
16 difference, or are they truly those three sizes
17 comparable prices?

18 MR. HERRING: Again, John Herring. These
19 three sizes from the three different brands here are
20 comparable, but if you are comparing will a customer
21 pay a premium price, you compare the average selling
22 price above to the models above to these.

23 So as an example, the LG-25976s are standard
24 capacity, and the 28978 is our larger capacity, and if
25 you were to look at the data, which we can certainly

1 provide underneath it, the average selling price will
2 be higher on the one that offers a larger capacity.
3 The same thing would hold true for Samsung.

4 MS. LEARY: Right, and so you are saying a
5 consumer would compare refrigerators in the same line,
6 as opposed to large capacities across brands?

7 MR. HERRING: They do both. They do both.

8 MR. POLITESKI: Actually, if I could just
9 add something. This is James Politeski. I think that
10 capacity is one consideration, but I think we have
11 tried to make it clear today that in this category of
12 refrigeration, it is not just about capacity.

13 It is about so many intangibles; the look,
14 the color, and how is it going to look in your
15 kitchen. There is a lot more that goes into it than
16 just capacity, and so to separate out on just one
17 metric, one identifier, is pretty complicated.

18 MS. LEARY: Thanks.

19 MR. CUNNINGHAM: If you look at that big
20 capacity chart, and you are comparing a 27 foot
21 whirlpool to the 29 foot Samsung, and you will
22 probably notice that the 29 foot Samsung is a little
23 bit below the 28 foot LG, and so there is some
24 blurring in consumers minds in this high-end.

25 There is not quite a -- you know, we pay X-

1 dollars for one extra foot or something like that, but
2 maybe you could argue that some of that disparity at
3 the start of that chart might be explained by the fact
4 that the Whirlpool is a little smaller.

5 But when you get down to the bottom of that
6 chart there, and you see that gap between 16 and 25,
7 or whatever that is, and over \$1,900 for the LG, I
8 mean, that is not a difference between 2 to 28 cubic
9 feet.

10 MS. LEARY: Right, but it might be a factor,
11 right?

12 MR. CUNNINGHAM: A little bit of it, but not
13 --

14 MS. LEARY: But not a lot?

15 MR. CUNNINGHAM: Yeah.

16 MS. LEARY: Thanks.

17 MS. DEFILIPPO: Thank you. Mr. McClure,
18 questions from you?

19 MR. MCCLURE: Excuse me, I was looking to
20 count the tassels on toes. Lawyers. Now, thank you,
21 and this has been an especially useful panel. We
22 really appreciate you making the effort to come up
23 here, and it has been very instructive.

24 And if you can come up with a refrigerator
25 that says, Jim, your beer is perfectly chilled, I'll

1 buy.

2 MS. DEFILIPPO: He will be very price
3 insensitive to that. Thank you, Mr. McClure. It has
4 been a lot to digest, and I am trying to look at my
5 little notes, and I did want to take the opportunity
6 to ask a couple of quick questions to Mr. Baird.

7 Since we don't often get the retailers, and
8 we don't often have a retail product, to the extent
9 that anything that I ask does get into something that
10 you would prefer not to say in public, that's fine,
11 and if you could perhaps put it into a written
12 submission after.

13 And I guess because we don't often get the
14 retail products, because we are used to seeing price
15 negotiations, where a manufacturer or a producer talks
16 to a distributor, and they are talking about prices
17 and quantity over a given period, and you said
18 something earlier that stuck in my brain, which was
19 that you talked about not having I think warehouses.
20 Is that right?

21 So you are not holding any inventory of any
22 of these? So you are having floor space to models on
23 the floor, but then if I walk in and I order a
24 refrigerator, it is coming from the manufacturer to
25 me?

1 MR. BAIRD: This is Bob Baird. It's going
2 from a manufacturer directly to a delivery agent, and
3 then the agent will deliver it to your house. Now, we
4 do carry some stock in the store, but it would be like
5 a \$499 model, real cheap stuff, and it certainly is
6 not French Door.

7 MS. DEFILIPPO: So, in terms of when you are
8 sitting down and talking prices for a given period, is
9 there any quantity discussion involved, or are you
10 looking mainly at MAP, the minimum price?

11 I guess how do you negotiate a price and how
12 often are you talking to a manufacturer over the
13 course of a year? Are you talking around these
14 promotions, or do you have sort of a range of prices,
15 and you know what that minimum is, and you just then
16 set it over the course of a year?

17 MR. BAIRD: Actually, Marc answered that
18 question, and to me the biggest use for me is that it
19 allows me to negotiate with the supplier, because if
20 they are going to give me the retail, then it gets
21 pretty easy on my part, because I would say we have
22 reasonably normal margins.

23 So once they establish a map on a product
24 when it first comes out, then I will just do the math,
25 and my goal then is to get the biggest margin that I

1 can. But there is a real normal range, and so it is
2 not like a wild difference.

3 MS. DEFILIPPO: And the map is good for how
4 long? I mean, how often would a manufacturer change
5 that?

6 MR. BAIRD: I would say the average product
7 lasts a couple of years, and sometimes the map never
8 changes. I would say a new product, some fashion
9 products like you are talking about here, you may see
10 some map changes, but they are pretty stable.

11 MS. DEFILIPPO: Okay.

12 MR. BAIRD: Now, a manufacturer can do a
13 promo map. They can come up and for whatever reason
14 say this is for one week, or two weeks, or three
15 weeks. This was 1,999 and we would like it to be
16 1,799, and then we negotiate how much support, because
17 my goal is to hold the margin constant.

18 MS. DEFILIPPO: And so in terms of that are
19 you ever going back and saying, hey, we hear that so
20 and so is running a promotion, and do you have any
21 flexibility on this, or is it more being driven from
22 the manufacturer, where you just gave that example?

23 MR. BAIRD: There is two kinds of that. One
24 is where you have a promo map, and it applies across
25 all retailers, and typically for LG, whenever they do

1 that kind of reduction, it is going to apply it to the
2 whole retail group. That is just how they do
3 business.

4 In the case of Whirlpool and Maytag, they
5 have what is called co-marketing, which means that
6 they will actually look at individual retailers, and
7 in fact I may have a deal for three weeks on a piece.

8 But typically when they do that, they won't
9 actually change the map, and so I can't advertise to
10 the public, but in my store and on-line, I can have it
11 at that reduced price. So you can either do it for
12 the whole group, or just some of the group.

13 MS. DEFILIPPO: And that varies depending on
14 which manufacturer you are dealing with, or they all
15 do a little bit of everything?

16 MR. BAIRD: Well, I have three suppliers.
17 So, I would say GE and LG do things for the group, and
18 Whirlpool does both. They do things for the group,
19 and occasionally they will do things for an individual
20 retailer.

21 MS. DEFILIPPO: That sounds very confusing.
22 Any other questions? With that, thank you all very
23 much for coming, and we did learn a lot. It has been
24 a lot to digest, and we it is 5:15, and we will break
25 for like five minutes to let panels switch, and

1 discuss what they want to do in closing statements.
2 So, at 5:20, we will start with domestic industry
3 closing statement.

4 (Whereupon, a brief recess was taken.)

5 MS. DEFILIPPO: We will start with closing
6 statements of those in support of the imposition of
7 antidumping and countervailing duties, and Mr.
8 Greenwald, if you would like to speak on it.

9 MR. GREENWALD: Thank you. How long do I
10 have? I promise not to take it all.

11 MS. DEFILIPPO: Thirty seconds? No.

12 MR. GREENWALD: I promise not to take it
13 all.

14 MS. DEFILIPPO: She begrudging says 10
15 minutes.

16 MR. GREENWALD: Well, we won't take 10
17 minutes. What I would like to start off with is a
18 general comment on the perception that Respondents
19 tried to leave you with, which was somehow that
20 Whirlpool is not technologically, or in terms of
21 features, or in terms of quality, quite up to snuff.

22 And I want to do that by reading you a
23 Consumer Report on this case. They listened to LG and
24 Samsung as they, quote, vehemently defended their
25 actions. An LG spokesperson called Whirlpool's

1 allegations outrageous, and then added these fighting
2 words. This is an example of the inability of a
3 domestic manufacturer to keep up technologically.

4 It will be up to the Commerce Department and
5 the U.S. International Trade Commission to determine
6 if Samsung and LG are indeed dumping, and there was
7 very little spoken today about dumping, and if so what
8 duties should be imposed.

9 As for the aspersions cast over Whirlpool's
10 technological chops, Consumer Report's latest
11 refrigerator reviews sheds some light. Our highest
12 rated models among conventional and French Door bottom
13 freezers are both manufactured by Whirlpool.

14 Part of the manufacturer's gold product
15 line, costing \$1,200 and \$1,700, respectively, these
16 bottom freezers deliver excellent temperature
17 performance, and energy efficiency, point to
18 Whirlpool.

19 Now let me go a step back and talk a little
20 bit about the contours of this case and where we are.
21 We came to you with a petition that said bottom mounts
22 are a distinct like product, and imports from Mexico,
23 and Korea, can be and should be accumulated.

24 Whirlpool is injured materially, and the
25 rise in subject imports is beyond dispute, and because

1 there are only two volume suppliers in the market, it
2 has come at Whirlpool's expense. Now, let me tell you
3 where we are on those central points after today's
4 oral argument.

5 We agree on the like product definition in
6 this case. That is no longer an issue. We agree on
7 cumulation. That is no longer an issue. You did not
8 hear one word today that disputed the proposition
9 either that the imports, the subject imports have
10 increased dramatically, or that their market share
11 gains have come at Whirlpool's expense.

12 And you did not hear any serious contention,
13 other than what are frankly peripheral issues raised
14 by counsel for Samsung, that there is not material
15 injury in this case. The whole argument, essentially
16 what Respondents have rested their entire case on, are
17 the proposition that non-price factors dictate success
18 or failure, and that feature differences don't much
19 matter, and that pricing doesn't much matter.

20 Now, as long as I have been here, I have
21 never seen a case where a purchaser buys something for
22 something other than price. I have never been
23 involved in a case where there is barter, and I have
24 never been involved in a case where one of the lawyers
25 has somehow managed to get a refrigerator for the

1 office for the offer of services.

2 It always comes down to price. There are no
3 factors, none, zero, that are ever independent of
4 price when you are buying goods at a price. So the
5 question before you is, first, does price matter, and
6 when you read the transcript, what you will find --
7 and not from the lawyers, because they are sort of
8 more careful in how they articulate, and I think a
9 little more cavalier with the truth.

10 But certainly from the -- well, the business
11 guys who were here, they say, yes, indeed, price
12 matters. Some talked about a \$40 difference, and a
13 hundred dollar difference, and those differences not
14 only matter to the consumer, but when you look at it -
15 - and I think it goes back to a point that I think Ms.
16 Leary correctly noted, that when you look at price
17 comparisons, features matter.

18 In fact, you could not listen to the
19 testimony from Samsung's business representative here
20 and come away with the conclusion that storage
21 capacity, or even twin cooling, whatever he may say
22 the cost is to him, you cannot come away from this
23 with the proposition that that is irrelevant to what
24 is produced and what is sold in this market.

25 I think it was Mr. Cunningham who had a sort

1 of features-smeatures approach to what you see before
2 you, and what I would urge him to do, and that I would
3 urge all of you to do, is to look carefully at the
4 Samsung product lineup, and look at differences, and
5 look at how they price differences.

6 A difference of a couple of cubic feet,
7 which in response to Ms. Leary's question, was sort of
8 brushed aside, in fact carries a \$300 price tag in
9 Samsung's own lineup. So beyond the claim that
10 features didn't matter, they then rested what was left
11 of the case on the proposition that it was Whirlpool
12 that somehow is driving prices down.

13 When we got into the price depression in the
14 four-door segment, the allegation somehow was that
15 Whirlpool was driving down the prices of a larger
16 Samsung model, when the evidence is that Samsung
17 reduced its price as Whirlpool introduced its product
18 into the market.

19 We will rest our case not on aggregate data,
20 which are frankly meaningless. One of the points I
21 think that Mr. Bitzer said to you, and it is just
22 fundamentally true, is that average pricing data in
23 this market with this product, with so many feature
24 differences, are worse than meaningless. They are
25 misleading.

1 You have collected data on the prices at
2 which manufacturers sell to retailers for very
3 specific models, and even within that there are some
4 feature differences, and we will describe those.

5 But I think that those prices, as opposed to
6 the average meaningless price data that is essentially
7 the foundation of the case the Respondents have
8 presented, will confirm what we have said when we
9 filed our petition, and that is that price matters,
10 and that is that dumping and subsidization in fact
11 drives sales in this business. I think that about
12 covers it, and with that, we will close. Thank you.

13 MS. DEFILIPPO: Thank you very much, Mr.
14 Greenwald. We will now move to the closing statements
15 of those in opposition to the imposition of
16 antidumping and countervailing duties. Mr. Connelly,
17 will you be making this statement?

18 MR. CONNELLY: I will.

19 MS. DEFILIPPO: Excellent. Please proceed
20 when you are ready.

21 MR. CONNELLY: Well, before I start, I have
22 to say to my good friend, John, John, you can't just
23 read the highlighted part of your exhibit. You have
24 to read the sentence that you failed to highlight.

25 The sentence that you failed to highlight

1 says, however, when you look at just French Door
2 bottom freezers, which is where the industry is
3 clearly moving, 5 of the 10 highest rated models are
4 by Samsung or LG, while just two are by Whirlpool.
5 John, why did you leave that out? I think we know.

6 Now, for the reasons that you have heard
7 this afternoon, this case is very different from those
8 that the Commission has considered in recent years,
9 and those differences indicate very serious
10 substantive weaknesses in Whirlpool's claims.

11 First, consider the fact that Whirlpool has
12 filed this case on the most expensive refrigerators
13 now in the market, with import models ranging up to \$3
14 thousand at retail, and this is a far cry from the
15 typical commodity case, in which price is usually the
16 only thing, or the most important thing, that a
17 purchaser considers.

18 The average annual income of a Samsung
19 customer is \$115 thousand. These are not price
20 sensitive people in the way that purchasers of
21 pencils, or ironing boards, or card tables, and chairs
22 are, just to name a few of the other consumer product
23 cases that the Commission has considered.

24 Second, the products that Whirlpool,
25 Samsung, and LG make, and that you heard today, are

1 highly differentiated from each other. Whirlpool and
2 the Respondents agree that a consumer will notice very
3 significant physical differences among the comparable
4 models on a retailers floor.

5 In turn, this means that the consumer most
6 often makes his or her choice based on non-price
7 factors, and there is also no question that Samsung
8 and LG have been the innovators. So they frequently,
9 if not always, have had the first mover advantage over
10 Whirlpool.

11 Third, the consumer electronics business is
12 one of the most thoroughly studied businesses in the
13 United States. The Commission almost never has the
14 type of evidence, particularly at the preliminary
15 stage, concerning purchase motivations that exist here
16 on bottom mount refrigerators.

17 Now, consider the fact that Whirlpool is the
18 world's largest home appliance manufacturer. They
19 undoubtedly possess numerous studies that document why
20 consumers buy either their products, or the products
21 of their competitors. Where are those studies? The
22 inference has to be that Whirlpool concluded that they
23 were not helpful to its case.

24 Fourth, the average selling prices for
25 subject imports almost always higher on the retail

1 floor. This is because as you heard when it comes to
2 styling, design, fit, feel, and finish, the imported
3 products are rated superior to Whirlpool's models.
4 See the Petitioner's exhibit.

5 In fact, we even think Whirlpool implicitly
6 conceded this fact in its petition. We can't recall a
7 case in recent years where this fact pattern existed,
8 and I want to just go back to this capacity issue.

9 It is not a feature. It is not an extra
10 feature. It is how Samsung builds refrigerators. It
11 is just how they do it. It is a characteristic, and
12 not a feature. We also cannot recall a case in which
13 a Petitioner felt compelled to ask the Commission to
14 compare the prices of non-similar models, or even
15 adjust the price from those that were reported in
16 order to somehow generate underselling margins.

17 This request ignores the fact that different
18 consumers attach different values to different
19 features, as well as to the design and styling of the
20 products that he or she considers before making a
21 decision, and we don't know what those values are.

22 And if we took everyone who had sat at the
23 table, or sat in the audience today, and we asked them
24 what it was that caused them to buy a refrigerator, we
25 would get a different answer for every person, and

1 that is why you can't put a single value on anything,
2 because people assign different values to different
3 things, depending on their own personal orientation,
4 and how they look at it.

5 So we think that it would be totally
6 inappropriate for the Staff to make any adjustments or
7 compare dissimilar models in the way that Whirlpool
8 has requested in its petition, and there is certainly
9 no basis to accept the values that Whirlpool has
10 assigned in its exhibit here.

11 That is their view. That is their
12 advocate's view. That has nothing to do with the real
13 world. Where is the real world study about what
14 consumers value? It is not here.

15 Fifth, domestic consumption of bottom mount
16 refrigerators is undeniable. It is growing rapidly.
17 Your typical case here involves a stable or a
18 declining market, where imports take sales away from
19 domestic producers.

20 Here, Samsung and LG virtually created the
21 French Door market, while Whirlpool has been forced to
22 follow, and not very effectively at that. So, unlike
23 the typical case, growing import sales reflect the
24 capture of new customers who are upgrading from their
25 traditional top mount, or side-by-side model.

1 Whirlpool hasn't lost any sales. In fact,
2 you heard that they have had double-digit growth in
3 their French Door models. They haven't had the growth
4 that Samsung and LG have, but they haven't lost
5 customers to Samsung and LG.

6 Sixth, or the sixth difference, that unlike
7 the typical case, a vast amount of pricing data is
8 available to market participants, such as the MPD
9 data, and the Trackline data that you have heard all
10 our witnesses discuss at length today.

11 As I mentioned earlier, consider the fact
12 that Whirlpool after having all this data, and all
13 this analysis, that preceded the following of their
14 petition included in its petition, and spoke today
15 about a grand total of three instances in which they
16 believe that they were the victims of aggressive
17 pricing by Samsung.

18 And none of those allegations has any merit.
19 They are wrong. So, we think that they have had to
20 cherry pick the data, and we think it is misleading,
21 and we will describe why it is misleading in detail.
22 Frankly, there just really is no factual support for
23 pricing claims.

24 We think that the use of average prices is
25 highly relevant. It tells you what is going on, and

1 you heard Mr. Baird describe how in the French Door
2 market at least it does matter, because there isn't
3 that much of a difference in these average prices for
4 these very high-end products.

5 And in talking about cherry picking, let's
6 just remember that there has been no discussion or
7 recognition from Whirlpool here today that prices
8 decline over time. We all know this from buying
9 automobiles.

10 Prices decline over time for models as they
11 age, and as consumers prefer newer models. This is
12 common experience. There is no recognition of this
13 phenomenon in Whirlpool's position. And another
14 example is the Black Friday sales. This is front and
15 center in Whirlpool's petition, although we didn't
16 hear a lot about it today. You're right.

17 We didn't hear a lot about it today. Why
18 not? Well, because Whirlpool engages in very
19 aggressive Black Friday promotions, and we are going
20 to give you some examples in our post-conference brief
21 of how aggressive they are when it comes to Black
22 Friday.

23 Seventh, and finally, we have a petitioner
24 that in our view likely earns at least \$50 million a
25 year during each year of the period of investigation

1 in energy efficiency tax credits. These are Federal
2 subsidies.

3 We cannot recall any case in which a Federal
4 subsidy was granted, and not to mention of this
5 magnitude, on the exact product line that the petition
6 covers. Yet, there is no mention of the significance
7 of this in Whirlpool's petition.

8 But we think that you have got to look at
9 this, and you have to put this in front of the
10 Commission on how much this matters. So, in summary,
11 we know that they have a low burden at the preliminary
12 stage, but all of these differences we think compel a
13 negative determination right now.

14 We ought not be forced to undergo the burden
15 of a Commerce Department investigation based on such a
16 flimsy set of allegations. We think that Whirlpool
17 has a healthy bottom mount refrigerator basis, and
18 once we find out how much that energy tax credit means
19 to them, I think we will be able to show you that, and
20 I think you will reach your own conclusion along the
21 same lines.

22 So we want to thank you for your time and
23 attention today. We want to thank you for all of the
24 efforts that you have made, and will continue to make,
25 and in compiling a record that will allow a complete

1 evaluation. Thank you.

2 MS. DEFILIPPO: Thank you, Mr. Connelly. On
3 behalf of the Commission and the Staff, I would like
4 to thank all the witnesses who came here today, as
5 well as counsel, for helping us gain a better
6 understanding of the product, and the conditions of
7 competition in the bottom mount refrigerator industry.

8 Before concluding let me mention a few dates
9 to keep in mind. The deadline for submission of
10 corrections to the transcript, and for submission of
11 post-conference briefs is Monday, April 25th.

12 If briefs contain business proprietary
13 information, a public version is due on April 26th.
14 The Commission has tentatively scheduled its vote on
15 these investigations for May 13th, and it will report
16 its determinations to the Secretary of the Department
17 of Commerce on May 16th.

18 Commissioner's opinions will be transmitted
19 to the Department of Commerce on May 23rd. Thank you
20 again for coming, and this conference is adjourned.

21 (Whereupon, at 5:12 p.m., the preliminary
22 conference in the above-entitled matter was
23 concluded.)

24 //

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico

INVESTIGATION NOS.: 701-TA-477, 731-TA-1180-1181
(Preliminary)

HEARING DATE: April 20, 2011

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary conference

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

DATE: April 20, 2011

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

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

SIGNED: Carlos E. Gamez
Signature of Proofreader

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

SIGNED: Gabriel Gheorghiu
Signature of Court Reporter