

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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

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1 directed to the Secretary.

2           Speakers are reminded not to refer to  
3 business proprietary information in their remarks or  
4 answers to questions. Please speak clearly into the  
5 microphone and state your name for the record for the  
6 benefit of the court reporter. Finally, if you will  
7 be submitting documents that contain information you  
8 wish classified as business confidential your requests  
9 should comply with Commission Rule 201.6.

10           Mr. Secretary, are there any preliminary  
11 matters?

12           MR. BISHOP: No, Mr. Chairman.

13           CHAIRMAN WILLIAMSON: Very well. Let us  
14 begin with opening remarks.

15           MR. BISHOP: We have a congressional witness  
16 first, the Honorable Sherrod Brown, United States  
17 Senator, Ohio.

18           CHAIRMAN WILLIAMSON: Welcome, Senator  
19 Brown. You were offered to use the washing machine as  
20 the lectern by one of my colleagues, but I'd prefer  
21 that.

22           MR. BROWN: They're very well made. They're  
23 made in America. You know that. Thank you, Mr.  
24 Chairman, members of the Commission. I'd like to  
25 thank you for the opportunity to appear before you

1 this morning in an important case for workers in my  
2 state, for manufacturers and for communities.

3           This case is critical to businesses across  
4 the country that must decide how to keep their doors  
5 open in the face of fierce competition from often  
6 unfairly traded imports. This morning the Commerce  
7 Department reported that the U.S. trade deficit  
8 climbed again, reminding us that while American  
9 exports are slowly growing we continue to face  
10 challenges from unfairly traded imports, particularly  
11 from the People's Republic of China.

12           The case before you today does not involve  
13 China, but it speaks to the larger issue of competing  
14 against unfairly traded imports, particularly in  
15 consumer goods like washers.

16           Before talking about the case, I'd like to  
17 welcome several workers from Whirlpool's Clyde, Ohio,  
18 plant, a community in northwest Ohio not too far from  
19 where I grew up in Mansfield, those workers who make  
20 the washers under consideration today. Too often we  
21 think of trade in the abstract. In reality, trade is  
22 about these workers, about their families, about our  
23 communities. These workers from the Clyde plant know  
24 that. They traveled more than 10 hours on a bus to be  
25 here today.

1           My colleagues from the Ohio delegation and I  
2 have received more than 16,000 letters from Whirlpool  
3 employees and their families and neighbors reminding  
4 us of how important these jobs are and how important  
5 the success of the Clyde plant is to them. A proud  
6 Whirlpool worker from Ottawa, Ohio, sent a letter to  
7 me explaining, "The behavior of these foreign  
8 companies threatens my job and threatens the jobs of  
9 my 10,000 colleagues in Ohio. Our communities are  
10 adversely affected when our families' economic  
11 security is at stake."

12           He isn't asking for a handout. He just  
13 wants "other companies to play by the rules". He's  
14 absolutely right. That's why you and we need to get  
15 this right and support manufacturers from trade  
16 partners who cheat. This is not a partisan issue. My  
17 colleague, Senator Portman, and Representative Pat  
18 Tiberi from Columbus have also submitted written  
19 testimony today.

20           Representative Tiberi and I both serve on  
21 the President's Export Council where we've been  
22 working to increase our exports. I was at one of  
23 their meetings today talking about Russia PNTR -- or  
24 this last week, excuse me, talking about Russia PNTR  
25 -- talking about exports, especially working with

1 small businesses. Senator Portman and I have worked  
2 together on a number of trade enforcement issues,  
3 including a letter we sent yesterday to the Commerce  
4 Department on tubular steel made in Ohio.

5           Again, trade enforcement, defending American  
6 companies and workers are not partisan issues.  
7 Rigorous enforcement of U.S. trade laws is critical to  
8 the viability of domestic manufacturing and the  
9 economic security of our workers. Simply put, we have  
10 an industry that's been struggling for more than five  
11 years to compete in the face of a flood of dumped and  
12 subsidized washers from Korea and Mexico.

13           As you know, two of the companies making  
14 washers in this country have already closed their  
15 doors and let their workers go. Two others, Whirlpool  
16 and GE, have decided to stay in America and join the  
17 battle. They've invested more than \$250 million to  
18 build modern, efficient, competitive manufacturing  
19 facilities for washers here in the United States.

20           Let me tell you why these companies are  
21 important to Ohio, as there are some 10,000 Ohioans  
22 currently working for Whirlpool. In 2008, Whirlpool  
23 made the decision to make substantial investments in  
24 the Clyde facility, a facility I have visited and seen  
25 with my own eyes the efficiency and the productivity

1 of those workers in that plant. It has significantly  
2 increased the plant's capacity and secured more than  
3 500 jobs on new manufacturing lines.

4           This was welcome news, and Whirlpool's  
5 commitment to Ohio is part of what I hope will become  
6 a growing trend of companies willing to move  
7 production back to the United States, repatriating  
8 jobs to this country. I toured the state-of-the-art  
9 plant in Clyde, as I said, and met many of the women  
10 and men who produce these consumer award-winning  
11 Whirlpool washers.

12           The company has been recognized by *Fortune*  
13 and *Forbes* and *Newsweek* and *Corporate Responsibility*  
14 and others for its innovation and its leadership.  
15 Whirlpool workers in Ohio are asking for nothing more  
16 than to be given the opportunity to compete against  
17 fairly traded -- fairly traded -- imports.

18           Unfairly traded washers imported from Korea  
19 and Mexico harm American workers and these companies.  
20 I know that neither the workers here from Clyde nor  
21 Whirlpool nor GE are afraid of foreign competition.  
22 Americans will compete with anyone who plays by the  
23 rules. Yet when production of these washers is  
24 unfairly subsidized and dumped on the U.S.  
25 marketplace, U.S. companies and workers are harmed.

1           These unfairly traded imports cause market  
2     distorting losses that undermine businesses that have  
3     remained here. Repatriation, which we must encourage  
4     if we're to grow our manufacturing sector, means  
5     increased U.S. production and a decrease in imports.  
6     Unfair trade actions can persist or even accelerate in  
7     the face of repatriation of manufacturing.

8           In fact, as the business case for making  
9     products in the U.S. continues to grow, the impetus by  
10    others to engage in unfair trade only increases.  
11    Congress would not have written trade laws or intended  
12    that they be applied in a manner that would discourage  
13    American companies from bringing their production and  
14    their jobs home.

15           Thank you again for the opportunity to speak  
16    in front of the International Trade Commission, Mr.  
17    Chairman. I appreciate it.

18           CHAIRMAN WILLIAMSON: Thank you, Senator  
19    Brown. Are there any questions for the Senator?

20           (No response.)

21           CHAIRMAN WILLIAMSON: Okay. Well, thank  
22    you.

23           MR. BROWN: Thank you very much.

24           CHAIRMAN WILLIAMSON: You're always welcome  
25    here.

1 We'll begin with opening remarks.

2 MR. BISHOP: Opening remarks on behalf of  
3 Petitioner will be by John D. Greenwald, Cassidy Levy  
4 Kent.

5 CHAIRMAN WILLIAMSON: Welcome, Mr.  
6 Greenwald.

7 MR. GREENWALD: Good morning, Chairman  
8 Williamson, Commissioners. It's a pleasure to be here  
9 again.

10 Let me get right to the point. This case is  
11 about an assault by dumped imports, principally by  
12 Samsung and LG, on the high end of the U.S. washer  
13 business. This is precisely the segment of the  
14 broader washer market that the U.S. industry depends  
15 on for the margins it needs to maintain and support  
16 product innovation and, frankly, the margins it needs  
17 to carry the business as a whole.

18 The record of this final phase investigation  
19 is very well captured in a very thorough and very  
20 comprehensive staff report. That staff report paints  
21 a clear picture of a domestic industry that has been  
22 injured by dumped and subsidized imports. The record  
23 shows that however you choose to define the like  
24 product, and let me be very clear, there will be  
25 allegations of gerrymandering of the scope. We

1 changed the scope of the investigation to focus on  
2 where the imports are, not where they're not.

3           But however you choose to define the scope,  
4 and the choice is yours, what you will find is the  
5 injury caused and directly related to these imports is  
6 unquestionably material. Specifically the record  
7 shows that, first, the volume and rise in volume of  
8 the imports is significant both absolutely and  
9 relative to U.S. production and consumption over the  
10 period of investigation.

11           Second, that imports have captured  
12 substantial market share at the direct expense of the  
13 domestic industry where imports and the domestic like  
14 product compete most directly and that they have  
15 driven two U.S. manufacturers out of the business.

16           Third, that imports have systematically,  
17 pervasively and significantly undercut the prices of  
18 domestic products and have significantly depressed and  
19 suppressed U.S. producer prices, which has contributed  
20 to a cost/price squeeze that has destroyed the bottom  
21 line of this industry.

22           Fourth, the pricing of imports at the high  
23 end has suppressed prices up and down the washer  
24 product line.

25           And, fifth, that while prices rose for the



1 first time during the period of investigation in 2012,  
2 the rise only occurred after this case was brought  
3 and, even so, the rise in prices has not been enough  
4 to allow the industry to earn the return on investment  
5 it needs to reinvest in product design and  
6 development.

7           Once again, the focus has been on the high  
8 end of the market, and it has destroyed the entire  
9 economics of the business. The Respondents have no  
10 substantive answer to any of this. Instead, their  
11 case is essentially, one, that we gerrymandered  
12 somehow the scope by focusing on where the imports are  
13 and not where they're not.

14           Two, they make an attack that is not only  
15 unfounded, but deeply offensive on the integrity of  
16 Whirlpool's data. Third, they try mightily to rewrite  
17 large sections of the staff report. And, fourth, they  
18 want to relitigate the Whirlpool case. I'm sorry.  
19 Relitigate the Refrigerators case.

20           Let me respond to each of these. First, the  
21 Whirlpool data have been verified in an intensive  
22 three-day verification. As a company, Whirlpool does  
23 not permit anybody that works for it or its counsel to  
24 provide data that are in any way misleading.

25           Second, the evidence on the record now

1 includes comprehensive pricing data which was not  
2 available at the preliminary, as well as comprehensive  
3 responses to questionnaires from purchasers. That  
4 evidence cannot be ignored. And as much as Samsung  
5 and LG want this to be a relitigation of the  
6 Refrigerators case, the product, the conditions of  
7 competition and the record evidence are very, very  
8 different.

9           We ask only one thing of you and that is  
10 that you base your decision on an objective review of  
11 the facts of this case. In the LRW market,  
12 competition among suppliers for sales to retailers  
13 shapes the prices that the manufacturers offer and the  
14 volumes that they sell. Samsung and LG have already  
15 forced Bosch to close its plant and abandon the U.S.  
16 market, and they have forced Electrolux to move to  
17 Mexico.

18           There are two remaining large U.S.  
19 producers; that is Whirlpool and GE. Each of them  
20 have invested hundreds of millions of dollars in  
21 state-of-the-art plants to produce state-of-the-art  
22 domestic washers with first rate workers. Competition  
23 in the U.S. market --

24           CHAIRMAN WILLIAMSON: Mr. Greenwald, your  
25 time.

1 MR. GREENWALD: All right. Let me just --  
2 one minute. Less than that.

3 Competition in the U.S. market has now been  
4 reduced to subject imports and the domestic like  
5 product. Basic economics teaches that that  
6 competition shapes market prices. Thank you.

7 CHAIRMAN WILLIAMSON: Thank you.

8 MR. BISHOP: Opening remarks on behalf of  
9 Respondents will be by Warren E. Connelly, Akin Gump  
10 Strauss Hauer & Feld.

11 CHAIRMAN WILLIAMSON: Welcome, Mr. Connelly.

12 MR. CONNELLY: Good morning. As you listen  
13 to the testimony today, we ask you to consider the  
14 following issues:

15 First, you have before you an illustration  
16 of the effect of Whirlpool's new like product  
17 definition, but is it logical to exclude the enormous  
18 volumes of under 3.7 cubic foot top-load models that  
19 Whirlpool and GE sold when both Whirlpool and the  
20 Respondents sold identical and nearly identical  
21 front- load units? To advocate this definition,  
22 Whirlpool had to jettison everything that it  
23 previously said about the nature of competition and  
24 the extent of cross shopping.

25 Second, this little box represents one-tenth

1 of a cubic foot of capacity. Maybe you could get a  
2 t-shirt and a pair of socks into this box. Is that a  
3 sufficient physical difference to find a clear  
4 dividing line? Whirlpool drew this line in order to  
5 hide the domestic industry's actual performance.  
6 Every analysis of data in Whirlpool's brief employs  
7 the wrong like product definition. It is completely  
8 disingenuous.

9           Third, Whirlpool insists that its aggressive  
10 promotions of its small capacity top-load models had  
11 no adverse effect on anybody. That assertion is  
12 simply not credible, given Whirlpool's claim that  
13 aggressive pricing and promotions on any product  
14 influence products along the entire continuum.

15           Fourth, if the instances of underselling and  
16 the margins of underselling are as significant as  
17 Whirlpool claims, then how could Whirlpool and GE have  
18 sold far more high efficiency models than all three  
19 Respondents combined? These substantial domestic  
20 industry sales mean that factors other than price must  
21 have influenced retailer and consumer behavior.

22           Fifth, three buying groups have submitted  
23 what they claim are impartial statements that stress  
24 how important price is to the consumer. These  
25 statements have identical themes, and they reach

1 identical conclusions. Buy why didn't any of these  
2 groups describe the specific discounts and rebates  
3 that Whirlpool provided directly to them and to their  
4 members? We submit that that is no coincidence.

5           Sixth, Whirlpool has asserted that the  
6 Respondents have added more features to their models  
7 at every price point. This is their old feature  
8 dumping argument. You rejected it in the  
9 Refrigerators case, and it is no more persuasive here.  
10 What really happened is that Whirlpool tried to push  
11 its Alpha front-load models into the market at much  
12 lower prices than were being charged at the time.  
13 When they didn't sell, it had to promote them.  
14 Subject imports were not responsible for those  
15 business judgments.

16           Seventh, is it possible that Whirlpool's  
17 price and promotion strategy both before and after it  
18 filed its petition was litigation driven? Whirlpool  
19 clearly held off on discounting in the fourth quarter  
20 of 2011 just before filing its petition in order not  
21 to undercut its legal position. And concerning the  
22 price increase that it unsuccessfully attempted to  
23 push through in May of this year, how much more could  
24 it expect its customers to absorb in a very difficult  
25 economy?

1 Eighth, is it credible for Whirlpool to  
2 claim that hundreds of millions of dollars that it  
3 received in tax credit subsidies didn't affect any of  
4 its business decisions or its investment strategy or  
5 its financial outlook?

6 Ninth, what did the enormous investments  
7 that GE and Whirlpool made tell you about their view  
8 of the market and their confidence in their ability to  
9 compete in it? GE is doing very well, and that just  
10 might be Whirlpool's real problem.

11 Finally, why would Whirlpool oppose a visit  
12 to a Home Depot store? Why didn't they want you to  
13 hear from Mr. Baird on that visit? And I suspect they  
14 probably didn't want you to hear from Mr. Baird today.

15 So when Whirlpool presents its witnesses,  
16 please remember that these same people tried to  
17 prevent you from hearing from a person with  
18 unquestioned knowledge and expertise. That tells you  
19 all you need to know about Whirlpool's credibility.  
20 Thank you.

21 CHAIRMAN WILLIAMSON: Thank you.

22 MR. BISHOP: Would the first panel, those in  
23 support of the imposition of antidumping and  
24 countervailing duty orders, please come forward and be  
25 seated? Mr. Chairman, all witnesses have been sworn.

1 (Witnesses sworn.)

2 CHAIRMAN WILLIAMSON: Okay. Thank you. Mr.  
3 Greenwald, you may begin when you're ready.

4 MR. GREENWALD: We will begin with Mr.  
5 Fettig, Chairman and CEO of Whirlpool.

6 MR. FETTIG: Good morning, Commissioners.  
7 My name is Jeff Fettig. I'm Chairman and CEO of  
8 Whirlpool Corporation, and I've been with Whirlpool  
9 for 32 years in the washing machine business. I'm  
10 appearing here today to discuss with you our U.S.  
11 washing machine business and the critical and serious  
12 problem that we have due to dumped prices by LG and  
13 Samsung.

14 Our company is 101 years old. We've been  
15 making washing machines in the U.S. for 101 years. It  
16 is the heart of our U.S. business. History shows for  
17 most of this period of time, including now, we've been  
18 the very best at this, and we continue to be the best  
19 washing machine producer and manufacturer in the world  
20 in Clyde, Ohio.

21 So I'd like to thank you for your attention  
22 to the critical issue of fair trade, of having a level  
23 playing field, of having all participants abide by the  
24 law of this country. It's critical to our company,  
25 it's critical to the 22,000 U.S. employees that we

1 have, and I would argue it's critical to the future of  
2 American manufacturing and jobs.

3           Before I get into some of my specific  
4 remarks, I must say I feel I must respond to some of  
5 the allegations made by Respondents. I've been in  
6 this business a long time, and if you ask people who  
7 work with Whirlpool, for Whirlpool or do business with  
8 Whirlpool no one -- no one -- would describe it the  
9 way Respondents did.

10           Whirlpool has not manipulated data in any of  
11 this investigation. I personally have the  
12 responsibility at this company to set the right tone  
13 at the top, as does every senior leader in our  
14 company. Ethics are a core value of Whirlpool. We  
15 were started as a family-owned business. We live by  
16 that culture.

17           We have a motto. When I walked in the doors  
18 at Whirlpool 32 years ago one of the first things I  
19 heard the first day was at Whirlpool there is no right  
20 way to do the wrong thing, and that's the ethics that  
21 we live by. So let me say without question Whirlpool  
22 has reported its data completely, truthfully and  
23 accurately.

24           We had key members of our finance team who  
25 spent hundreds of hours -- hundreds -- completing the



1 data required in the questionnaire. We fully  
2 cooperated with your auditor and spent three days in  
3 our offices verifying this data. As I understand it,  
4 all this data -- all of it -- has been verified. As  
5 CEO of this company, it's just inconceivable that  
6 anyone would suggest that we're trying to mislead the  
7 U.S. Government in anything, let alone an  
8 investigation. This simply is not the truth.

9           Let me talk about the comments that the  
10 Respondents made on scope. The scope change since the  
11 preliminary determination was an extraordinarily  
12 difficult decision for us. Why? Because subject  
13 import pricing has had a terrible effect on our entire  
14 washing machine business. Obviously narrowing the  
15 scope made part of our washing machine business  
16 extraordinarily vulnerable.

17           Nevertheless, after reading the ITC's  
18 preliminary determination and taking all the inputs  
19 into consideration, we concluded it was most important  
20 to focus the case in the areas of the market where  
21 imports exist, apples to apples. Specifically, we  
22 asked the Commerce Department to narrow the scope to  
23 exclude top-load washers less than 3.7 cubic feet  
24 simply because there are no imports of those sizes.

25           So let me say Whirlpool is not being

1 deceptive. We're not trying to. We're absolutely  
2 presenting apples to apples facts. And now that the  
3 scope has been narrowed, I think the data that you  
4 have should give you a crystal clear picture of what  
5 is happening in the key areas of the market where we  
6 compete directly with both Korean and Mexican imports.

7 I'd also like to make it very clear, and I  
8 think the record speaks for itself. Whirlpool  
9 produces great products. High quality, innovative  
10 washing machines, all the major features, all the  
11 latest designs. In fact, I'd like to show you  
12 Exhibit 1 here on the board, which is during the  
13 period of investigation. This was for 2011.

14 Our front-load washing machines were rated  
15 number one, number two, number three, number four and  
16 number five in *Consumer Reports* -- a clean sweep --  
17 along with our top-rated top load LRWs, occupied most  
18 of the top ratings along with our other Whirlpool top-  
19 loaders. In 101 years, we have never had more  
20 comprehensive, better ratings in the leading third  
21 party endorsement than we had in *Consumer Reports*  
22 indicating we have outstanding products.

23 In my view, subject imports' real innovation  
24 in the U.S. marketplace is not about product. It's  
25 been to radically reduce prices well below any

1 possible economic level in order to sell their washing  
2 machines. Due to this, they've grown substantial  
3 volume and market share and completely compressed the  
4 margins and the profitability of all the domestic  
5 manufacturers.

6           Let me speak to nonprice factors. The idea  
7 that other nonprice factors determine the sales simply  
8 does not hold water when you look at the facts. Think  
9 about this. If subject imports are so good, why do  
10 they radically and consistently lower their prices?  
11 If you're good, you usually should charge a higher  
12 price, not a lower price.

13           But every time they are reducing their  
14 prices to the wholesalers, who determine what gets put  
15 on the floor. And that's because there's only one  
16 answer, and that is that price does matter, and that  
17 is their main point of differentiation in a market  
18 where everyone has competitive design, technology and  
19 aesthetics.

20           As mentioned in the opening brief, Whirlpool  
21 is now only one of two major domestic producers left.  
22 The predatory and price practices have caused  
23 tremendous harm economically and financially to all  
24 domestic manufacturers. As you'll hear later and you  
25 can see in the briefs, two producers have already

1 completely left the marketplace. No longer can they  
2 compete. Only Whirlpool and GE stayed and continue to  
3 invest, but subject import pricing has driven our  
4 business economics to loss-making levels and frankly  
5 unsustainable levels.

6           Over the last few years, we invested over  
7 \$300 million in our washing machine business to  
8 continue building the best washers in the world in  
9 Clyde, Ohio, the best and most competitive factory in  
10 the world in Clyde, Ohio. We think we have the best  
11 employees in the washing machine business in Clyde,  
12 Ohio, and if you look at the back of the room we have  
13 almost 60 of our employees here today who rode 10  
14 hours on a bus just to show their support of fair  
15 trade in this country and how important this is to  
16 Whirlpool.

17           We've also repatriated jobs back to the  
18 U.S., to Clyde, Ohio, by moving all of our front-load  
19 washing production for the U.S. market from Europe and  
20 Mexico back into the U.S. As of July of this year,  
21 all of our washing machines, including all of our  
22 LRWs, are made in the United States.

23           Whirlpool is in fact being injured greatly  
24 by import pricing. When you look at the financial  
25 performance of the LRW business both in front-load and

1 in top-load, you can see we're losing a significant  
2 amount of money in a business which is the heart of  
3 our U.S. business. As I explained and I'll show, the  
4 root cause of this problem is clearly driven by  
5 pricing actions by LG and Samsung. I'll provide you  
6 with very specific examples of how imports have  
7 impacted both our volume and margins. And there are  
8 many.

9           Let me now turn to Exhibit 2. These are the  
10 three washer platforms that we have in our U.S.  
11 production. The first is Alpha, which is the large  
12 front-loads; the second is Oasis, which is the greater  
13 than 3.7 cubic feet, large top-load HE; and the third  
14 is our VMW, our smaller top-load below 3.7 feet and  
15 now not in the scope.

16           Let me start with the middle one, the  
17 top-load segment HE. Commissioners, we invented this  
18 segment of the marketplace. We invented it by  
19 investing over \$100 million for bringing this great  
20 new product to the marketplace. In 2009, we had 100  
21 percent of this segment of the market, and we were  
22 having tremendous growth and good margins justifying  
23 the investment that we made of over \$100 million.

24           LG followed and entered the market in 2010,  
25 and Samsung was late, but followed in 2011. By the

1 end of 2011, our market share in this segment had  
2 decreased to below 50 percent. But listen to this.  
3 Our operating income in this segment in 2009 and 2010  
4 was \$42 million, appropriate for the kind of  
5 investment that we made. We had an operating loss in  
6 2011 to the first half of 2012 of \$10 million.  
7 \$42 million profit to \$10 million loss. This is an  
8 incredible change in market dynamics.

9           But let me be even more specific in turning  
10 to Exhibit 3. In May 2011, Samsung entered the market  
11 with their first white HE top-loader -- you can see  
12 it; it's Product D back here at the end -- which  
13 retailed, according to independent data, NPD data, at  
14 \$856 in the marketplace in May of 2011.

15           By September, three months later -- three  
16 months after they introduced a brand new model --  
17 Samsung began aggressively discounting this product to  
18 gain market share. They were buying market share.  
19 This model three months later was retailing at \$657, a  
20 drop of \$200, 23 percent in three months. And  
21 according to our market intelligence, the wholesale  
22 price for this product was around \$440 at the  
23 wholesale level, which is where we compete.

24           Our identical product, Product C, which was  
25 doing fantastic in the marketplace, was being sold to

1 retailers in the same month at \$609, \$169 difference.  
2 In the washing machine business, that is impossible,  
3 other than selling below economic cost. There's no  
4 way we could compete with this, and of course we lost  
5 sales and our margins were destroyed by that.

6 I think it's one of many examples where  
7 Samsung's assault on the market was solely fueled by  
8 predatory price cutting. Never in my 31 years in the  
9 washing machine business have I seen more value  
10 destruction of such magnitude in such a short period  
11 of time than what has happened during this period of  
12 inquiry.

13 Let me turn to Exhibit 4, the front-load  
14 segment. Prior to the period of investigation, we  
15 decided to invest in a new, first-in-class, large  
16 front-load washing platform. We invested \$100 million  
17 in engineering capital to bring the absolute latest  
18 and best technology and innovation to the marketplace.  
19 We also decided to produce it in Clyde, Ohio, because  
20 it's the most efficient factory in the world for  
21 washing machines.

22 And based on very realistic business  
23 assumptions about market pricing at the time, we knew  
24 the platform would be profitable if we delivered a  
25 winning product. And, boy, we sure did. We launched

1 this product in Q4 of 2010. As soon as we brought it  
2 to the marketplace it was rated. From a product  
3 perspective, these new products were number one,  
4 number two, number three, number four and number five  
5 in *Consumer Reports*. No one has ever been able to do  
6 anything like that.

7           From a cost perspective, we met every cost  
8 goal, every quality goal, but from a pricing  
9 perspective the launch was a complete disaster because  
10 between the short time where we decided to invest and  
11 the time that we brought it to the marketplace, LG and  
12 Samsung had so dramatically driven marketplace prices  
13 down in this segment that the feedback that we got  
14 from our wholesalers, the retailers, told us that we  
15 love your product, but if you don't lower your prices  
16 we won't even put it on the floor. We won't even show  
17 it to consumers.

18           So we had to choose between lowering prices  
19 to unprofitable levels or failing to even get the  
20 opportunity to sell these products to the consumers,  
21 which both resulted in lost sales. We saw both price  
22 deterioration and lost sales. We had 500,000 units of  
23 capacity for Alpha. We never exceeded 50 percent of  
24 production.

25           The result has been an operating loss of



1 over \$61 million on a \$100 million investment during  
2 this period of investigation, all due to marketplace  
3 pricing of subject imports. When you look at the  
4 data, you'll see this product has never been  
5 profitable since it's been launched.

6           Let me turn to Exhibit 5. This kind of  
7 price pressure has caused a tremendous cost/price  
8 squeeze. Our costs were rising in 2011 for a number  
9 of reasons. One, reduced capacity due to lost volume,  
10 as I mentioned earlier, but, two, raw material prices.  
11 They were increasing for everyone all around the  
12 world. The price of oil, the price of steel, the  
13 price of copper, the price of resins. Everyone in the  
14 world had higher raw material costs, and of course the  
15 cost of adding new features to new models to stay  
16 competitive in the marketplace. That cost money.

17           To be clear, we had great performance at a  
18 manufacturing level. And as the chart shows, we could  
19 not raise prices in 2011 to even cover our increased  
20 cost. And the reason was because of cut-rate pricing  
21 again from Samsung and LG. So we lost volume due to  
22 these uneconomic prices in the marketplace.

23           The next point I'd like to make is that this  
24 does impact the entire washer business. We offer a  
25 full line of washers which will appeal to almost all

1 consumers in the marketplace from the very low end  
2 segments of the market to the very high end of the  
3 market. In the low end, you offer less product at  
4 less cost, but try to reach a lower affordability  
5 level. At the high end you generally offer high  
6 capacities, more features, more innovation, and of  
7 course it costs more.

8           When prices are depressed or suppressed at  
9 the high end of the market, which is where LG and  
10 Samsung have focused their assault on price  
11 reductions, the price effect ripples all the way down  
12 the line. If I start at \$1,000 and it's pushed down  
13 to \$800 or \$700, it's going to push down everything  
14 below it. And that's how business works and that's  
15 how retail works.

16           The fact that Samsung and LG have targeted  
17 the high end of the business has been devastating for  
18 us by wiping out all the margins at the high end  
19 because that's where most manufacturers would  
20 typically make more profit. As you move up-mix in the  
21 line, if I sell something at a higher value I should  
22 have a higher margin or a higher dollar amount for  
23 that. In this case, that doesn't exist.

24           In this segment of the market, and I would  
25 argue almost for the entire washer market, the

1 economics of the business have been destroyed during  
2 the period of investigation, and the viability of the  
3 overall washer business depends heavily on our ability  
4 to have healthy margins from the mid to the high end  
5 of the line in order to mix up, to earn margins, to  
6 reinvest in the business. That no longer exists.

7           So in closing, I'd like to refer back to  
8 Exhibit 1 and look at the outstanding, beautiful  
9 product that we had in 2011 in the marketplace. I  
10 believe there's absolutely no way to conclude -- no  
11 way at all to conclude -- that there's attenuated  
12 competition in this marketplace.

13           During the period of investigation, our  
14 products have been most highly ranked by the leading  
15 and third party *Consumer Reports*. We have beautiful,  
16 high quality products with competitive features with  
17 outstanding wash performance. We compete head-to-head  
18 with subject imports every day on the basis of price.  
19 Subject imports are the only other major source of  
20 LRWs in the market. There are no others.

21           Now that you look at what's happened -- raw  
22 material costs have gone up, prices have gone down  
23 radically, and you have to ask yourself why would I or  
24 anyone choose to sell washers at unprofitable price  
25 levels. We wouldn't unless there was incredible

1 competitive pressures by subject imports driving  
2 prices down. That's the only rational answer that  
3 there could be.

4           So I hope you will study carefully the  
5 factual record that subject import pricing is the  
6 problem and has caused serious, serious injury not  
7 only to Whirlpool, but the entire domestic  
8 manufacturing business of washing machines. LG and  
9 Samsung are preventing us from raising prices to a  
10 level to even allow us to cover cost, let alone  
11 justifying an investment in America, and it's costing  
12 jobs.

13           So at this point in time I'd like to  
14 conclude and hand off to Sam Abdelnour, who will talk  
15 about retail dynamics.

16           MR. ABDELNOUR: Thank you, Jeff, and good  
17 morning, Commissioners. My name is Sam Abdelnour, and  
18 I'm the Vice President of Sales for our North American  
19 business.

20           I've also been a Whirlpool employee for  
21 almost 35 years, and for most of that time I've worked  
22 with our customers, the retailers. This includes  
23 retailers like Sears and Lowe's, Best Buy, the Home  
24 Depot, h.h.gregg and the smaller independents that  
25 comprise these buying groups by the names of

1 Nationwide, BrandSource, MEGA and NATM and, as I  
2 understand it, all of whom provided statements.

3 I'd like to make a couple of notable points  
4 over the last few years. First, I believe we have the  
5 best washers we've ever made. Looking at this  
6 exhibit, you can see we have, as Jeff pointed out, the  
7 top rated washers in *Consumer Reports*, all the major  
8 features, key innovations and important market firsts  
9 that you'll hear about later on. We brought some  
10 products with us today, and I hope you'll take the  
11 opportunity at a break or maybe during the Q&A to get  
12 up and let us have the opportunity to show you the  
13 product.

14 Second, while price has always been  
15 important, we've experienced the most intense price  
16 pressure I've ever seen, so intense that several of  
17 our top-of-the-line Alpha products that appear on the  
18 chart and Oasis top-load products have never made it  
19 to the retail selling floor. This is because LG and  
20 Samsung have driven prices down and caused us to lose  
21 money on the best washers we've ever made from the  
22 most efficient factory in the world in Clyde, Ohio.

23 Jeff mentioned our colleagues and employees  
24 in the back of the room. The one thing he didn't say  
25 is those folks competed in a contest to be here today.

1 They had to write a document, if you will, about why  
2 invest in America, and from thousands of those written  
3 proposals these winners were selected based on the  
4 effort they wrote up to travel here 10 hours to be  
5 here for you all to see how important this is, not  
6 only to Whirlpool Corporation, but to each of those  
7 folks in the back of the room.

8           Despite our strengths, our large residential  
9 washer business has not turned a profit in any quarter  
10 of the period of investigation. To understand why,  
11 you have to look at this from the perspective of my  
12 customers, the retailers. They are guided by their  
13 number one objective, to earn a profit.

14           Their profit is a function of both margin  
15 and turns. Retailers try to floor a range of washers  
16 at different price points to serve different customers  
17 with different pocketbooks. Domestic and import  
18 manufacturers offer models adding richer features at  
19 each price point up what we call the model line.  
20 There are no meaningful differences between domestic  
21 and import products, so the major point of competition  
22 is price.

23           Retailers own limited floor spots, and they  
24 award those to products that offer the best profit  
25 margins based on the lowest wholesale first cost and

1 the highest promotional support they can negotiate.  
2 So when you walk into a retail sales floor what you're  
3 seeing is the result of intense price competition  
4 between manufacturers to win very few and very  
5 precious floor spots.

6           Once a manufacturer wins a floor spot, price  
7 competition continues for things like promotional and  
8 advertising support, preferred display areas and  
9 specifically the coveted end caps. Big box retailers  
10 are especially aggressive. Every time I announce a  
11 price increase they take us to a line review, which  
12 means I have to rebid the entire line against other  
13 producers in order to maintain those floor spots.

14           They control a high outlet share, they drive  
15 a very high amount of volume, and they consistently  
16 pressure us, the suppliers, to lower prices, and the  
17 most powerful tool they have today is now the pricing  
18 from LG and Samsung. Every day they play us off of  
19 each other, specifically LG and Samsung, forcing us to  
20 meet very aggressive competition.

21           Now turning to the next exhibit, let me show  
22 you some examples of how important price and the  
23 business dynamics are I just described. If you look  
24 at this exhibit, the top left corner, that's  
25 BrandsMart USA. You may not recognize that name.

1 They are a retailer that started in south Florida.  
2 They've got about 11 stores. Each one of those stores  
3 does about ten times or more business than any Sears  
4 or Lowe's or Depot store does in the marketplace, so  
5 they're small, but huge in the amount of volume they  
6 drive through these showrooms.

7 I've known this particular buyer, Randy  
8 Johnson, for 25 years, and what you see up there is  
9 his business card. What's interesting is on the back  
10 of every business card he gives out it says:  
11 Remember, there is no such thing as a bad product,  
12 just a bad price. That sign is also in his office, and  
13 when you're in there negotiating with him he'll point  
14 to that sign continuously throughout the negotiation.

15 You'll also see emails on here from a couple  
16 of our big box retailers. I'll point out the one on  
17 the bottom, Lowe's. "I've only got one open floor  
18 spot that I can do something, so the best fully  
19 supported offer wins." That's just an indication of  
20 what we deal with every time we try to take pricing in  
21 the marketplace, and that competition has gotten so  
22 much more aggressive in the last couple of years as  
23 Samsung and LG have come into the market.

24 There are some very big contracts to supply  
25 Sears and under its private label, Kenmore. Kenmore



1 is very important because there they are a three-year  
2 contract to supply a substantial share of the market.  
3 We, Whirlpool, have been doing business with Sears  
4 for more than a hundred years. They were actually our  
5 first customer, and we know better than anyone how  
6 they operate to get the best deal and the lowest  
7 price.

8           For Kenmore products Sears provides detailed  
9 product specifications, so all manufacturers compete  
10 head-to-head. When choosing among bidders, they look  
11 for the lowest price, which they call first cost,  
12 among producers with identical features that they  
13 define. Our confidential submission shows how we lost  
14 some large Kenmore bids in head-to-head competition to  
15 LG.

16           In 2011, we offered to supply the same  
17 products as LG meeting the same exact specifications  
18 set by Sears in their bid template. For example, we  
19 bid to supply the front-load washers from our new  
20 Alpha front-load platform. At the time, the Alpha  
21 products, as Jeff pointed out, were the top five rated  
22 washing machines in *Consumer Reports* and had  
23 outstanding aesthetics and innovation, as you can see.

24           Despite offering our industry-leading  
25 products, Sears rejected our bid because we were, as

1 they quoted in an email, 9 percent too high on price,  
2 and the result, as you can see in the green box, was  
3 hundreds of millions of dollars of lost sales,  
4 specifically over half a million units, 14 percent of  
5 the front-load laundry industry and over \$260 million  
6 in lost revenue.

7           Now let's move to the next exhibit. We  
8 filed this petition in December of 2011, and in fact  
9 we were able to take a price increase to try to become  
10 profitable. This was immediately following the filing  
11 of the petition in this case. I have no doubt this  
12 case was responsible for us getting this price  
13 increase to stick in the marketplace.

14           We felt the benefits across the whole line  
15 -- Alpha line of front-loads, the Oasis line of  
16 top-load washers and the VMW line of top-load washers  
17 -- but that increase alone was not enough to restore  
18 profitability, so in April I proposed another  
19 selective price increase effective July of 2012.

20           Unfortunately, we were forced to withdraw  
21 that price increase within weeks because retailers  
22 told us we would lose floor spots and other benefits  
23 because our prices weren't as low as LG and Samsung at  
24 the time. A couple of emails up here. If you look at  
25 the top one, the Lowe's one, "I wanted to reiterate in

1 writing that we are not accepting Whirlpool  
2 Corporation's announced July 1 price increase for both  
3 stock and special order product."

4           So to wrap it up, I am fighting every day to  
5 sustain the washer business against this extraordinary  
6 discounting from LG and Samsung. I get constant  
7 pressure from the retailers to meet competition from  
8 LG and Samsung. We're between a rock and a hard  
9 place. If we do, our best products become  
10 unprofitable. If we don't, we're off the floor and  
11 our volume suffers greatly. Either way we lose and,  
12 as you can see, we lose big.

13           This impacts us across the entire washer  
14 line. Since prices get compressed all the way down  
15 the line, the situation is just not sustainable.  
16 Again, I'd like to make it very clear. In my 35 years  
17 of experience with Whirlpool and in the appliance  
18 industry in this market, my business conversations  
19 with the customers, our retailers, are centered on the  
20 lowest wholesale prices, the highest promotional  
21 support that they can receive from Whirlpool  
22 Corporation. This is the reality of the U.S.  
23 appliance business.

24           I'd like to answer questions now or later in  
25 the Q&A period, but I thank you very much for your

1 attention and I look forward now to have Mr. Dave  
2 Bilas say a few remarks.

3 MR. BILAS: Good morning. My name is Dave  
4 Bilas. I currently serve as the Executive Vice  
5 President of the Nationwide Marketing Group, which is  
6 the largest appliance buy group in North America.  
7 From the perspective of market share, our retailers  
8 are collectively bigger than Best Buy and also  
9 collectively bigger than the Home Depot.

10 Prior to joining Nationwide last year I was  
11 head of sales for GE's appliance business and I served  
12 in that role for seven years, so I know the appliance  
13 business from both the manufacturing side of things  
14 and also from the buy side. This morning I just want  
15 to make four points now, and I'm available to answer  
16 any questions you may have during the Q&A period.

17 Point No. 1. Everyone here has great  
18 products. I would agree with Whirlpool that they make  
19 outstanding washers with competitive features and wash  
20 performance and design. I would also add, however,  
21 that so do LG, Samsung, Electrolux, GE and, by the  
22 way, so did Bosch. This is good news for our  
23 retailers because they have multiple competing sources  
24 of supply, literally hundreds of SKUs to choose from.  
25 Retailers can play suppliers off one another and get

1 the highest profit margin available.

2           Point No. 2. Washers are not a fashion  
3 item, and most are bought in white. The samples out  
4 on the floor are a bit misleading with the paint and  
5 picture a market because everybody today is showing  
6 their best stuff, including colors. Please bear in  
7 mind that washers go in basements primarily in the  
8 northeast, laundry rooms, utility closets. And where  
9 I hail from, the west coast, they go in garages. They  
10 don't go in your kitchen or your living room.

11           Most consumers will not pay a \$100 upcharge  
12 for color. Why? Because they consider a washing  
13 machine to be a work horse, not a show horse. I think  
14 I know this because I come from Louisville, Kentucky,  
15 the heart of the racing capital.

16           So what should you find today from this vast  
17 majority of washers in white? Foreign suppliers give  
18 away color. Foreign suppliers will sometimes give  
19 away color for free, which is good news for our  
20 retailers, but for the competing manufacturers this  
21 puts them in a real pinch because adding color entails  
22 a substantial cost, often more than \$50 additional for  
23 the paint.

24           And then Point No. 4. Competition occurs at  
25 the wholesale level, not at the consumer level. My

1 good friend, Mr. Bob Baird, put in his statement that  
2 the Home Depot has a fair floor, and he suggests that  
3 the consumers choose winners and losers in the washer  
4 market. Let me address this from my point of view.

5           In this market where everyone has great  
6 product, as I stated earlier, a retailer should have  
7 no trouble selling a Whirlpool, an LG, Samsung,  
8 Electrolux, GE or Bosch product -- or Bosch washer;  
9 excuse me -- to the consumer that comes into the  
10 store. So the retailer has the luxury of flooring  
11 what gets him the best profit margin.

12           What you see on the floor of the retailer is  
13 the outcome of a price competition between domestic  
14 and imports. The consumer will buy what he can see on  
15 the floor. The only fair thing about the Home Depot  
16 floor is they don't have commissioned sales people.  
17 In fact, the Home Depot floor is a bit more skewed  
18 than most as it is smaller, and many Home Depot floors  
19 haven't even sold all the brands of washers out there.

20           On most retail floors, however, commissioned  
21 sales people will steer consumers to the floored  
22 models that offer the best profit margin for the  
23 retailer. Here again, if the margin that's offered to  
24 the retailer is not competitive, the product will not  
25 make it to the floor.

1 I thank you, and I'd now like to turn it  
2 over to Franz Bosshard.

3 MR. BOSSHARD: Good morning. On behalf of  
4 BSH Home Appliances Corporation, BSH, I am before the  
5 Commission today in connection with the Commission's  
6 final phase investigation concerning large residential  
7 washers from Korea and Mexico.

8 My name is Franz Bosshard. I am the former  
9 President and CEO of BSH Home Appliances Corporation.  
10 I served in this capacity as CEO for 25 years, half  
11 the time in Asia-Pacific. BSH, Bosch and Siemens  
12 Hausgeräte GmbH, is a 50/50 joint venture between  
13 Bosch and Siemens Hausgeräte with revenues of  
14 \$13 billion worldwide and ranks as number three in the  
15 appliance industry.

16 With a global network of companies,  
17 including sales and customer service firms, BSH is  
18 made up of 70 companies in 46 countries with a total  
19 workforce of over 43,000 people. Bosch operates 43  
20 appliance manufacturing facilities in multiple  
21 locations worldwide and knows what it takes to operate  
22 efficiently and be cost competitive. In the U.S., BSH  
23 Home Appliances Corporation is a fully-owned  
24 subsidiary headquartered in Irvine, California.

25 Until 2011, BSH was a significant domestic

1 producer of large residential washers. They produced  
2 premium front-load washers at its facilities in New  
3 Bern, North Carolina, where they employed more than  
4 300 production and related associates. Without  
5 question, the North Carolina production facility was  
6 one of the most modern, lean and cost effective washer  
7 production platforms in the world. The plant was  
8 right-sized to operate according to the highest  
9 manufacturing efficiency standards, and any suggestion  
10 to the contrary is without foundation.

11            BSH produced a world-class front-load washer  
12 with precision engineering, competitive features,  
13 green technology, innovative design, first-rate  
14 quality and outstanding feel and finish. Simply put,  
15 BSH had a winning product that could compete  
16 successfully on nonprice factors. Unfortunately, BSH  
17 was forced to close its front-load production plant in  
18 May 2011 as a result of competition from low-priced  
19 washers, including in particular imports from LG and  
20 Samsung.

21            The impact of LG and Samsung pricing was  
22 twofold. One, low subject import pricing caused us to  
23 lose sales which resulted in lost revenues and drove  
24 its capacity utilization to unsustainable, low levels.  
25 Two, imports from LG and Samsung depressed the prices



1 at which BSH could floor and sell its washers to  
2 retailers at the same time that cost-inclusive raw  
3 material costs were rising, which resulted in a  
4 cost/price squeeze.

5           By 2010, based on this competitive market  
6 environment, BSH management decided to shut down the  
7 factory at New Bern and to exit the 27-inch laundry  
8 business in North America. This decision was not  
9 taken lightly and resulted in a significant loss to  
10 BSH. At the time the U.S. investment decision was  
11 made, LG and Samsung had almost no presence in laundry  
12 in the U.S. market. By the time the plant was closed,  
13 LG and Samsung had increased their market share from  
14 practically zero to almost 20 percent together, a  
15 stunning development in the appliance industry.

16           This achievement by LG and Samsung was not  
17 driven by product innovation alone. It was driven by  
18 price. As LG and Samsung continued to lower prices,  
19 their market share increased. Because we were  
20 operating in a competitive environment, our prices  
21 were forced down ultimately to unsustainable levels.

22           Based on its experience and understanding of  
23 the U.S. market, BSH expects that no manufacturer  
24 could possibly earn a profit on the sale of large  
25 front-load washers such as the ones produced by BSH

1 under the market conditions prevailing over the past  
2 three years. Consistent with this analysis, we  
3 understand that Electrolux Frigidaire also closed its  
4 plant in Webster City, Iowa, in 2011.

5 More recently, another European manufacturer  
6 competing in the U.S. market, Miele, similarly  
7 announced its decision to abandon the U.S. market  
8 because the U.S. prices simply do not support a return  
9 on investment in new models and features. I thank you  
10 for the opportunity to speak.

11 MR. LEVY: Good morning. Jack Levy for  
12 Cassidy Levy Kent. May I ask Mr. Bishop how we're  
13 doing on time? Twenty minutes?

14 MR. BISHOP: You have 21 minutes remaining.

15 MR. LEVY: Okay. Thank you very much. I'd  
16 like to make some closing remarks prior to concluding  
17 our affirmative presentation.

18 First, let me reiterate a point that Jeff  
19 Fettig made. There is absolutely no merit -- no merit  
20 whatsoever -- to Respondents' claims that Whirlpool  
21 manipulated its cost data or, for that matter, its  
22 pricing data. Respondents have been banging this drum  
23 for weeks, making these arguments to the staff, and  
24 during verification with your auditor we reviewed  
25 specifically and in detail each of their points, and

1 we addressed them with great specificity and complete  
2 transparency.

3 Whirlpool's data have now been verified, and  
4 if you have any remaining concerns about this we'd be  
5 pleased to address any questions you may have in the  
6 Q&A period and in much greater detail in our  
7 posthearing submissions.

8 Second, Whirlpool is not trying to  
9 gerrymander on the scope or on the like product issue.  
10 That is a gross mischaracterization. I'm sure this  
11 issue will come up in the Q&A so I'm not going to  
12 spend too much time on it here except to highlight a  
13 few basic points.

14 Whirlpool requested that Commerce narrow the  
15 scope in response to the Commission's concerns from  
16 the prelim about the overlap in competition between  
17 imports and domestically produced washers. The  
18 amended scope is now limited to the area where there  
19 are imports. While we believe a domestic like product  
20 coterminous with the scope makes the most sense,  
21 ultimately this is a decision for the Commission to  
22 make.

23 This is not our issue. Domestic like  
24 product is not our issue, and if the Commission wants  
25 to do what Respondents are now advocating, which is to

1 define a domestic like product comprising all  
2 residential washers, including the smaller top-loaders  
3 excluded from the scope, we have absolutely no quarrel  
4 with that because everything we told you in the  
5 preliminary phase is still true; namely that price  
6 compression at the high end affects pricing all the  
7 way down the product lineup. That's what Jeff Fettig  
8 just told you.

9           The import volume analysis will be exactly  
10 the same. Why? Because we've excluded no imports.  
11 The import pricing analysis will be exactly the same.  
12 Why? Because we've excluded no imports. The impact  
13 analysis will be fundamentally the same as we have  
14 described and we will describe further in our  
15 posthearing brief. What you find is that under either  
16 like product scenario the record in this case supports  
17 an affirmative determination.

18           So what's really going on here? Well, after  
19 reading a very thorough staff report Respondents  
20 apparently realized that they have no case on this  
21 record so their entire strategy, and you heard a road  
22 map just earlier this morning, their entire strategy  
23 is to impugn the integrity of Whirlpool Corporation  
24 and its employees and its data and rewrite the staff  
25 report and to create new evidence that does not exist.

1 All we ask of you is that you focus your  
2 decision on the evidence in the record before you. So  
3 let us please focus on that record together for a  
4 moment. Here we have an industry where two respected  
5 washer companies, Bosch and Frigidaire, were driven  
6 out of the U.S. LRW business by subject imports.

7 Two other major U.S. producers, Whirlpool  
8 and GE, are left standing. They're not quitting.  
9 They have invested huge sums of money for the  
10 production of new and innovative products here in  
11 America, but those investments cannot be viable in an  
12 environment where costs are rising and subject imports  
13 are suppressing prices.

14 The cause and effect relationship between  
15 import volumes and pricing on the condition of the  
16 domestic industry can be seen most clearly, I would  
17 submit, if we analyze three discrete segments of the  
18 LRW market. So if you could indulge me, let's look at  
19 what's going on in each of these three segments one by  
20 one. I'm going to refer to Petitioner's confidential  
21 exhibits now for a moment, if you have your pink  
22 paper. And you'll forgive me, Casey, but I'm going to  
23 raise this here.

24 So I'll turn your attention first to  
25 Petitioner's Confidential Exhibit 1, which is actually

1 captioned Impact of Subject Imports on Bosch. This is  
2 a segment of the front-load market for small capacity  
3 front loaders from 3.2 to 3.7 cubic feet. Everything  
4 in front of you is based on record evidence in the  
5 questionnaire responses and in the staff report.

6           And so what I want to do is focus your  
7 attention first on this segment of the market where  
8 Bosch competed, the small capacity front-loaders,  
9 because this is the first area where subject imports  
10 focused their assault on the domestic industry. And  
11 first look at the top of the page and look at what the  
12 condition is of Bosch over the period.

13           We all know that Bosch was a significant  
14 U.S. producer at the beginning of the period and it's  
15 common knowledge that they had to close their plant in  
16 2011, and Bosch has just told you why. So look at  
17 where PRWs were 2009 and where they are now in 2012.  
18 Look at Bosch's operating income over the period of  
19 investigation and look at the COGS to sales ratio  
20 throughout the period.

21           Next let's go down to the volume section,  
22 and in particular let me focus you on the line for  
23 subject import volumes. Look at what's going on with  
24 subject import volumes in 2009 and then look at what's  
25 going on in 2010 and ask yourself whether those

1 volumes are significant within the meaning of the  
2 statute. And then similarly look at subject import  
3 share from 2009 to 2010 and ask yourself whether that  
4 is significant.

5           And finally going down to the bottom, look  
6 at the margins of underselling. How many quarterly  
7 comparisons are there and how many instances of  
8 underselling and what are the exact magnitudes of the  
9 margin? Is that substantial and is that meaningful?  
10 I'd ask you to reflect on that. And I submit to you  
11 that in this segment of the market where Bosch was  
12 competing head-to-head with subject imports there is  
13 clear evidence of causation and clear evidence of  
14 material injury.

15           Let's turn to the second area of the LRW  
16 market where subject imports next focused their  
17 assault on domestic producers, and I'll turn your  
18 attention to Petitioner's Confidential Exhibit 2.  
19 This is the segment of the market comprising even  
20 larger capacity front-load washers, 3.7 cubic feet and  
21 up. This is the segment of the market where Whirlpool  
22 repatriated production. The Alpha washer is 4.3 cubic  
23 feet.

24           And so let's look at what's going on here.  
25 You'll remember that the Alpha investment product came

1 into market in late 2010, so let's look there. What's  
2 going on at the top in the injury tables for  
3 Whirlpool's Alpha front-load platform? Well, look at  
4 the operating income experience in particular and look  
5 at the COGS to sales ratio. And then scroll down to  
6 the volume section and let's look at subject imports.

7           Look at the subject import volume in 2010  
8 and then look at the subject import volume in 2011.  
9 And I would ask you to look at what the trend might be  
10 and what the volumes are and ask yourself is that  
11 significant? And then kind of look at the total and  
12 then reflect also on what's going on with demand  
13 trends in this narrow segment of the market.

14           And finally turn to the bottom, price  
15 underselling. Look at how many quarterly comparisons  
16 are there, the instances of underselling and what are  
17 the margins of underselling, and I submit to you that  
18 the information on this page drawn directly from the  
19 record in this case paints a very clear picture of the  
20 environment in which the Alpha product, Whirlpool's  
21 new U.S. front-load product, was forced to compete and  
22 that there's clear evidence that subject imports were  
23 responsible for material injury.

24           Finally, let me turn your attention to  
25 Confidential Exhibit 3. This is the third area where



1 subject imports focused their assault on U.S.  
2 manufacturing. This is the large capacity top-load  
3 washer, what Whirlpool calls its Oasis platform. And  
4 first let's look at the injury data in this segment.  
5 Look what's going on. Jeff Fettig told you that  
6 Whirlpool invented this segment. They had the whole  
7 market in 2009.

8 LG began to enter in 2010. Samsung followed  
9 suit, and so LG and Samsung were full-bore in the U.S.  
10 market in 2011. And so look at what's going on with  
11 it's really just Whirlpool's operating income in 2009  
12 and 2010 and then contrast that with 2011. And look  
13 at the COGS to sales ratio. Compare 2009 to 2011.  
14 And scroll down to the volume section and look at the  
15 subject import volume going from 2009 to 2010 to 2011.

16 I would ask you to reflect on whether that  
17 volume is that significant within the meaning of the  
18 statute, either absolutely or in relative terms  
19 relative to U.S. production, relative to consumption.  
20 Indeed, I would also ask you to reflect on subject  
21 import share in 2009 and 2010 and 2011.

22 And then finally, at the bottom of the page  
23 please refer to the underselling data, how many  
24 instances of quarterly comparisons and how often is  
25 there underselling versus overselling and are the

1 margins significant where there is underselling. And  
2 here again in this third area where subject imports  
3 have focused their assault on U.S. manufacturing, I  
4 submit that there is clear record evidence of  
5 causation and material injury.

6           So to summarize, we believe the record  
7 evidence is clear. The volume of subject imports,  
8 both absolute and relative to U.S. production and  
9 consumption, is significant within the meaning of the  
10 statute. I read Respondents' briefs very carefully,  
11 and I don't believe they've even attempted to deny  
12 that the volume of subject imports is significant in  
13 absolute terms. They've simply read that provision  
14 entirely out of the statute.

15           We also believe the record on price effects  
16 is clear and compelling. There's a strong record of  
17 underselling for quarterly comparisons where they're  
18 available, and the coverage in this case is excellent.  
19 It bespeaks price depression for some products and  
20 price suppression for all of them. The evidence of  
21 lost sales and lost revenue also corroborates this  
22 analysis, and in your preliminary determination you  
23 noted with approval many of the lost sales and lost  
24 revenue allegations of Petitioner.

25           Respondents apparently don't deny that raw

1 material costs were going up during the period of  
2 investigation, but then they go on to say well, that's  
3 not their fault. They don't decide what raw material  
4 prices are. Well, if you conclude from the data that  
5 subject imports suppressed U.S. producer prices for  
6 LRWs then I submit to you that subject imports are  
7 responsible for the domestic industry's cost/price  
8 squeeze, and that's exactly what's going on during the  
9 period of investigation.

10           One final point. I expect we'll hear a lot  
11 this afternoon about nonprice factors, the idea that  
12 nonprice factors somehow break the causal link between  
13 low-priced imports and the condition of the domestic  
14 industry. We'll hear a lot about fit, feel and  
15 finish, innovation and the like. Here again, the  
16 record -- the record -- shows that price competition  
17 -- price competition at the wholesale level -- is the  
18 key driver.

19           This is clear from the staff report, the  
20 underlying purchaser questionnaire responses, and some  
21 of the key evidence is reproduced for your reference  
22 at Petitioner's Confidential Exhibits 4, 5 and 6, and  
23 I would ask you to refer to those exhibits when you're  
24 listening to Respondents' testimony.

25           I think our time is running short. We'll

1 save the remainder for rebuttal. But I certainly hope  
2 during the Q&A period you'll have an opportunity to  
3 ask questions of our other panelists. We have here  
4 Casey Tubman and Norb Schmidt, who some of you may  
5 have met in Clyde, Ohio. These gentlemen are experts  
6 in product development and marketing and who could  
7 tell you the truth about Whirlpool as an innovation  
8 leader in this industry.

9           So thank you for your attention, and we look  
10 forward to your questions.

11           CHAIRMAN WILLIAMSON: Okay. Thank you very  
12 much. I want to express our appreciation to all of  
13 the panelists for taking time from their businesses to  
14 come today. Your testimony is extremely important to  
15 us. We will now begin the questioning with  
16 Commissioner Broadbent.

17           COMMISSIONER BROADBENT: Thank you. I want  
18 to thank the witnesses. This is sort of a unified  
19 team that's come before us today. We really  
20 appreciate all the communication we've been getting.  
21 A couple of us were out in Clyde, Ohio, at your plant.  
22 Norb and Casey gave us a great tour.

23           Being from Ohio, it was particularly  
24 inspiring to me in the sense that there was a great  
25 feel there in terms of everybody working in the same

1 direction, and kind of the showing of people coming to  
2 the hearing means a lot to us and the time that you  
3 take to come here and try to work us through this.

4           For Mr. Fettig, I was trying to get a sense  
5 just looking a little broader beyond this case sort of  
6 how your decision to relocate your production of  
7 washing machines to the United States syncs up with  
8 the rest of your sort of global strategy. I know  
9 you're working hard internationally to be competitive  
10 everywhere.

11           MR. FETTIG: Yes, Commissioner. For us  
12 actually it was an easy decision in the sense that we  
13 had developed the next generation front-load washing  
14 machine, outstanding innovation, design, aesthetics,  
15 larger capacity and so on, and we wanted to bring it  
16 to the marketplace, as I described in my brief. And  
17 then we looked about where is the best place in the  
18 world to be able to produce that.

19           So we took production. We decided the best  
20 place in the world for the U.S. market, there is no  
21 doubt the best cost position in the world for the U.S.  
22 market is in the United States. So that's why we  
23 decided to make that investment in Clyde, Ohio, and we  
24 actually eliminated the production in Europe and  
25 phased out the production in Mexico. But it was based

1 on economics and competitiveness, and that was the  
2 best place from a cost/quality standpoint and  
3 availability standpoint to do it.

4 COMMISSIONER BROADBENT: Okay. Do you sell  
5 washers or do you plan to sell washers made in Ohio in  
6 Brazil or China?

7 MR. FETTIG: You know, it varies year to  
8 year, but we export about 15 percent of our production  
9 from Clyde to other countries.

10 COMMISSIONER BROADBENT: Okay. And then  
11 what's going on in Mexico for your company? We may  
12 have some stuff on the record from the Mexican  
13 Embassy.

14 I'm looking at the margin that's on the  
15 Whirlpool imports coming from Mexico and trying to  
16 integrate that into our finding. Could you sort of  
17 give us some information about what's happening in  
18 Mexico and how that fits into this case?

19 MR. FETTIG: Well, yes. I mean, the  
20 economics of the entire business due to the radical  
21 decline in pricing was such that it no longer made any  
22 sense to put further investment in Mexico because  
23 again the margins for the entire business at every  
24 level had been crushed and it became a loss-making  
25 operation.

1           So again, when we reinvested in washing  
2 machines, in front-loaders, we put all of that  
3 production in Clyde where we had the best cost, best  
4 quality possible to the marketplace, which made the  
5 Mexican facility redundant, and therefore we're  
6 repurposing it for other products in Mexico.

7           COMMISSIONER BROADBENT: What will you be  
8 making there?

9           MR. FETTIG: Well, right now we're looking.  
10 We're not making anything right now, but we're  
11 looking at a couple of proposals. Right now it's just  
12 warehouse space.

13          COMMISSIONER BROADBENT: Okay. In terms of  
14 your cost structure, I know your raw materials involve  
15 a lot of flat-rolled steel products. Are those prices  
16 rising at this point, and are you having access to  
17 globally competitive sources of raw materials?

18          MR. FETTIG: Absolutely. We buy materials  
19 in every market in the world, so we know every day  
20 what the raw material cost market are.

21           I think in the data submitted to the  
22 Commission it gives you very specific examples of what  
23 happened to steel during the period of inquiry, what  
24 happened to resins, what happened to oil, what  
25 happened to plastics, and basically the trend has been

1 up. Sometimes they flatten out, but generally they're  
2 up significantly -- I mean significantly -- during the  
3 period of investigation.

4           And the only way to offset them is to try to  
5 offset them by passing through some level of pricing,  
6 which we're unable to do. That's one of the reasons  
7 we had such a serious cost squeeze, cost/price  
8 squeeze.

9           COMMISSIONER BROADBENT: Okay. Are there  
10 other policy reasons that were behind your decision to  
11 relocate to Ohio? I don't know if it was energy  
12 efficiency standards or tax policy. What other things  
13 sort of -- I know a decision like that is very  
14 complicated. Were there other themes?

15           MR. FETTIG: It was a significant -- over  
16 \$100 million -- investment. Huge. And as we do with  
17 any investment, we look at where is the best place in  
18 the world to produce it for the markets that they're  
19 going to sell it. And the economic decision was there  
20 was only one answer. Clyde, Ohio. It was the best  
21 economic decision possible. That was the factor.

22           COMMISSIONER BROADBENT: Right. But was  
23 there a tax benefit there or any other sort of  
24 policy --

25           MR. FETTIG: No.



1           COMMISSIONER BROADBENT:  -- perspective on  
2 why you made that decision?

3           MR. FETTIG:  Well, I mean, we're always glad  
4 that American workers win the right for investment,  
5 which our people in Clyde have done, because they're  
6 an outstanding workforce.  And so, I mean, obviously  
7 there's the human nature side that we're pleased that  
8 we can bring jobs to Clyde, Ohio.  That's in addition  
9 to the fact it was the best financial and economic  
10 decision.

11           Regarding tax credits, when we were making  
12 this decision we didn't even have tax credits.  Those  
13 didn't come into effect --

14           COMMISSIONER BROADBENT:  Right.

15           MR. FETTIG:  -- until late 2008, and the  
16 decision was already largely figured out by then.  You  
17 know, the tax credits, again that was part of the  
18 government stimulus plan to provide tax credits to not  
19 American companies.  To domestic producers.  It  
20 doesn't matter what nationality they were.  For  
21 producing energy efficient appliances in the United  
22 States.

23           And we're obviously one of them and one of  
24 many who received the credit, but we never apply that  
25 to the washing machine business because, first of all,

1 we don't know if we're going to get the credits. In  
2 2012, we get no credits.

3           During this period of time for 2009, we  
4 didn't find out until very, very -- I think it was  
5 about this time or later in December at 1:22 a.m.  
6 Congress passed a bill that had an energy credit, so  
7 there's no way in the world you could have made an  
8 investment decision based on that.

9           And then to top it off, unfortunately  
10 because of the terrible results we've had due to price  
11 reductions in this and other businesses by subject  
12 imports, we haven't made any money. Our legal entity  
13 is in a loss position. You can only use a credit if  
14 you have a profit, and so far we've not been able to  
15 use them. So, no, it had no direct impact on this  
16 decision.

17           COMMISSIONER BROADBENT: So that credit  
18 would be available to the future to apply?

19           MR. FETTIG: If and when we someday make  
20 money, but again it's applied at the entity level.  
21 It's never applied to the washer level.

22           COMMISSIONER BROADBENT: All right. Can you  
23 help me a little bit? We're all new to this area, and  
24 we see all the statements about the front-load, the  
25 problems you've had with the front-loaded machines.

1 They have an odor with them, and there's complaints  
2 early on in this decade about that malfunction. Is  
3 that a malfunction that was typical to all washing  
4 machines, or was it more typical to Whirlpool and GE?

5 MR. FETTIG: Not at all. And again, I'll  
6 let some of my colleagues answer to give you the  
7 facts. It's been a very, very limited problem that  
8 very few consumers have.

9 But the fact of the matter is if you ever  
10 have water sitting in any product it can develop mold  
11 if it sits there long enough. It can do it in your  
12 basement. It can do it in your bathroom. It can do  
13 it in your washing machine. It can do it in your  
14 dishwasher.

15 Under certain conditions, some limited --  
16 and I mean limited -- number of consumers have had  
17 this problem, and we do everything we can to very  
18 quickly rectify it, but it's certainly not unique to  
19 Whirlpool. It has to do with any front-load washer or  
20 any washing machine in the world.

21 Casey or Norb, would you care to add to  
22 that?

23 MR. SCHMIDT: Yes. This is Norb Schmidt.  
24 I'm Senior Director of Product Development. Hopefully  
25 you can hear me. I'm sitting a distance from the mic.

1           CHAIRMAN WILLIAMSON: Just pull it closer to  
2 you.

3           MR. SCHMIDT: It doesn't come any closer.

4           CHAIRMAN WILLIAMSON: Oh, sorry.

5           MR. SCHMIDT: No. That's okay. I'll lean  
6 over the table. Hopefully you can hear me.

7           I just want to reiterate what Jeff said. It  
8 actually is a very small driver of our overall service  
9 incident rate, which is kind of how we measure service  
10 calls in the field. It is a front-load washing  
11 machine. Because the difference in configuration  
12 requires different care, so consumers that don't take  
13 care of the product, like Jeff said, could have this  
14 issue. There is instructions in the Use and Care  
15 Guide to deal with that issue even early on.

16           Front-loaders have been around for many,  
17 many years in Europe. They're more accustomed to  
18 maintaining and using a front-load washing machine.  
19 It was new to the U.S. market. Actually, most  
20 products, whether you're talking about a GE, a  
21 Whirlpool, even LG and Samsung, there's innovations  
22 now in the product that help to deal with this issue  
23 even further. So again, it is a very, very small  
24 issue, and today's product is less prone to that  
25 issue.

1           COMMISSIONER BROADBENT: I have a few more  
2 questions on the scope issue that you mentioned in  
3 your testimony, but I'll get that in the second round.

4           CHAIRMAN WILLIAMSON: Okay. Thank you.  
5 Just to finish up on that last line of questions, Mr.  
6 Schmidt, was it the innovations the manufacturers made  
7 that have taken care of the mold problem or the  
8 consumer familiarity of the product that's solved it,  
9 and sort of when did they introduce innovations?

10          MR. SCHMIDT: A little bit of both.  
11 Innovations have come over time. As Jeff said, the  
12 manufacturers typically invest in a platform less  
13 frequently, so we'll change a major platform or bring  
14 a new product to market or new platform to market  
15 infrequently.

16          That said, each year we're bringing a new  
17 model line to market. And contrary to what I saw in  
18 some of the exhibits from LG and Samsung, Whirlpool  
19 has launched many, many models to market every year to  
20 bring enhanced performance, enhanced innovations, and  
21 so those are the innovations that come over time to  
22 deal with that issue.

23          CHAIRMAN WILLIAMSON: I'm sorry. I was  
24 asking about innovations regarding the mold issue.

25          MR. SCHMIDT: Yes. Yes. As an example, for

1 us we introduced back on our platform that came out of  
2 Germany -- actually it's a product that we have here  
3 -- a technology we call dynamic venting technology,  
4 and what that does is we've actually introduced a fan  
5 into the front-load washer.

6           If you've ever used a front-load washer  
7 compared to a top-load, it's a sealed system. Because  
8 the washer is sitting on a horizontal axis, it --

9           CHAIRMAN WILLIAMSON: Yes.

10           MR. SCHMIDT: -- has to keep the water in.  
11 It's a sealed system. That's why it's prone to mold.  
12 If you keep that door closed, it's a wet system and  
13 it doesn't dry out like a top-load machine does.

14           In our newest machines and even in older  
15 generations we've introduced a fan to that machine  
16 that actually dries the wash unit out. It prevents  
17 that from happening. And even it's a consumer  
18 benefit. We can actually now wash and dry clothes in  
19 the same machine. That was introduced back in the mid  
20 2000s.

21           CHAIRMAN WILLIAMSON: Okay. Thank you for  
22 that answer.

23           MR. SCHMIDT: Yes.

24           CHAIRMAN WILLIAMSON: Mr. Bosshard, I'm just  
25 wondering. Is there anything about the conditions of

1 the competition in Europe? Have Samsung and LG  
2 entered that market in the same way they've entered  
3 the U.S. market in terms of shall we say competing on  
4 quality and features?

5 MR. BOSSHARD: Mr. Chairman, the market  
6 situation in Europe is different, and the European  
7 manufacturers at this point still do lead the market.  
8 Our Asian competitors are preparing or are there, and  
9 they're increasing their efforts to take market share  
10 there as well.

11 So I think we probably will see them more as  
12 we go forward. We will see a more intensive  
13 competition there as well.

14 CHAIRMAN WILLIAMSON: Will it be again sort  
15 of going after the top end first do you think?

16 MR. BOSSHARD: Absolutely. Absolutely.

17 CHAIRMAN WILLIAMSON: Okay. Thank you. I  
18 was wondering. Since Whirlpool has narrowed the scope  
19 of the investigation to where there are subject  
20 imports, as you've said, I was wondering if this was  
21 the intention why didn't you amend the scope to  
22 exclude all conventional washers?

23 MR. FETTIG: Yes. I think it does. That  
24 does.

25 MR. LEVY: If I could elaborate?

1           CHAIRMAN WILLIAMSON: Okay. Go ahead, Mr.  
2 Levy. I'm sorry.

3           MR. LEVY: One of the challenges we always  
4 have as a petitioner in proposing a scope or revision  
5 to the scope to the Commerce Department is coming up  
6 with a definition that is clear and administratable  
7 for U.S. Customs and Border Protection.

8           There is I think in the industry common  
9 reference to terminology like a conventional  
10 top-loader or a high efficiency top-loader, but I  
11 think the record is clear that those dividing lines  
12 are somewhat murky. You know, I think that if you  
13 were to ask which unit is conventional and which unit  
14 is high efficiency and take a poll, 90 plus percent of  
15 the time folks would agree with one another, but they  
16 would not agree with one another 100 percent of the  
17 time.

18           So even if you were to look at the clothes  
19 moving device within a top-loader you'll see a  
20 continuum in terms of the height of the unit. You may  
21 have an impeller moving up the line to GE that has an  
22 agitator, which is a hybrid, moving up the line to a  
23 full-size agitator.

24           And so I think there is some confusion in  
25 the minds of many as to what is a conventional



1 top-loader in modern times. Is it the depth of the  
2 water when the unit is full? Is it the physical  
3 configuration of a plastic clothes mover? Is it some  
4 combination of the two? We were at a loss.

5           Our assessment was that capacity is perhaps  
6 one of the most important features that purchasers  
7 look to in defining a product, and the Department of  
8 Energy requires companies to certify and declare their  
9 capacity at the time of sale. You can go on the  
10 Department of Energy website, and it's clear and  
11 unambiguous what the capacity of any washer is at any  
12 moment in time.

13           And so on that basis we looked at the  
14 marketplace and said where are there imports and where  
15 are they absent? And what we saw with respect to  
16 top-load, and this was Whirlpool's assessment of the  
17 marketplace. There are no imports of top-loaders less  
18 than 3.7 cubic feet and so that was the principal  
19 basis for the exclusion.

20           That is in no way a retreat from Whirlpool's  
21 explanation of how competition really works.  
22 Whirlpool has told you in the prelim -- you've heard  
23 it from Jeff Fettig again today -- that imports of  
24 larger top-loaders compressed prices. I think Jeff's  
25 words were crashed prices down, and it has a ripple

1 effect all the way down the product line.

2           So we've drawn a line here to exclude the  
3 area where there are no imports, but again to be clear  
4 we are not denying for a second that there is no  
5 competitive impact of imports on these smaller  
6 top-loaders that Whirlpool produces on its VMW  
7 platform.

8           I'll say one other thing on this point,  
9 which is from Whirlpool's point of view this dividing  
10 line also made sense because they have these three  
11 platforms. You heard about Alpha, the front-load  
12 platform. You heard about Oasis, which is the large  
13 top-load platform, and those units are about 3.4 cubic  
14 feet and up. Nowadays they're all 4.6.

15           And then they have this VMW platform, which  
16 parenthetically produces both conventional and  
17 impeller-based high efficiency units on the same  
18 assembly line, and those units have smaller cabinets.  
19 They're capacity constrained, and they go up to 3.6  
20 cubic feet. So for lots of reasons this dividing line  
21 made perfect sense to Whirlpool. They weren't in any  
22 way trying to gerrymander the scope.

23           And if I could say one more thing on the  
24 subject? I'm sure we'll get more into this, and I  
25 apologize, Chairman, for using your time.

1           CHAIRMAN WILLIAMSON:  Go ahead.

2           MR. LEVY:  But there is a suggestion in  
3 Respondents' briefs that by drawing the line this way  
4 we are trying to shield you from analyzing what's  
5 going on with the pricing of Whirlpool's 3.6 cubic  
6 foot top-loaders.  And I'll repeat that because, you  
7 know, this is part of their theme, that there is  
8 something nefarious going on in the way the record has  
9 developed.

10           Respondents are insinuating that we are  
11 trying to shield you from seeing with great  
12 specificity what's going on with Whirlpool's 3.6 cubic  
13 foot top loaders, and I will tell you that what  
14 Whirlpool has told you is true, that those products  
15 are prejudiced by larger capacity top loaders from  
16 subject imports, and I would make simply two points  
17 for your reference.

18           First, if I could draw your attention to the  
19 staff report, and, in particular, let us turn to page  
20 IV-6.

21           CHAIRMAN WILLIAMSON:  Got it.

22           MR. LEVY:  I think there's a table at the  
23 bottom, it's called table IV-10, which actually, for  
24 subject imports of top loaders, it shows the capacity  
25 break outs over the period.  You've heard LG make a

1 lot of noise about how they have a 3.7 model, I think  
2 it's just one SKU, 3.7 cubic foot washer in the  
3 marketplace. Whirlpool's view is that subject imports  
4 are concentrated at a much higher capacity range. You  
5 see most of them in the 4.5, 4.6, 4.7 range. Let's  
6 look at what's in the record.

7 I would focus you to that band which is from  
8 3.7 to 4.2 cubic feet. Ask yourself, you know, are  
9 the volumes there kind of the heart of the market for  
10 subject imports, or are those volumes more kind of at  
11 the fringe? Are they outliers? That's the first  
12 thing I'd ask you to consider. So when Respondents  
13 are drawing comparisons between the 3.7 top loader  
14 that they import and Whirlpool's 3.6, you know, is  
15 this competition at the fringe of the scope line, or  
16 is this kind of what's really going on?

17 The other point I'll make, and I want to be  
18 very clear about this, we are not trying to shield  
19 from your analysis what's going on with Whirlpool  
20 pricing for 3.6 top loaders. In our petition we have  
21 either lost sales or I think lost revenue allegations  
22 that show how 3.6s are being injured by 3.7s of  
23 subject imports.

24 We would be more than happy to report to you  
25 quarterly pricing data for the 3.6 top loaders that

1 compete most directly with the LG SKUs, and you should  
2 feel free to aggregate those data and roll them into  
3 your quarterly pricing data, and I think you will find  
4 those data to be most illuminating, and so we would  
5 welcome that analysis. Thank you.

6 CHAIRMAN WILLIAMSON: You've covered most of  
7 my questions. My time is up. I think we would be  
8 interested in that last offer of comparison there.

9 MR. LEVY: Absolutely. Thank you very much.

10 CHAIRMAN WILLIAMSON: Fine. Thank you.  
11 Who's next? Commissioner Pearson?

12 COMMISSIONER PEARSON: Thank you, Mr.  
13 Chairman. Welcome, to all of you. I was among the  
14 Commissioners who was able to spend a rather pleasant,  
15 if somewhat rainy, November day with the team at  
16 Clyde, and I would have to say it is, indeed, a very  
17 impressive facility. I appreciate the warm  
18 hospitality and the education that was provided.  
19 Okay.

20 I'd like to follow up on a point that  
21 Commissioner Broadbent was raising. If we go back to  
22 the statute, we are required as we examine impact, to  
23 consider that the Commission shall evaluate all the  
24 relevant economic factors which have a bearing on the  
25 state of the industry in the United States, and it

1 lists a number of them. Not specifically listed are  
2 energy-efficient appliance federal tax credits. So a  
3 few questions about that.

4           Mr. Fetting, I think you said that the tax  
5 credit had begun in 2008. I have a Bloomberg article  
6 from April 27, 2011 that says Congress created the  
7 appliance manufacturing tax credit in 2005. Is that  
8 the same thing we're talking about or are there some  
9 differences?

10           MR. FETTIG: The question was as it was  
11 related to the Alpha investment. The comment I made  
12 was we were, as we were making the decision on the  
13 Alpha investment in 2008, the energy tax credit  
14 package as part of the stimulus, there was none at  
15 that time. There may have been one in 2005, candidly,  
16 I don't recall, but there was not one at the time, and  
17 we had no understanding or belief that there would be  
18 one other than it was passed, you know, in the dead of  
19 night in December, if memory serves.

20           So my point was they're unpredictable, and  
21 therefore, you would never, no rational, at least our  
22 company and I, as the chief decisionmaker, would never  
23 make an investment decision based on the prospect of  
24 having or not having energy tax credits.

25           COMMISSIONER PEARSON: Yes. Many Americans

1 share with you the concern about lack of  
2 predictability in government policy at the current  
3 time. Does anyone on the panel know offhand the  
4 history of this tax credit? Has it come and gone at  
5 various points? Maybe this is something that we could  
6 put on the record in the posthearing if no one --

7 MR. FETTIG: Well, plus, there is not one  
8 currently. We know that, too. So, yes, it has not  
9 been continuous.

10 COMMISSIONER PEARSON: So it ended -- we  
11 passed December 31?

12 MR. LEVY: Commissioner Pearson, we will  
13 give you a more detailed legislative history of this  
14 program in our posthearing submission.

15 COMMISSIONER PEARSON: Okay.

16 MR. LEVY: I do not know with specificity  
17 what the status is. I know that there are always  
18 proposals in government for extensions and  
19 continuation, but we're not aware of the status at  
20 this moment.

21 COMMISSIONER PEARSON: Okay. So it's not  
22 beyond the realm of the possible that assuming  
23 Congress does do something on taxes within the next  
24 number of months that an energy tax credit could be  
25 put in effect for even 2012, for a period of time now,

1 when it does not exist.

2 MR. FETTIG: We have no idea.

3 COMMISSIONER PEARSON: Right. No, I  
4 understand. It's just that I'm just trying to get a  
5 sense of how this issue plays into the record.

6 MR. SCHMIDT: Commissioner, this is Norbert  
7 Schmidt, Product Director for Washers.

8 COMMISSIONER PEARSON: Yes.

9 MR. SCHMIDT: Again, if it would help, we  
10 could provide this in posthearing submissions, but the  
11 Alpha investment, as Jeff said, stood on merits on its  
12 own. While certainly we had to understand, you know,  
13 would there be an opportunity with tax credits, it is  
14 unknown. It's renewed on a year by year basis. We  
15 never know if they're going to be available. We would  
16 never certainly invest in a platform that's not going  
17 to provide a return without them.

18 So the Alpha investment needed to stand on  
19 its own feet, needed to be a profitable platform, and  
20 as such, when it was approved by Jeff, when it was  
21 approved by our board of directors, it had a solid  
22 business case. The only reason we weren't able to  
23 turn a profit was because of what happened in the  
24 market with pricing, just to be clear.

25 COMMISSIONER PEARSON: Okay. Thank you for



1 that. Going back to this same Bloomberg article from  
2 2011, it says Whirlpool reaffirmed its profit estimate  
3 of between \$12 and \$13 a share this year, helped by  
4 between \$300 and \$350 million in energy tax credits.  
5 The company said in February that it expected to  
6 receive \$300 million in energy tax credits this year.  
7 Fetting told analysts today that the higher number was  
8 based on better visibility after monitoring sales of  
9 qualifying models.

10 Then another Bloomberg article, this one  
11 from March 18, 2011, the credit will generate about  
12 one-third of Whirlpool's earnings this year. Finally,  
13 from a Wall Street Journal market watch article from  
14 March 2, 2011, Whirlpool gets a production tax credit  
15 of up to \$225 per washer. Okay.

16 So I read this and it seems to me that this  
17 is not immaterial. I mean there's a fair amount of  
18 economic value being tied up in these tax credits, so  
19 I'm trying to understand how, in the context of what  
20 the statute asks us to do, to consider all relevant  
21 economic factors which have a bearing on the state of  
22 the industry. How do we understand this? Because  
23 this is not something we normally deal with, which is  
24 why I'm a little bit flummoxed.

25 MR. FETTIG: Well, Commissioner, you know,

1 first of all, the numbers you've pulled were not,  
2 that's for all appliances, not just washing machines,  
3 number one.

4 COMMISSIONER PEARSON: Right. Actually, we  
5 do have the confidential data regarding, but I'm not  
6 going to talk about that in public here.

7 MR. FETTIG: Number two, let me give you the  
8 simplest way to understand. It would be like if you,  
9 if the government gave you, personally, a tax credit  
10 to offset against your income, but if you had no  
11 income, what's the value of the tax credit to you?

12 COMMISSIONER PEARSON: Yes. Well, you carry  
13 it over. I've actually had the pleasure of doing that  
14 with some energy-related tax credits a couple of  
15 times, so I'm familiar with the concept.

16 MR. FETTIG: Well, I would say to date we've  
17 never been able to use them, we won't use them this  
18 year, 2012. I can't tell you what's going to happen  
19 in '13, '14, '15. Largely depends on what happens to  
20 the prices in the marketplace. It in no way -- in no  
21 way -- affected our investment decision, it in no way  
22 affected how we executed in the marketplace, and  
23 candidly, it has had no positive impact on the  
24 valuation in the company because it's not cash. It's  
25 an accounting balance sheet item right now.

1           Someday, maybe sometime when we are making a  
2 profit in this country, we will be able to use them.  
3 We have, you know, 10 more years or something like  
4 that. But in the period of inquiry they had  
5 absolutely no value.

6           COMMISSIONER PEARSON: Well, I hope  
7 sincerely for all of you who are employed by the  
8 domestic industry that you're in your positions long  
9 enough to be able to take advantage of those credits.

10          MR. FETTIG: If we do, it will create  
11 resources to reinvest in U.S. manufacturing.

12          COMMISSIONER PEARSON: See, my own  
13 experience in the private sector, there were times  
14 when the company I was with was making money and there  
15 were times when it wasn't making money. I understand  
16 how much more pleasant it is when the company's making  
17 money, so I'm with you there and I understand that  
18 this is a little bit of an uncertain, an asset of  
19 uncertain value.

20          MR. FETTIG: That did not factor in to any  
21 of our decisionmaking.

22          COMMISSIONER PEARSON: Okay. That includes  
23 both the decision to repatriate any production to the  
24 United States?

25          MR. FETTIG: That did not drive the economic

1 business case for that. No.

2 COMMISSIONER PEARSON: And it's also had no  
3 affect on how, on your decisions to produce or how you  
4 have marketed production during this period of review?

5 MR. FETTIG: I am, and was, the chief  
6 decisionmaker. I was involved in understanding the  
7 prospects or not of getting any of these credits. We  
8 made it crystal clear within our company -- crystal  
9 clear -- that we will never base our economics based  
10 on an uncertain tax credit, and we have not.

11 COMMISSIONER PEARSON: Okay, but at times  
12 during this POI there would have been certainty  
13 regarding that the credit would apply to a qualifying  
14 machine that was sold in a certain timeframe, and even  
15 at \$225 a machine, that's material.

16 MR. FETTIG: But when I spend cash to  
17 invest, it's cash. When I have credits, it's not  
18 cash, it's a bookkeeping entry. I don't base  
19 economics based on bookkeeping credits.

20 COMMISSIONER PEARSON: Right. Part of my  
21 problem is I spent too much time involved in farming  
22 and various agricultural policy and the government  
23 does a lot of things that influence the decisionmaking  
24 of farmers in terms of what they plant and how they  
25 market it, and so I'm trying to understand whether

1 there's been any of that type of influence on this  
2 industry because, you know, if you have to sell a  
3 machine to one of the retailers for \$100 loss but  
4 you're getting a \$225 credit that you hope will be  
5 worth something in the future, figure out a discounted  
6 present value of that and it might be a very rational  
7 business decision to sell some machines at a lower  
8 price than you would really like.

9 MR. FETTIG: But we did not do that. I also  
10 grew up on a farm and if we had cash, we could spend  
11 it, and if you didn't have cash, you couldn't spend  
12 it. We had no cash. We did not factor that into our  
13 decision making.

14 COMMISSIONER PEARSON: Okay. Well, thank  
15 you for --

16 MR. TUBMAN: If I can answer?

17 COMMISSIONER PEARSON: Yes. I'm over time,  
18 but please, a brief response would be appreciated.

19 MR. TUBMAN: Okay. I'm sorry. I didn't  
20 notice the light. Casey Tubman. Just to give you a  
21 for instance, and Mr. Fettig will hopefully not fire  
22 me after this, but if I were to take the tax credit  
23 into consideration when I was selling a product to a  
24 retailer, I would expect that when I came back I would  
25 not have a job. I mean you cannot count on it. We

1 would not consider it.

2           We basically go by what the product cost is,  
3 what our costs roll up to, and then what our profit  
4 would be after that. We cannot consider a tax credit  
5 in any form. So just from a wholesale selling day-to-  
6 day, you know, myself and other sales folks, we don't  
7 have any visibility to that.

8           COMMISSIONER PEARSON: Okay. Well, I  
9 appreciate very much your testimony on this issue  
10 because, as you can tell, it's been a little bit  
11 confusing to me. Okay. Thank you very much. Mr.  
12 Chairman, I'm over time, so back to you.

13           CHAIRMAN WILLIAMSON: Commissioner Aranoff?

14           COMMISSIONER ARANOFF: Thank you, Mr.  
15 Chairman. Join my colleagues in welcoming all of you  
16 here today. I have such a long list of questions,  
17 I've been having a hard time trying to figure out  
18 where to start, but I'll start at the top with a like  
19 product question. This may be addressed initially to  
20 Mr. Levy.

21           Mr. Levy, you testified earlier this morning  
22 that, essentially you said everything that you said in  
23 the prelim about like product was still true, and so I  
24 just wanted to put this question to you. Aside from a  
25 change in scope, are there any new facts on the record

1 in the final phase of this investigation that the  
2 Commission did not consider in addressing the six like  
3 product factors in the preliminary phase?

4 MR. LEVY: I think that there are some more  
5 details regarding -- well, a couple of points. The  
6 answer is yes, it's a different record from the final.

7 First of all, we have purchaser  
8 questionnaire responses which help to inform the  
9 perceptions of purchasers in the industry, we have  
10 more robust questionnaire responses from importers and  
11 producers to help inform their perceptions of the  
12 products in the industry, and the staff asked some  
13 very particularized questions centered around the like  
14 product factors, so I think we have a much more robust  
15 record for analyzing the like product issues in this  
16 final phase than we did in the preliminary phase  
17 simply because, you know, the nature of the  
18 investigatory processes is truncated in the  
19 preliminary phase. Very, very little time.

20 With that said, I think fundamentally the  
21 facts that you outlined in your preliminary  
22 determination in terms of, you know, analyzing, for  
23 example, you know, characteristics and uses of  
24 washers, common channels of distribution,  
25 interchangeability, you know, the extent to which

1 prices overlap or do not overlap, I think much of that  
2 information is fundamentally still the same.

3           What has changed, as you correctly note,  
4 most notably is the scope, and of course the starting  
5 point for the Commission's domestic like product  
6 analysis has to be the scope.

7           COMMISSIONER ARANOFF: Okay. Thank you for  
8 that answer. Let me turn to a completely different  
9 subject now and go to pricing. A number of the  
10 witnesses this morning had made the point, and it  
11 certainly comes through in your brief and in the  
12 prelim, that pricing at the high end of the market  
13 affects pricing all along the line.

14           The Respondents argue at length in their  
15 briefs that prices for high end top load or front load  
16 washers cannot be found to depress or suppress prices  
17 for lower end washers unless they're actually  
18 underselling those lower end models, which they  
19 contend that does not, in fact, happen. How would you  
20 respond to that line of argument?

21           MR. LEVY: Well, again, I struggle to  
22 understand where Respondents are coming from. You've  
23 heard very clearly from Mr. Fettig, and it resonates  
24 throughout our briefs, and frankly, the record, you  
25 know, there's clear record evidence. Let's just, it's



1 in a proprietary exhibit, and I needn't reference it  
2 now, but, for example, the staff has asked questions  
3 of whether reduced pricing at the high end affects  
4 prices at the low end, and you have record evidence  
5 that describes, from the perspective of purchasers,  
6 the extent to which that is an accurate  
7 characterization.

8           As I try to understand what Respondents are  
9 saying, you sort of, you're made to ask, you know, who  
10 really is trying to gerrymander. You know, when they  
11 talk about like product, LG, at page 5 of its brief,  
12 says there's, "no reason why 3.7 cubic foot capacity  
13 would function as a meaningful boundary for this  
14 industry", and they're advocating that the domestic  
15 like product be engrossed beyond the current scope.

16           Then out of the other side of their mouth  
17 they say that, you know, this less than 3.7 cubic foot  
18 segment is U.S. production that did not compete with  
19 subject imports in any way during the period of  
20 investigation. So, you know, I struggle a lot with  
21 this.

22           You know, again, what we did was we excluded  
23 from, we asked Commerce to exclude from the scope a  
24 group of products where there were no imports, and so,  
25 you know, again, we've said to you that you should

1 properly conclude that there's a domestic like product  
2 coterminous with this amended scope, and the factors  
3 support that finding, but if you want to find a  
4 domestic like product encompassing all residential  
5 washers, that's not our issue. We have no quarrel.  
6 The factors could support that analysis, and, you  
7 know, you reach the same conclusion. Why do you reach  
8 the same conclusion? Well, let's talk about that, or  
9 maybe we'll talk about it later because I want to stay  
10 focused on your question, Madam Commissioner.

11           I think the perversity of Respondents'  
12 argument is they want to say on the one hand you must  
13 consider as part of the domestic like product domestic  
14 top loaders less than 3.7. Why? Because, according  
15 to them, it is like what? Like the imports. They  
16 want to argue that on the one hand, and then on the  
17 other hand they want to say now, having found a  
18 broader domestic like product, there is no competition  
19 or attenuated competition between those products which  
20 they just advocated to be like the imports and subject  
21 imports.

22           I would propose that what Respondents are  
23 advocating is a perversity, they cannot have it both  
24 ways, and it makes no sense to me. I hope that's  
25 responsive to your question.

1           MR. GREENWALD: Commissioner Aranoff, if I  
2 could address the specific question that you asked,  
3 which is the issue of price suppression down the line  
4 without price undercutting or underselling. I think  
5 that was the question.

6           COMMISSIONER ARANOFF: Yes.

7           MR. GREENWALD: If you go to the staff  
8 report at V-12 -- and let me again congratulate the  
9 staff on a questionnaire that was uncommonly thorough  
10 -- one of the questions that was asked of purchasers,  
11 and I believe this is all in the public record, does  
12 the availability of a higher featured washer at a low  
13 price affect the price of less highly featured  
14 washers? It doesn't address the underselling  
15 explicitly, but it does address it implicitly because  
16 you're asking about feature, load and price.

17           The answer to that is 19 purchasers said  
18 that there was downward pressure on the less featured  
19 price, less featured product, and zero said there was  
20 no price impact. So that's point one.

21           MR. LEVY: And, I'm sorry, Julie, that's  
22 Exhibit 18 if you want to put it up.

23           MR. GREENWALD: It's the III-27. The other  
24 part that I think goes directly to your question is  
25 what happened to prices up and down the line after

1 this petition was filed? Don't forget that the  
2 imports are entirely in the highly featured segments  
3 of the market, higher priced, highly featured.

4           What you see after this case was filed,  
5 because of the impact at that end, was prices rose up  
6 and down the line, so the notion that somehow you  
7 cannot have price suppression without underselling is  
8 disproved by this record because of the questions the  
9 staff asked and because of the data the staff  
10 collected on postpetition price increases.

11           COMMISSIONER ARANOFF: Okay. Thank you. In  
12 line with those questions, the Respondents argue that  
13 the Commission was wrong in its preliminary  
14 determination to find that cross-shopping by consumers  
15 between the three different kinds of washers, high  
16 efficiency top load, conventional and high efficiency  
17 front load, even occurs in the market, and they said  
18 that even if it did occur, it doesn't provide a  
19 mechanism for transferring adverse price effects from  
20 the sales of one type of product to another. Do you  
21 want to respond to that? Do you agree with that?

22           MR. FETTIG: Commissioner, I'll take the  
23 first shot at it and I think Mr. Bilas could probably  
24 answer it because he lives this every day. You know,  
25 candidly, this is a replacement market. Consumers

1 purchase a washing machine every 10, 12, 15, 20 years  
2 if it's a Whirlpool, and so they're not in the market  
3 that often. It's usually a replacement purchase, it  
4 breaks or it's, and they're in the market for a very  
5 short period of time. Of course they do some research  
6 and so on, but normally they are very, it's everything  
7 on the floor is very new to them, so to think that  
8 they go in, that they don't cross-shop, they're going  
9 to the store to buy a washing machine. That is their  
10 first level of thinking, so of course they cross-shop.

11           They go what's available, what size, what  
12 configurations and so on and so forth, and then they  
13 start to decide what is the value. What do I pay for  
14 what do I get and what meets my needs. If there's a  
15 salesman, a salesperson, they'll try to convince them  
16 to get this or that. Again, they go into the store to  
17 buy a washing machine.

18           COMMISSIONER ARANOFF: Okay. Thank you very  
19 much. I appreciate that answer. Thank you, Mr.  
20 Chairman.

21           CHAIRMAN WILLIAMSON: Commissioner Pinkert?

22           COMMISSIONER PINKERT: Thank you, Mr.  
23 Chairman. I join my colleagues in thanking all of you  
24 for being here today. As Mr. Greenwald noted earlier  
25 today, some would have it that this case is merely a

1 rerun of the refrigerators case. Now, without regard  
2 to whether we got the refrigerators case right, and I  
3 know that there would be strong feelings about that on  
4 this panel, how is this case, what are the fundamental  
5 features of this case that are different that  
6 distinguish this case from the earlier case?

7 MR. FETTIG: Commissioner, I'm sure there's  
8 many people who could answer that but let me give you  
9 my view. I mean, first of all, this is the washing  
10 machine business, not the refrigerator business, and  
11 the facts of the case are very different and the data  
12 is very different, starting with where do washing  
13 machines go in the home? They go in the basements,  
14 they go in the garages. They're not in the kitchen,  
15 and so it's a completely different utility for this  
16 product.

17 The second is there is absolutely, you know,  
18 if you turn to Exhibit 1, no credible argument  
19 whatsoever that we have any deficiency in our product.  
20 We have all the latest innovations, we have all the  
21 size configurations, we have the best reports in  
22 *Consumer Reports*, so the idea that somehow there's a  
23 deficiency in our product line is simply not true.

24 We have a very strong case, very strong, of  
25 price underselling. The magnitude of the price

1 underselling, both in the aggregate data, but also in  
2 the specific, is extraordinary by any measures. We've  
3 already seen two domestic producers leave the  
4 marketplace during the period of inquiry.

5           You know, candidly, the washer case is  
6 important for so many reasons. As I said in my  
7 beginning remarks, it's the heart of our entire  
8 business in the United States. It employs 3,000  
9 people. You see some of them in the room. We had  
10 3,900 people a couple of years ago, so 800 people  
11 already are not there because of the harm of price  
12 competition by subject imports. So I think up and  
13 down the line the facts of the washer case are  
14 different than they were in the refrigeration case.

15           MR. GREENWALD: If I may, let me elaborate  
16 on that by going again to the record. Jeff had spoke  
17 directly about it from a business point of view. It's  
18 a different product that goes into different places  
19 with a different emphasis on things like feel, fit and  
20 finishing.

21           If I can take you to the data, as I read  
22 your decision in refrigerators, it turned on two  
23 issues in the record. One was there's a mention of  
24 attenuated competition, and that issue was addressed  
25 to the purchasers. There's a question in the

1 purchasers' questionnaire that says since January 1,  
2 2009, have certain grades, types, sizes of LRWs been  
3 available only from a single source, domestic or  
4 foreign? Twenty of I think 21 purchasers that  
5 answered that question said no, there is no serious  
6 allegation that there are products that are not  
7 offered or that, frankly, Whirlpool does not make the  
8 best quality in the business.

9           Second question, again from your  
10 questionnaire responses from purchasers, and this is  
11 on staff report page II-31, are large residential  
12 washers produced in the United States and other  
13 countries interchangeable? Most purchasers say yes.  
14 You have a record on attenuated competition,  
15 particularly from a thorough group of purchaser  
16 responses that we did not have in the refrigerator  
17 case, that I believe is compelling.

18           The second issue, if you go back and you  
19 reread your decision in bottom mounts, much is made of  
20 underselling. Here, the record on underselling is  
21 radically different from what you saw in that case.  
22 So, in addition to the business side, the record is  
23 fundamentally different.

24           COMMISSIONER PINKERT: Thank you. Now, also  
25 in your opening remarks, Mr. Greenwald, you referred



1 to why Electrolux stopped producing in the United  
2 States, and I'd like for this panel to tell me what  
3 evidence do we have specifically that goes to the  
4 relationship between the subject imports and  
5 Electrolux' decision?

6 MR. GREENWALD: I don't think I said -- I  
7 believe what I said is that, in my view, subject  
8 imports and the pricing drove Electrolux out of the  
9 market. In the case of Bosch, you have that stated  
10 explicitly by Bosch in testimony. Electrolux is in a  
11 different position because it's gone from being a  
12 major domestic producer in the first part of the  
13 investigation to now an importer from Mexico, and it  
14 will be much more circumspect in its answers.

15 I do not think you can fairly read this  
16 record with the losses that were being incurred by all  
17 producers on front load washers produced in the United  
18 States, Bosch, Electrolux, and then subsequently  
19 Whirlpool, and conclude anything but. No matter what  
20 they say, the evidence shows that they made a decision  
21 to leave the U.S. market for production of the larger  
22 front load washers because they thought that that's  
23 what they had to do given the price competition from  
24 subject imports.

25 MR. LEVY: Commissioner Pinkert, I would add

1 only two points on this Electrolux question. First,  
2 it's clear from the public version of Electrolux's  
3 brief that they earned in the United States operating  
4 losses through the duration of the period of  
5 investigation, and second, the Department of Labor  
6 certified laid off Electrolux workers for TAA during  
7 this period.

8           COMMISSIONER PINKERT: Thank you. Now, this  
9 next question relates somewhat to the scope issue but  
10 I just am wondering about the mechanics of the  
11 marketplace on the 3.7 cubic foot top loading  
12 conventional washers, okay? For example, there's a  
13 product that GE introduced in 2012. Can those  
14 products compete against comparably sized, top  
15 loading, high efficiency units at the same price level  
16 or does there have to be a price gap between the two?

17           MR. FETTIG: Casey, I'd ask you to answer  
18 that.

19           MR. TUBMAN: Casey Tubman again. To answer  
20 the question, I think the best way to think about it  
21 is the value of the product. So you asked if a  
22 conventional agitator-based GE, which might have a  
23 capacity up to 3.9 actually, compete at the same price  
24 point as an impeller-based washer, maybe a smaller  
25 capacity, 3.7 or a 3.6. It all comes down to the

1 value and the total because the consumer, when they  
2 look at it, they would compare the two.

3           For us, going into an actual retailer and  
4 trying to sell a floor spot, that retailer has already  
5 decided whether they're going to put a high efficiency  
6 product on the floor or whether they're going to put a  
7 conventional agitator on the floor. Therefore, it  
8 comes down to if they're looking for a high efficiency  
9 washer, they're going to look at the value they get  
10 for the price, and it all comes down to margin there.

11           We're going to take one of our high  
12 efficiency products and compete against it, and if  
13 they're looking for an agitator, we're going to take  
14 them an agitator to compete against it, and again,  
15 we'll argue the fact of dollars most of the time  
16 because they've specified what that floor spot's going  
17 to be for.

18           COMMISSIONER PINKERT: I'd ask that your  
19 economic consultant look at this question for the  
20 posthearing, and if there are any numbers you can put  
21 on it, I think that would be helpful. Finally, there  
22 was an allegation that I want to give Whirlpool a  
23 chance to respond to that late 2011 pricing might have  
24 been driven by litigation strategy.

25           MR. FETTIG: I'll answer that. Again, I'm

1 responsible for many parts of our business, including  
2 supervising the North America business. I would just  
3 say, first of all, the allegation is absolutely  
4 untrue. It would be hard for me in my mind to even  
5 imagine how they created that type of idea.

6           If you go back even to actually in early  
7 2011, late 2010, we told the financial community that  
8 we were no longer going to participate in the what we  
9 called very poor investments that others were making  
10 in the marketplace for holiday promotional periods.

11           We went from an environment where it used to  
12 be 10 to 15 percent offs, or free delivery, or things  
13 like that, and, you know, in the recession, not due to  
14 the recession, because people were desperate for  
15 volume and subject imports put all this pressure on  
16 the pricing on the marketplace, we started seeing  
17 crazy things going on, 25 percent offs, 30 percent  
18 offs, 50 percent off. Think about it: 50 percent  
19 off. How in the world in an industry where last year  
20 we made more than anyone else, we made four points --  
21 four points -- as a company, how could you offer 50  
22 percent off? It's impossible without selling at huge  
23 losses.

24           We told the financial community we no longer  
25 were going to participate in that. It had gotten

1 crazy. The retailers can choose to do whatever they  
2 want to, but as a manufacturer, we were not going to  
3 pay for it. So we did this well before that. That  
4 had nothing to do with the legal decision, it had to  
5 do with the fact we're losing money. We're simply  
6 losing money due to low prices by subject imports. So  
7 why in the world, why in the world would we promote to  
8 lose more money? The answer is we chose not to.  
9 Other domestic manufacturers, by the way, followed  
10 suit.

11 COMMISSIONER PINKERT: Thank you very much.  
12 Thank you, Mr. Chairman.

13 CHAIRMAN WILLIAMSON: Thank you.  
14 Commissioner Johanson?

15 COMMISSIONER JOHANSON: Thank you, Mr.  
16 Chairman. I would also like to thank the witnesses  
17 for appearing here today and other people in the  
18 audience as well. My first question is for anyone on  
19 the panel. I understand that sales of washers with  
20 color are down apparently due to the economic  
21 downturn. What does this suggest about the importance  
22 of appearance to U.S. purchasers of washers?

23 MR. FETTIG: Well, Sam, I'd first ask you  
24 and perhaps Dave to talk about that, and then we'll  
25 talk about the trends in color.

1           MR. ABDELNOUR: Yes. This is Sam Abdelnour.  
2 I would argue that color has always been a small  
3 percentage of the total washer business right from the  
4 very beginning. Most consumers are attracted to color  
5 when they see it on the floor. By the time they make  
6 the purchase, they choose white. The reason they do  
7 is because there's an up charge for color and that  
8 product is not going in the kitchen, it's not going to  
9 be in a room that anybody really sees, in most cases  
10 it's going to be in a basement or in a garage, maybe a  
11 laundry room in some parts of the country.

12           So we have seen a move toward more white,  
13 but I would also argue that from the beginning we've  
14 had retailers who have tried not to complicate the  
15 business by offering color at a premium. They display  
16 more product in white than anything else. So I don't  
17 think the current economy has really influenced the  
18 fact that the color charge or the sale of color  
19 product is down.

20           MR. FETTIG: I'd ask Mr. Bilas to make a  
21 comment.

22           MR. BILAS: Yes. Thank you. This is Dave  
23 Bilas. I would agree with Sam's remarks. I would  
24 also add to that, in the retail environment, which are  
25 my customers, it increases their stock keeping units

1 and what they have in their warehouse, which is an  
2 additional cost to what's there. It's not that they  
3 don't necessarily want to sell color, but the market  
4 tends to be about 80 percent plus in white depending  
5 on which manufacturer you're with, so that would also  
6 skew that in a certain extent, the fact that Sam  
7 alluded to, that it is not necessarily in a visible  
8 part of the home, so you're not entertaining behind a  
9 washer. You typically have that as the work horse in  
10 the house.

11           What drives my belief in the laundry  
12 business, specifically washer, is capacity. That's  
13 been typically what a consumer comes in to,  
14 particularly those with large families, and that will  
15 drive the sale of what's there. If that piece is on  
16 the floor, it's going to be asked about capacity, and  
17 the features and the value of that going forward.  
18 Thank you.

19           MR. GREENWALD: Mr. Johanson, I don't know  
20 whether you want to get into color more generally, but  
21 one of the things I would like to say for the record  
22 is one of the more irritating points in the briefs  
23 that were not an easy read on the other side was the  
24 way they portrayed color.

25           When you think about color, you have to go

1 back to the staff report and distinguish between color  
2 in top loads and color in front loads. There is a  
3 difference. So when you're aggregating all this  
4 information, it can give a distorted picture if  
5 somebody is relatively more heavily in top load or in  
6 front load.

7           The other issue, and this is really more for  
8 the staff, the color data from at least one of the  
9 responding producers strikes me as being way, way off  
10 anybody else and you have to get to the bottom of  
11 that.

12           MR. TUBMAN: If I can just add -- Casey  
13 Tubman -- one of the things that we see also in terms  
14 of sales of color in the market and whether they move  
15 more or less from a retailer standpoint is if that  
16 retailer was offered the option to sell color at no  
17 cost.

18           So we've had issues where others have  
19 offered color at free basically, the same price as  
20 white, and then the retailer, if they so choose, can  
21 then charge more and make extra margin to put in their  
22 pockets or they can sell it at the same price as  
23 white, therefore moving more consumers in that  
24 direction. So the consumer can be swayed back to if  
25 it's a free decision versus if it's a cost decision at



1 that point in time.

2 MR. FETTIG: And to be clear, selling color  
3 at no cost is a price reduction because color costs  
4 money in the product.

5 MR. SCHMIDT: Yeah. This is Norb Schmidt.  
6 Just to address one allegation that was made in the  
7 briefs that I believe you read. If you go to Exhibit  
8 13, I know there was a lot of comments made about how  
9 Whirlpool was lagging in color. It's actually quite  
10 the opposite. You know, if you don't see a color here  
11 that you'd like to have in your home, please let us  
12 know because we certainly can bring it to market.

13 Since the very beginning, actually -- it was  
14 fun to go back and Google Whirlpool color washers  
15 because, actually, if you go back to the early '60s  
16 and '70s, we've offered colored washers, whether it's  
17 yellow, pink, black. There's been colors in washers  
18 for quite a long time. This is just, this isn't even  
19 everything that we've offered here, in our recent  
20 history. Whether you're talking about a full  
21 stainless unit, oranges, reds, blues, we've offered  
22 product.

23 While some of this product may come from our  
24 German and Mexican platforms, many of these colors are  
25 offered on our large residential washers that are

1 built here, in Clyde. All of this work was engineered  
2 and designed here, in America.

3 COMMISSIONER JOHANSON: All right. Thank  
4 you for your responses. What do recent investments by  
5 GE and Whirlpool in U.S. manufacturing capacity for  
6 large residential washers say about the strength of  
7 the domestic industry as a supplier in the U.S. market  
8 today and going forward?

9 MR. FETTIG: Well, I can't speak for General  
10 Electric, I can speak for Whirlpool, and that, you  
11 know, our investments are based on our commitment to  
12 bring great products to customers in this market where  
13 we've been a leader for 101 years, to make sure we've  
14 got the most competitive and efficient tools. We  
15 invest in our factories to make sure we have the most  
16 efficient factories, and we invest in our people to  
17 make sure they always have the skills and training to  
18 perform at their very best.

19 We made these investments, and again, I'll  
20 take the two in our case, the Oasis -- if you go to  
21 our three platforms, Exhibit 2 I believe, Oasis  
22 platform. We invested over \$100 million. We invented  
23 this segment, large capacity HE. We had 100 percent  
24 of the market in 2009 and 2010. We're growing in a  
25 bad economy, growing at a very, very fast rate and

1 making reasonable returns given the investment.

2           What changed was LG and Samsung being  
3 copiers, fast followers to the marketplace, and then  
4 they radically, radically reduced prices. They bought  
5 market share at uneconomic levels. That's why they  
6 took away this volume.

7           The same for front load washing machines,  
8 Alpha. We spent over \$100 million. We did bring best  
9 in class product to the marketplace. Again, you saw  
10 both of those in *Consumer Reports*. We hit every  
11 target that it took to have a great investment that  
12 would win in the marketplace, make sense economically  
13 and sell well in this country. The one thing that  
14 changed was marketplace pricing by competitors who  
15 once again drove down prices to where there was no  
16 economic viability to either one of these.

17           So what it says is that subject import  
18 pricing is making it impossible for investments in the  
19 United States manufacturing for products to be  
20 economically viable, which is why the fair trade law  
21 exists, and on a level playing field today, at least  
22 our investments would be great investments in this  
23 country.

24           COMMISSIONER JOHANSON: Thank you for your  
25 response. Respondents have argued that there is no

1 price depression by reason of subject imports in part  
2 because the prices for individual washer models are  
3 likely to decline over a three year period due to the  
4 normal product life cycle of pricing. What is normal  
5 product life cycle pricing in this market? Mr.  
6 Fettig?

7 MR. FETTIG: Yes. First of all, there is no  
8 normal product life cycle. They're bringing in  
9 consumer electronics TV nomenclature into a category  
10 where when you're making \$100 million investments in  
11 platforms every reasonable manufacturer would expect  
12 to utilize those platforms for many years, number one.

13 Number two, certainly everyone -- everyone  
14 -- is bringing new features, new aesthetics, new  
15 selling points, which are very, which are not \$100  
16 million investments, they're small investments. To  
17 think that there's a cost curve that you can drive the  
18 prices down in any period of time that they show in  
19 the period of inquiry, it's absolutely impossible. It  
20 defies gravity.

21 Think about the Samsung example, Exhibit 3,  
22 if you would. This is not life cycle pricing. They  
23 introduced this product in May of 2011 at \$856 retail.  
24 Three months later they reduced the price by \$200.  
25 That is price dumping. They are buying market share.

1 They were not earning market share.

2 Casey, you might talk about the make up of  
3 the cost of the materials of a product to show that  
4 these kind of numbers are not possibly explainable by  
5 life cycle pricing.

6 MR. TUBMAN: Casey Tubman. Again, just  
7 thinking of the product itself, 75 percent of that  
8 product is made up of raw materials, so we're talking  
9 about steel, we're talking about copper, we're talking  
10 about aluminum and basically plastic resins. So  
11 that's 75 percent of your cost.

12 Those commodities are not going down at all,  
13 they're going up, especially over the period of  
14 investigation. They're going up severely. So for us  
15 to be able to bring products down to the type of  
16 numbers that Mr. Fettig refers to here is impossible.

17 I think at the same time you have to think  
18 of the life cycle of a product, if you want to call it  
19 that, but it's really of a model, it's not of the  
20 platform. Instead of a \$100 million investment,  
21 you're talking about a couple tens of thousands of  
22 dollars to bring a new model, so you might put a new  
23 aesthetic to it, you might put a new cycle on it,  
24 things of that nature, and when you bring that model,  
25 that's to refresh the look of it or refresh the model.

1           So you can see in some of the exhibits  
2 they'll show sales of a certain amount and then a  
3 price at a certain amount, and then they show the  
4 sales going to zero and the price coming down trivial  
5 amounts, I'll say. That's us closing floor models  
6 out. When you sell the floor model off it's been  
7 dinged, and dented and damaged over time, and  
8 therefore, it sells for a much lower price, but you're  
9 only talking about a few models to clear the floor.

10           So if you look at the majority of the sales,  
11 they're going to show up at that price point. The  
12 following model that comes after it would take over  
13 that price point and then continue the sales of the  
14 higher volume. So again, if you look at the numbers  
15 that you have, that should all be included in there  
16 for our products, as well as others.

17           COMMISSIONER JOHANSON: All right. Thank  
18 you, Mr. Tubman. Mr. Levy, I see you're about to  
19 respond but my time expired over a minute ago and so  
20 perhaps if you want to come back to this in my second  
21 round of questions.

22           MR. LEVY: Very good. Thank you.

23           COMMISSIONER JOHANSON: Okay. Thank you.

24           COMMISSIONER BROADBENT: I mean if you  
25 wanted to respond, you can use my time, but you

1 haven't given it.

2                   CHAIRMAN WILLIAMSON: Commissioner  
3 Broadbent?

4                   COMMISSIONER JOHANSON: Thank you,  
5 Commissioner Broadbent.

6                   COMMISSIONER BROADBENT: Okay. Mr. Levy.  
7 Please.

8                   MR. LEVY: Okay. Thank you very much. Just  
9 to follow-up on this question of life cycle pricing, I  
10 would just call your attention to the record to page  
11 V-24 of the staff report if you have it handy.

12 Excellent. What you're going to find at page V-24 of  
13 the staff report is the quarterly pricing table for  
14 Product 5 just, there's an illustration.

15                   In particular, let me call your attention to  
16 the per unit price of the U.S. product in say January  
17 to March of 2010, and look at that price. Then fast  
18 forward to October to December of 2011 and look at  
19 that price. The question is is that life cycle  
20 pricing? I would submit to you that what you see  
21 there is not a function of life cycle pricing.

22                   I would ask you to look over to the right,  
23 look at the timing of the introduction of Korean  
24 import volume, look at the volumes and look at that  
25 price, and I would submit to you that what explains

1 U.S. producer pricing to the extent certain pricing  
2 products are a reflection of price depression, that it  
3 is a function of import price competition, not product  
4 life cycle. Thank you.

5 COMMISSIONER JOHANSON: All right. Thank  
6 you, Mr. Levy, and thank you, Commissioner Broadbent,  
7 for the time.

8 COMMISSIONER BROADBENT: Sure. Thanks. I  
9 think this might be for Casey, Mr. Tubman. At Home  
10 Depot there's often a sign in front of the washing  
11 machine that tells you sort of in large letters how  
12 much your water bill is going to be, and I noticed  
13 that some washers with impellers had higher advertised  
14 water bills than those with agitators. How exactly do  
15 you define high efficiency for a washing machine? Is  
16 there a clear dividing line between agitators and  
17 otherwise?

18 MR. TUBMAN: Sorry. Mr. Tubman talking. I  
19 would say no, there's not a clear dividing line. I  
20 think you bring up a good point about that is you can  
21 have an agitator-based washer that actually has a  
22 better water factor -- and water factor is how much  
23 it's used on the size versus the capacity, so for the  
24 clothes you're using you can use less water in an  
25 agitator-based than in an impeller-based.



1           What happens is if you talk to an engineer,  
2 I'll say, or a manufacturing person and you say high  
3 efficiency, they automatically think impeller in their  
4 mind. If you say it to a sales guy out in say Oregon  
5 or somewhere where there's a rebate, they think CEE  
6 Tier 3, so it's got to be a much better water  
7 efficiency to be high efficiency. So it depends on  
8 who you're talking to at the time, what they're  
9 talking about, if it's a sale versus an engineering  
10 discussion versus a production discussion. It really  
11 is a mixed bag of discussion. You have to be clear  
12 who you're talking with and what you're talking about,  
13 whether it's high efficiency or conventional.

14           COMMISSIONER BROADBENT: Okay.

15           MR. BILAS: Excuse me. I'd just like to add  
16 one thing. This is Dave Bilas. Different states and  
17 public utilities have different measurements of that  
18 as well, so you might see it in Wisconsin being  
19 different than California, and Oregon and so forth.  
20 So it's there's not a direct line of demarcation.

21           COMMISSIONER BROADBENT: So the energy  
22 standards are a moving target in terms of --

23           MR. BILAS: Well, in terms of the public  
24 utility, what they're calling energy efficient, yes.

25           COMMISSIONER BROADBENT: Okay.

1           MR. SCHMIDT: This is Norb Schmidt again.  
2 Again, talking technically and being the engineer that  
3 would give my engineering answer, it is a moving  
4 target. That's a function of the fact that you really  
5 have two bodies that set the energy requirements, one,  
6 the Department of Energy, and one is this Consortium  
7 of Energy, CEE. They set tier levels. Those are  
8 moving targets as well. Those can change every two  
9 years, every three years, just as time goes on. So  
10 those also, even from a technical perspective, while  
11 there's a requirement in terms of water usage and  
12 energy usage, it changes over time.

13           COMMISSIONER BROADBENT: Okay. Great. I  
14 think this would probably be for Mr. Greenwald or Mr.  
15 Levy. As you know, there's a number of ADCVD orders  
16 covering flat-rolled steel products in place now. In  
17 your view, have these duties increased the raw  
18 material prices to Whirlpool for input costs,  
19 especially if you're comparing sort of input costs  
20 with Korea and Mexico.

21           MR. GREENWALD: I can't answer that off the  
22 top of my head. I just don't know. It's worth  
23 looking at. If it's all right, we would do so in the  
24 postconferencing briefing.

25           COMMISSIONER BROADBENT: If it was raising

1 your prices, would that be something we should  
2 consider in our analysis?

3 MR. GREENWALD: I would think not because  
4 the Department of Commerce looking at dumping, does a  
5 dumping margin. It's a dumping equation, if you will.  
6 What's going on in this market in terms of this  
7 industry is what prices are people selling at, and  
8 what's the competition doing, and to what extent does  
9 the dumping margin affect competition? The cost side  
10 of steel, the relevant costing, is something that  
11 features in the Commerce Department analysis, not, I  
12 believe, in your own analysis.

13 COMMISSIONER BROADBENT: Okay. This is for  
14 Mr. Fettig. I'm sort of new here, at the Commission,  
15 been here a couple of months, but what I've, it's  
16 confirmed to me is once orders go in place, they're in  
17 effect for a long time. In your situation, what do  
18 you anticipate here? Is this something that's a  
19 temporary measure or do you anticipate a longer term  
20 remedy that's necessary for the type of aggressive  
21 pricing that you anticipate way down the road?

22 MR. FETTIG: Well, what we would like  
23 literally is a level playing field. The people  
24 compete based on some form of economics and  
25 competition, as opposed to subsidized prices below

1 economic cost, losing money selling products.

2           You know, I don't know what period of time  
3 it takes to change that behavior and I'm not sure  
4 exactly what -- I do know what, there's increments  
5 that the statute has and the Department of Commerce,  
6 and of course it has to be monitored, but, you know,  
7 we would like, we believe in competition. It makes us  
8 better. We get better every day. We do not believe  
9 in violating clear fair trade rules where people are  
10 dumping products. They're dumping it to basically  
11 increase employment in their countries and they take  
12 away employment in this country. They're trying to  
13 destroy the manufacturing.

14           We've competed, again, before these guys  
15 came around for a long time with the best companies in  
16 the world, and we still do, but never have competed  
17 with companies that will so willingly drive prices  
18 down below any possible level that make economic  
19 sense, so I would like to see change in economic  
20 behavior.

21           MR. LEVY: Commissioner Broadbent, I would  
22 add I think that it would be understandable if certain  
23 Commissioners may from time to time harbor a healthy  
24 skepticism of dumping margins that the Commerce  
25 Department may calculate.

1           This is a case where the Respondents in  
2 their own public statements have announced an  
3 intention to grow U.S. market share and be number one  
4 in appliances and have said that they hope to be  
5 profitable a few years out at some point. In other  
6 words, by their own admissions, they are selling below  
7 their cost in order to buy market share. That is  
8 uneconomic behavior, and that is exactly the kind of  
9 behavior that Whirlpool cannot compete against.

10           Whirlpool has competed against the likes of  
11 GE and done very well, thank you very much, but what  
12 we're experiencing now is a fundamentally uneconomic  
13 and predatory practice that is, I would say,  
14 qualitatively different than your garden variety  
15 dumping case.

16           COMMISSIONER BROADBENT: I thought it was  
17 very impressive that you had so many products that  
18 made the top five and the top 10 list in *Consumer*  
19 *Reports*. I did notice that you got most of those  
20 awards in 2011. Are you ramping up here and becoming  
21 more competitive? I mean I think that's exciting. I  
22 just noticed a big difference between 2011 --

23           MR. FETTIG: I mean, you know, year in, year  
24 out there's changes to the ratings. We always have in  
25 the washing machines, always have among the top

1 ratings. Every time we come out with new products we  
2 usually get the top ratings, so this is not uncommon  
3 for us, to be high on the list. It is uncommon for us  
4 to have a grand slam across the list because no one's  
5 ever done that before.

6 COMMISSIONER BROADBENT: Right. It's very  
7 good. Can somebody give me a sense of why GE's not  
8 more actively involved in this case since, being the  
9 other domestic producer?

10 MR. GREENWALD: We don't pretend to speak  
11 for GE. I think they are doing whatever their comfort  
12 zone permits. I would urge you to look at their  
13 questionnaire response and anything else they may have  
14 provided you, but I don't think it would be  
15 appropriate for me to speculate why GE does, or  
16 doesn't do, what it decides to do.

17 MR. LEVY: The only thing I would add is  
18 that the fundamental economics that General Electric  
19 faces in Louisville, Kentucky, are no different than  
20 the economics that Whirlpool faces in Clyde, Ohio.  
21 When Whirlpool tells you that they've invested \$100  
22 million in an Alpha platform and they cannot earn a  
23 profit because of import pricing, that's an important  
24 point.

25 When we read in the papers that GE has

1 committed to up to a quarter of a billion dollars to  
2 invest in new washers in Louisville, Kentucky,  
3 including a new front load washer platform that would  
4 rival the Alpha front loader, and that is slated to  
5 come on line next year, I would say that the future  
6 portends very bad news for General Electric in 2013  
7 without trade relief.

8           COMMISSIONER BROADBENT: Okay. Thank you.  
9 My time is up.

10           CHAIRMAN WILLIAMSON: Thank you. Mr. Bilas,  
11 I was just wondering if you can address from your own  
12 practical experience this question of the impact of  
13 the undersellings, you know, hitting the high end  
14 products and the fact that it caps the lower end and  
15 adversely affects them. I was just wondering, you  
16 know, since you deal with the retailers quite a bit, I  
17 was wondering if you might have any insights on that.

18           MR. BILAS: Certainly. Thank you.

19           This is David Bilas, as you asked the  
20 question, negotiations really from our side always  
21 start with price. If you deal in the premium products  
22 in the higher end of the line and the price is coming  
23 down, that compression affects the entire line,  
24 really, from top to bottom because there is a  
25 comparative --

1           When you look at the washing machine  
2 business, again as I stated earlier, one of the key  
3 consumer Qs is capacity and its value for that  
4 capacity. And in a market that we're in right now  
5 which is driven primarily by replacement, you're going  
6 to see that. That's really where I'd see -- There's a  
7 high discounting effect that you'd see on the retail  
8 floor which would also push that as well. So with  
9 limited time offers and some other things that would  
10 be there as well.

11           Does that answer the --

12           CHAIRMAN WILLIAMSON: Yes, it does.

13           A quick question. Having been somebody  
14 who's always lived in a place where you had to put the  
15 dish out of the washer and dryer upstairs and had  
16 limited space, the capacity argument doesn't come to  
17 me as naturally. Is that a big driver for folks who  
18 are say putting their washer/dryer in the basement --

19           MR. BILAS: When you have the ability to  
20 have a larger capacity washer, typically a consumer  
21 will take that. If your configuration limits the  
22 space that you have, obviously you have to buy that.

23           In urban living, where you're vertically  
24 living versus single family housing, it is a bit  
25 different. When you're putting a washer in the



1 basement the concern typically is capacity, value for  
2 that capacity and also the ability to pump that water  
3 up because you might be below the surface of the  
4 ground. So it would have to go up that six or eight  
5 feet to go out there.

6 So those types of what I would call  
7 installations have impact relative to what products  
8 you may choose.

9 CHAIRMAN WILLIAMSON: Thank you.

10 Do fair floor retailers such as Home Depot  
11 steer consumers towards those offering the highest  
12 margins? And if so, how do they do that?

13 MR. ABDELNOUR: I'm sorry. Could you repeat  
14 the question?

15 CHAIRMAN WILLIAMSON: Do fair floor  
16 retailers such as Home Depot steer consumers towards  
17 those washers offering the highest margins? If so,  
18 how do they do that?

19 MR. ABDELNOUR: It starts with the wholesale  
20 price and it starts with our ability as a manufacturer  
21 to get floor spots, to negotiate floor spots on the  
22 floor.

23 In the case of a Home Depot it's a very  
24 limited display. Very limited number of brands on the  
25 floor. So consequently there's a great deal of

1 control that goes into the selection of those SKUs  
2 that provide the greatest margin to the Home Depot.  
3 Those products are placed on the floor in a very  
4 unencumbered environment. The consumer comes in, they  
5 don't have a lot of choice because it's a small  
6 display. And generally all of those products at the  
7 Home Depot drive good margin for the Home Depot based  
8 on the negotiation.

9 Does that answer your question?

10 CHAIRMAN WILLIAMSON: Yes.

11 Mr. Bilas?

12 MR. BILAS: I would add to that again, the  
13 negotiation at the wholesale level will drive what  
14 happens on the floor. When you have larger retailers  
15 such as the Home Depot, such as Lowe's and so forth  
16 that have limited floor space, getting those pieces on  
17 the floor is premium for a manufacturer. If they're  
18 not on the floor they typically don't sell.

19 Obviously there are special orders, but the  
20 large amount of sales that they produce are products  
21 on their floor and products that they do advertise.  
22 So it is imperative for a manufacturer to get those  
23 products on the floor.

24 When you look at an independent retailer,  
25 which I represent at this point in time, their floors

1 tend to be larger. They may have two to three to four  
2 times the amount of SKUs. The mobility, being nimble  
3 on the floor to move around has that access.

4           But again, if you look at market share  
5 statistics, again, well into the 60s, I think about 66  
6 percent of the business in washers is done by four  
7 players. That would be Sears, Lowe's, Home Depot, and  
8 Best Buy. Those limited floor spaces do create a  
9 premium for what goes on there.

10           Does that answer the question?

11           CHAIRMAN WILLIAMSON: Yes.

12           To what extent does the fact that a salesman  
13 may get a commission, how does that affect things? I  
14 think you mentioned Home Depot doesn't. Do most of  
15 the others do?

16           MR. BILAS: Yes. If you look at a Sears  
17 floor there is commission involved in it. Lowe's  
18 there is commission. Best buy is a non-commission  
19 floor although they have done, at different times  
20 they've had different mechanisms to test that out.

21           The independent retailer typically is always  
22 a commission floor.

23           I would suggest to you, my opinion, that the  
24 Home Depot sells what they have on their floor. It is  
25 a non-commission floor and to that extent as I said

1 earlier, is the fair portion of what they have. It's  
2 just that it tends to be a smaller floor, some 900 to  
3 1,000 square feet. So you're not entertaining all the  
4 models that are out there in that area.

5 CHAIRMAN WILLIAMSON: Thank you.

6 MR. ABDELNOUR: Can I add something?

7 CHAIRMAN WILLIAMSON: Sure.

8 MR. ABDELNOUR: This is Sam Abdelnour.

9 What I would add to that, on a commissioned  
10 sales floor, the negotiations at a wholesale level get  
11 that much more intense because the way a commissioned  
12 sales person is compensated is based on the level of  
13 margin the retailer can make on that SKU. So if one  
14 SKU provides better margin than another it pushes the  
15 commissioned sales person in that direction because  
16 his commission rate will be higher and he'll put more  
17 in his pocketbook at the end of the day.

18 Home Depot is a little different because  
19 they're salaried people. Everybody else for the most  
20 part, with the exception of Best Buy, has commissioned  
21 sales people, and in some cases they don't draw a  
22 salary or anything. It's straight commission. So  
23 they push the consumer and themselves into the areas  
24 with the highest margin.

25 CHAIRMAN WILLIAMSON: Thank you.

1 MR. SCHMIDT: If I could as well, very  
2 quickly.

3 CHAIRMAN WILLIAMSON: Yes.

4 MR. SCHMIDT: This is Norb Schmidt.

5 While we're spending a lot of time talking  
6 about selling to the actual consumers that are buying  
7 the washer, while that's interesting and it's  
8 interesting to understand how the salesman who might  
9 be commissioned might steer them on the floor, it is  
10 important to remember that being responsible for  
11 product development, for us competition is happening  
12 long before the product gets to the floor.

13 For those of you that were able to be with  
14 us at Clyde, you were able to see all of the product  
15 and innovation and colors that we have in our product  
16 that comes out of Clyde, Ohio. All of the winning  
17 innovations that we have. That product isn't even  
18 making it to the floor. So even if we have a fair  
19 floor, a non-commission floor, it's the competition  
20 and pricing that's happened long before that, that  
21 wholesale pricing and what gets to the floor that's  
22 really important. That's really where we're losing  
23 the fight.

24 MR. BILAS: I think one more point that  
25 might be important to make. In this industry sales

1 over the internet in appliances are typically in the  
2 low single digit area. So it is not a transaction  
3 that is typically done over the internet through  
4 Amazon or the likes of that where you're buying books  
5 and other consumables in there. I think people still  
6 want to go in and see the product that they're going  
7 to buy.

8           CHAIRMAN WILLIAMSON: Thank you for those  
9 answers.

10           Switching gears, to what extent did the  
11 recession impact our washer sales? The washer demand  
12 during the period examined.

13           MR. FETTIG: Obviously the front end coming  
14 out of the 2008, 2009, that was where the recession  
15 really set in. So it started low. It started low at  
16 the beginning.

17           We had a short period between, in the first  
18 half of 2010 where we saw a big increase in demand,  
19 and that was due to part of the government stimulus  
20 program where every state had basically cash for  
21 appliances.

22           So we had, people thought we were coming  
23 into a recovery. We were not. It was an artificial  
24 stimulus that made the market go back up. As soon as  
25 that was over, which was mid-year, it stopped. It has

1 actually continued to decline.

2           So we're still at recessionary levels.

3           MR. TUBMAN: If I can just add, Casey  
4 Tubman.

5           If you look at actually washer sales  
6 specifically, there are three different segments that  
7 you have to consider here. There's the conventional  
8 top load segment, which during the period of  
9 investigation has been shrinking, the demand for those  
10 has been shrinking. It's been shrinking for several  
11 reasons. But as you look at top load HE, top load HE  
12 has been growing. This is a segment we invented years  
13 ago and we were 100 percent market share. I think  
14 Jeff maybe mentioned that earlier. We were 100  
15 percent market share going into the period of  
16 investigation.

17           During the period of investigation that has  
18 continued to grow. But within that segment the larger  
19 portion of it, the larger capacity units, we've  
20 actually gone from 100 percent market share to below  
21 50 percent market share.

22           So while consumers are coming in there,  
23 subject imports have also come in and taken over quite  
24 a bit of the market share.

25           Then if you look at front load, front load

1 as a total has been shrinking from a demand  
2 standpoint, but within front load, again, there's two  
3 segments. Early in the period of investigation you  
4 had much smaller front load washers. You had  
5 Electrolux participating there, you had us, you had  
6 Bosch and others, two of which have left. You also  
7 had imports as well there.

8           Then in the larger capacity what you saw was  
9 with our Alpha platform that launched, we basically  
10 created that larger segment of front load washers, and  
11 that segment of the front load has actually been  
12 growing during the period of investigation.

13           What we've seen is subject imports now are  
14 focused there on the larger front load washers and  
15 have begun to eat away at the market share that we had  
16 gained there as well.

17           CHAIRMAN WILLIAMSON: Thank you for that  
18 answer. My time has expired.

19           Commissioner Pearson?

20           COMMISSIONER PEARSON: Thank you, Mr.  
21 Chairman.

22           Mr. Bosshard, I believe you said in your  
23 testimony that subject imports played a role in the  
24 decision to close washer production at New Bern. Can  
25 you provide any contemporaneous documentation of that?



1 Perhaps a statement to stockholders, a press release,  
2 an application for trade adjustment assistance for  
3 those employees? Anything along those lines?

4 MR. BOSSHARD: As I recall, at this point we  
5 have not published. BSH is a joint venture, as you  
6 know, between Bosch and Siemen, so we're not such a  
7 public company. So we communicate in turn with the  
8 board and management and us from an operational point.  
9 We're degenerating also over a period of time and  
10 that led to the position that we needed to exit that  
11 business because during the whole period of time the  
12 prices did erode.

13 But at the same time technology and  
14 performance increased while prices were lowered, and  
15 the price is a very critical criteria for sales. So  
16 if that makes performance and price, we were not  
17 competitive and we had no choice than to cut the  
18 losses and fix it.

19 COMMISSIONER PEARSON: But that doesn't tell  
20 me anything about causation and the relationship to  
21 subject imports. So that's why -- If you have  
22 anything you could put on the record that would  
23 elucidate that point I would --

24 MR. BOSSHARD: I will look when I get back  
25 and get back to you.

1           COMMISSIONER PEARSON: Okay, because it's  
2 really quite common that when plants are closed  
3 because of import competition that that's part of the  
4 public record right at the time. I'm not aware of it  
5 being on this record. So if you've got something,  
6 please, let's see it.

7           MR. BOSSHARD: I will look.

8           Mr. LEVY: Commissioner Pearson? That's an  
9 excellent point.

10           I am aware of a TAA certification for Bosch  
11 employees and a finding from the Department of Labor  
12 that imports contributed importantly to the plant  
13 closure and I'd be pleased to place that on the record  
14 in our post-hearing submission.

15           Of course I'd also refer you to the  
16 underselling data in the products where Bosch is most  
17 present in the marketplace. Those data are summarized  
18 at Petitioner's confidential exhibit 1 which obviously  
19 goes to the causation issue.

20           COMMISSIONER PEARSON: Right. And perhaps  
21 we'll hear more from the Respondents this afternoon  
22 about this, but they have put on the record an  
23 alternate point of view regarding what was going on at  
24 Bosch and they cite, among other things, a relatively  
25 smaller size of washer and relatively high price and

1 there are some other things. I don't know how much of  
2 that is confidential without taking time to go through  
3 it in some detail.

4           Just anecdotally, I can offer an observation  
5 about Bosch. First I want to say that my washing  
6 machine is a Whirlpool and it's one of the front  
7 loading type that may have been a non-subject import  
8 at one time. I'm not completely sure. And if you  
9 ever have an odor problem with it, bleach works  
10 wonderfully well and it's very inexpensive. So I'm  
11 extremely happy with it.

12           I'm not sure whether I've ever lived in a  
13 household without a Whirlpool appliance. It's  
14 possible, but I don't recall that. So I think highly  
15 of them.

16           But the Bosch appliances, my wife had the  
17 kitchen redone two years ago and this was her project  
18 and I stayed out of the way. It helps promote  
19 domestic tranquility, you know.

20           But now I have two Bosch's. One is a  
21 dishwasher which really works very well. It's quiet,  
22 it's efficient. I'm very pleased with it. The other  
23 is an oven which is absolutely, it's close to  
24 impossible to use. The touch screen doesn't respond  
25 to touch. The machine should come with a rubber

1 mallet or something so you can whack it to get it to  
2 respond. I tell you, if I was offered my old oven  
3 back for that one I'd have it out of there in a  
4 moment.

5           That takes me to some of the information  
6 that the Respondents have put on the record regarding  
7 consumer responses to the Bosch washers. I'm just  
8 wondering, maybe Bosch has a blind spot in terms of  
9 consumer reaction to some of these things.

10           Just reading one, this is from Deb from Des  
11 Moines, and it's on the Consumer Report web site here.  
12 The pros of the machine, she had large capacity. The  
13 cons, breaks down, doesn't clean effectively, long  
14 cycle, noisy, and it shakes. No, I would not  
15 recommend this to a friend.

16           It goes on from there. Some of it's almost  
17 kind of humorous but would take more time than is  
18 required.

19           But given my own experience, which is  
20 anecdotal, and this other information on the record,  
21 also anecdotal, why shouldn't we assume that there  
22 were plenty of reasons that Bosch was losing market  
23 share or having a difficult time in the U.S. market  
24 that had nothing to do with subject imports?

25           MR. BOSSHARD: Thank you for that question,

1 Commissioner.

2 Overall speaking you are now addressing  
3 dishwasher and wall ovens.

4 COMMISSIONER PEARSON: I'm back to clothes  
5 washers now in the last comments. I touched briefly  
6 on dishwasher and then oven with which I have personal  
7 experience, but now it's back to the record.

8 MR. BOSSHARD: Can you ask the question  
9 again regarding the washer?

10 COMMISSIONER PEARSON: Yes. The question  
11 is, based on this information, why shouldn't we assume  
12 that there were some important factors other than  
13 subject imports that caused Bosch to leave the  
14 domestic production of clothes washers?

15 MR. BOSSHARD: All I can say is we developed  
16 great product. It performed well. It was positioned  
17 by JD Power, was announced as a top notch product. We  
18 had good performance over time. And what clearly  
19 resulted is that the price eroded in the market.  
20 That's why we could not continue to compete on the  
21 price level. So it's not just a discussion on the  
22 product quality, it's also the position on the  
23 pricing, what the customer decides.

24 From a quality point, I have to say I need  
25 to go back to look at that but I am not aware that

1 product quality was any issue at all on the washer,  
2 and washers are no different from all the other  
3 appliances we do. And we get top ratings of the  
4 associations and of the Consumer Reports.

5 COMMISSIONER PEARSON: If counsel, since I  
6 think this is not BPI, I should have provided the  
7 information to Mr. Bosshard. No doubt he would enjoy  
8 reading it.

9 MR. SCHMIDT: Commissioner, if I could  
10 answer that even just for a second. This is Norb  
11 Schmidt, product development.

12 I actually spent a year working in front  
13 load washers in Germany at our facility there where we  
14 made our German product when it first came into the  
15 U.S. market. And the Bosch was the benchmark at the  
16 time. This was before LG and Samsung were into the  
17 market. It was a very good product. So not to stand  
18 on their behalf, but it was a good product at the  
19 time. As I said, it was very highly rated.

20 Trying to address your concern around blogs,  
21 I know, again, I went through all the exhibits. There  
22 were a number of blogs not only on the Bosch product,  
23 but you would find some on the Whirlpool product as  
24 well.

25 If you would do an internet search on LG and

1 Samsung product you'll find the same thing, and I'd be  
2 very happy to submit those in post-hearing briefs if  
3 you're looking for consumers who are upset or unhappy.  
4 Those tend to be the consumers that are going to post  
5 things on-line. We'd be happy to put those on the web  
6 site.

7 But all I can say is the Bosch product at  
8 the time was extremely high quality. The product that  
9 we make here in the U.S. is extremely high quality.  
10 That is not the issue.

11 COMMISSIONER PEARSON: Thank you. It might  
12 be interesting to put a little bit of counter-  
13 balancing data on the record. And understanding that  
14 all of this is anecdotal. I recognize that. It gives  
15 a different perspective.

16 MR. GREENWALD: Commissioner Pearson, you're  
17 right. It is anecdotal. But in sort of defense of  
18 the data on the record, what I would urge you to do,  
19 and you consider the charges, the anecdotes on the one  
20 hand, is look at the pricing products and the pricing  
21 data you have on the other. If what you find in your  
22 pricing tables for Bosch products is systematic  
23 underselling, that can't be dismissed properly because  
24 of an email or a blog from Deb or -- That's not  
25 anecdotal.

1           COMMISSIONER PEARSON: This is an excellent  
2 point. It gets me right to my next question which we  
3 may not have time to finish in this round.

4           But in the preliminary investigation I found  
5 that the best approach was to analyze three separate  
6 market segments. You're taking about doing this  
7 pricing comparison. Are you recommending that we do  
8 it by the three segments and break it down as --

9           MR. GREENWALD: Not at all. What I'm  
10 recommending is that you take the pricing data in the  
11 report, you take it seriously. They are very specific  
12 products. You ask yourself in each case, where are  
13 the domestic products coming from? And what is the  
14 relationship between those products and whoever may  
15 have produced them and the subject imports? Is there  
16 underselling or not?

17           COMMISSIONER PEARSON: I did that in the  
18 preliminary I think. I reached a somewhat different  
19 conclusion than you have.

20           MR. GREENWALD: You did. But there was a  
21 major difference in the pricing data and the coverage  
22 at the preliminary.

23           As I recall, your decision in the  
24 preliminary you discounted the Bosch data as being  
25 unreliable. That problem should have disappeared.



1 What you have now is a full series where you can look  
2 at the Bosch data and you can look at the subject  
3 imports and you can reach a conclusion.

4 Now all I would urge you to do is to rethink  
5 the analysis in light of changes which should have  
6 addressed all of your concerns.

7 COMMISSIONER PEARSON: And I clearly will do  
8 that. I have not yet at this point. This is a  
9 complicated and somewhat messy record, and I'll get  
10 there, but I'm not there yet.

11 Thank you very much.

12 Mr. Chairman, my time has expired.

13 CHAIRMAN WILLIAMSON: Commissioner Aranoff?

14 COMMISSIONER ARANOFF: Thank you, Mr.  
15 Chairman.

16 We've heard a lot in this case about the  
17 importance of promotional periods and pricing during  
18 promotional periods. I wanted to ask, who chooses the  
19 models that are going to be promoted during  
20 promotional periods? Does the retailer or does the  
21 manufacturer? And does it have to be a model that's  
22 already on the retailer's floor?

23 MR. ABDELNOUR: What was the last part of  
24 that question? Does it have to be --

25 COMMISSIONER ARANOFF: Does it have to be a

1 model that's already on that retailer's floor?

2 MR. ABDELNOUR: We go through a very  
3 extensive promotional planning process at Whirlpool, I  
4 assume all our competitors do as well, to determine  
5 what product makes the most sense to promote in the  
6 marketplace during a holiday or any kind of a  
7 promotion.

8 We also go through a very rigorous  
9 investment scenario to understand how much we want to  
10 invest and at what levels we want to provide volume to  
11 the trade.

12 Once we reach a decision of what that  
13 promotion looks like, it then becomes an environment  
14 where we negotiate at the wholesale level with each of  
15 our trade customers to promote that product or in many  
16 cases these days, get that product on the floor, to  
17 get a floor spot.

18 We have made a wholesale change in the last  
19 few years because of the aggressive pricing in the  
20 marketplace from LG and Samsung to invest less in  
21 those promotions, get very selective in the models  
22 that we do promote, and run them for shorter periods  
23 of time.

24 So more and more of our retailers are  
25 looking to promote for holidays, you know, Black

1 Friday used to be, the day after Thanksgiving Friday,  
2 Saturday and Sunday. Now it's as much as three weeks  
3 or more.

4           We've stayed away from that in the last few  
5 years. We've invested less. We have shortened the  
6 number of SKUs that we'll particularly promote. At the  
7 end of the day, once all that's determined, the  
8 retailer alone decides what he's going to promote and  
9 at what price.

10           Does that answer your question?

11           COMMISSIONER ARANOFF: It's definitely  
12 starting to answer my question.

13           So you decide on a model or a few models  
14 that you're going to promote during a particular time  
15 period and what you are willing to sell them for, and  
16 then the retailer makes the decision basically whether  
17 to take the deal, which may involve flooring a new  
18 product or just promoting a product that's already  
19 there, but they could choose to say no and not have a  
20 promoted product from Whirlpool.

21           MR. ABDELNOUR: Rarely is it a simple no.  
22 It's generally a negotiation. So we take a proposed  
23 plan to sell, if you will, for a promotion. Generally  
24 the retailer will want to negotiate pricing from  
25 there.

1           In every instance the retailer will bring  
2 forth the wholesale proposal from our competitors to  
3 understand what their pricing is, what the duration of  
4 the promotion is and how they plan to promote. Then  
5 you make a decision whether to meet competition or to  
6 lower the price by meeting competition or walking away  
7 from that particular retailer during that promotion.

8           COMMISSIONER ARANOFF: Thank you.

9           MR. BILAS: Commissioner Aranoff, may I add  
10 one thing?

11          COMMISSIONER ARANOFF: Sure.

12          MR. BILAS: In the industry there are, as  
13 Sam was indicating during these promotional windows  
14 there tends to be about even major windows -- 4th of  
15 July, Black Friday, Martin Luther King Day, so on and  
16 so forth during the course of the year where there's  
17 intense activity during those days. Extended  
18 promotional activity. What happens is the wholesale  
19 pricing will drive that activity to what gets on the  
20 floor. That continues to be the major thrust behind  
21 what drives that.

22          So as a manufacturer or as a retailer,  
23 you're trying to decide on what pieces you're going to  
24 end up going through there so you can have that  
25 promotional window to put in there.

1 I hope that adds a little more color to --

2 COMMISSIONER ARANOFF: That helps.

3 MR. SCHMIDT: Commissioner, if I could just  
4 make it simple, go to Exhibit 7, this is a very real  
5 example of the type of email that we would get around  
6 holiday periods. That one spot that they're willing  
7 to do something with, and it really comes down to the  
8 best fully supported offer is what's going to win and  
9 what will go to market.

10 COMMISSIONER ARANOFF: I'm glad you said  
11 that because one of my questions was to ask you to  
12 define the term fully supported offer.

13 MR. ABDELNOUR: To define it?

14 COMMISSIONER ARANOFF: Yes.

15 MR. ABDELNOUR: Fully supported means you  
16 put it on the floor, you provide the proper amount of  
17 margin, you provide the proper amount of promotional  
18 support, you back it up with plenty of inventory.  
19 That's a fully supported promotion.

20 COMMISSIONER ARANOFF: Promotional support  
21 means advertising money?

22 MR. ABDELNOUR: Yes. It could mean  
23 discounts to the consumer, it could mean advertising  
24 money, it could mean myriad different things.

25 MR. FETTIG: It's money.

1           MR. ABDELNOUR: The one point I didn't make,  
2 Norb kind of, I thought he was heading in that  
3 direction, was although we do lead the charge around  
4 holidays, get the conversation and planning process  
5 started, it is not uncommon, especially in the big box  
6 arena -- Sears, Lowe's, Depot, or Best Buy -- for them  
7 to come to us as a supplier and everybody else for  
8 that matter, and say I'm looking for a specific  
9 product to run at a specific price with a tremendous  
10 amount of volume over a short period of time, and more  
11 or less put the product up for bid.

12           So that will oftentimes completely derail  
13 what your promotional plans are or your thoughts  
14 around a particular holiday.

15           COMMISSIONER ARANOFF: Mr. Bilas, let me  
16 turn to you with a question because I think it rises  
17 out of some of this conversation.

18           One can't help noticing in looking at the  
19 witness list and some of the purchaser questionnaires,  
20 particularly that are responsive in this case. We  
21 have a witness from a big box retailer coming to speak  
22 on this afternoon's panel and we have you on this  
23 morning's panel.

24           Is there something about the economics of  
25 your business that inclines you to appear here on

1 behalf of the domestic producers rather than taking  
2 the allegedly very, very low prices of the subject  
3 imports and just running with them? What is it about  
4 the economics of your business that brings you here on  
5 this panel?

6 MR. BILAS: I believe if I'm understanding  
7 your question, my appearance here today, the  
8 constituency that I serve, is independent retailers.  
9 We tend in the 3500 retailers that I represent in the  
10 United States, have over 10,000 store fronts. They  
11 tend to sell a more premium product. In our industry  
12 we refer to that as mix. So our folks are mix driven.

13 While they obviously enjoy and want to  
14 perform at price levels that are competitive with  
15 everyone in the marketplace. As pricing drives down,  
16 that compression also drives margin down. At the end  
17 of the day these independent retailers do take money  
18 to the bank, dollars to the bank.

19 So when you have tremendous compression  
20 that's that down -- the other fear that some of them  
21 have is the scale that they provide in some cases may  
22 not give them the opportunity to attain some of the  
23 lowest prices that are out in the market.

24 I don't know if that defines or helps with  
25 your entire question, but that is part of it as well.

1           MR. GREENWALD: Commissioner Aranoff, if I  
2 can just add to the economics. I think the question  
3 went to the heart of why do different people do  
4 different things. I think it was an excellent  
5 question.

6           If you think about smaller independent  
7 retailers, they are under pressure from the big box  
8 companies. The big box companies can sell 40,000 or  
9 50,000 in a promotion, so they won't make as much on  
10 each but they will take volume dollars to the bank if  
11 they get a good deal from their suppliers. If that  
12 supplier to retailer price gives them a margin they  
13 can make it up on volume.

14           The smaller retailers don't have that luxury  
15 and they don't move that volume. And when price  
16 erodes it kills not only the economics of a Whirlpool  
17 or a GE or a Bosch, but it also destroys the economics  
18 of smaller retailers that are looking on higher margin  
19 for fewer sales.

20           COMMISSIONER ARANOFF: Okay. Both those  
21 answers were very, very helpful.

22           Since I just have a short time left, I'm  
23 going to try a question which might have a short  
24 answer.

25           Can someone tell me to what extent the



1 length of a wash cycle is a point of competition  
2 between conventional and high efficiency washing  
3 machines? Maybe it's not that short a question, but  
4 I'm curious about it because I'm the kind of person  
5 who's always in a hurry and I lived in Europe long  
6 enough to know that high efficiency machines just take  
7 a really long time to wash things.

8 MR. TUBMAN: Casey Tubman. I think I can  
9 answer this shortly, hopefully, or briefly.

10 It's on the list of things to consider but  
11 as a consumer looks at the list of things to consider  
12 it typically will rank in our research very low. And  
13 as you're on the sales floor you won't know how long  
14 the cycles are. So that's another thing. The sales  
15 associates won't be talking about cycle length.

16 The other thing I'll say is just from  
17 federal standards of energy, as they become more and  
18 more stringent, what happens is you have less water to  
19 work with so it may take a longer time to wash the  
20 clothes. That's what you see a little bit of the top  
21 load, high efficiency, and the front load both.  
22 Versus a conventional that you have much more water,  
23 you can do a little bit more cycle time. But even  
24 those, honestly, one from ten years ago that you could  
25 do a load in 45 minutes is now much longer than an

1 hour.

2           We've gotten to the point where you can do a  
3 front load wash in an hour and you can do a top load  
4 wash in an hour so they're pretty equivalent at this  
5 point in time.

6           COMMISSIONER ARANOFF: That's a helpful  
7 answer and probably convinces me that I need to keep  
8 my really old washing machine alive for a little bit  
9 longer.

10           Unlike my dryer, it's not being held  
11 together with duct tape, but we'll get to that point  
12 eventually. Thank you, Mr. Chairman.

13           CHAIRMAN WILLIAMSON: Thank you.

14           Commissioner Pinkert?

15           COMMISSIONER PINKERT: Thank you, Mr.  
16 Chairman.

17           This panel has talked a little bit about on-  
18 line retailing and I understand the testimony that  
19 people still like to go in and look at a washing  
20 machine before buying it, but has on-line retailing  
21 had any impact on the business? And I'm particularly  
22 interested in the impact on the independent retailers  
23 that we've heard about today.

24           MR. BILAS: This is Dave Bilas.

25           I think I would start by saying that the

1 impact that on-line has had is informational, as a  
2 predominant piece. Where people have access to  
3 information at a much quicker level.

4           If you look at the amount of store shops  
5 going back 10, 15 years ago, there were as many as  
6 three, three and a half stores shopped before the  
7 product was purchased. If you look at today's data it  
8 is about 1.8. Obviously that's a compilation of many  
9 figures, so you can't see 1.8 stores.

10           But the point I'm trying to make there is  
11 there's information that consumers have that go into a  
12 store to make them buy.

13           The transaction typically is not done as  
14 much on-line.

15           I would give you the fact, and this is my  
16 opinion only, is that when you're buying an appliance  
17 it tends to be something that might be bought every  
18 10, 12, 15 years. So you're not as reticently aware  
19 of what those new features are, and possibly the  
20 pictures or the features that would be shown on-line  
21 would not be the best depiction of what's there. So  
22 you would still go in to see that product.

23           That's what we're seeing.

24           I'm not saying that the industry is absent  
25 of on-line selling. It is definitely something that

1 has hit it. There are major retailers that do a very  
2 good job of that. And it is a growing part of it. It  
3 is still, though, if you look at the research in the  
4 mid to low single digits of the overall industry, so  
5 it is not like an Amazon selling books or something of  
6 that nature.

7 Does that help?

8 COMMISSIONER PINKERT: Thank you, yes.

9 Go ahead.

10 MR. ABDELNOUR: The only thing I would add,  
11 this is Sam Abdelnour. I think Jeff hit on it a  
12 little bit earlier. Consumers in the marketplace so  
13 infrequently buy a washing machine. When it comes  
14 time to buy a new one they do research on-line as Dave  
15 Bilas described. But because they haven't had a new  
16 machine for so long it almost becomes incumbent on  
17 them to come in and look at it and see what it looks  
18 like before they make the final decision to make such  
19 a big purchase for something that's going to be in  
20 their home for probably another 15 to 20 years.

21 COMMISSIONER PINKERT: Thank you.

22 My next question goes to the impact of the  
23 petition and the preliminary relief in this case.

24 I understand that you've said that it had an  
25 impact across the board, but was there a segment of

1 the market where the impact of the petition and the  
2 preliminary relief was felt more strongly than any  
3 other segment?

4 MR. TUBMAN: I guess being the closest to  
5 the washer business in terms of sales, I would say it  
6 impacted it across the board.

7 By having the ability to raise prices on our  
8 higher end products, our larger washers, it allowed us  
9 to then move what was underneath it up. Again, we  
10 talk about a plan to sell, we talk about a spectrum,  
11 we talk about price points up the line. If one piece  
12 doesn't move within the line, the things below it  
13 cannot move. So this allowed us to move the entire  
14 line up so the impact was felt across the board.

15 MR. LEVY: Commissioner, this is Jack Levy.  
16 Let me try to answer that question speaking just to  
17 Whirlpool's data since we're in public session.

18 As I review Whirlpool's data, which  
19 obviously they're on the record, what you do see in  
20 the first half of 2012 is a price increase across the  
21 board for their three platforms -- the Alpha front  
22 load, the Oasis top load, and indeed the smaller VMW  
23 top load.

24 But at the same time what you see is an  
25 improving financial performance in the VMW platform

1 category which I think stands in sharp contrast to the  
2 continued difficulties for whirlpool sales of LRWs,  
3 the products within scope.

4           So when you look closely at the data you  
5 sort of ask what's going on here? What we have said  
6 is that the products that are within the scope compete  
7 most directly with subject imports, and the VMW  
8 platform also competes, albeit less directly.

9           So the explanation for the difference in the  
10 financial performance of that smaller top load VMW  
11 platform in 2012 can be explained on the cost side.  
12 What's going on there? Why are the costs being better  
13 managed on the VMW side compared to LRWs?

14           The answer there is features. Where  
15 Whirlpool competes most head-to-head with subject  
16 imports, they're in a feature war. They have to  
17 continuously add costly features to have competitive  
18 products at given price points. Therefore, they're in  
19 this cost/price squeeze.

20           The VMW platform is somewhat insulated from  
21 that feature war. Because of that they've been able  
22 to keep prices better under control from a raw  
23 materials standpoint, and enjoy that price increase.  
24 I think when you look at what's going on in the LRW  
25 segment, both the Alpha and the Oasis platforms, and

1 contrast that with their financial performance in the  
2 first half of 2012 for the VMW segment. I think that  
3 also provides further corroborating evidence of the  
4 cause and effect relationship between subject imports  
5 and the performance of domestic producers.

6 MR. GREENWALD: Just to add a little bit.  
7 Those numbers, when you get into them and the staff  
8 gets into them, are absolutely intriguing. What you  
9 find is when you look at pricing, prices go up across  
10 the board, but they go in differently depending on  
11 whether it is a large front load, a large top load, a  
12 small top load machine.

13 What you find in the smaller space is that  
14 what changes is price relative to cost. What always  
15 matters is price relative to cost. How does it  
16 change? How does it affect the bottom line?

17 When you get into the area that Jack Levy  
18 was just talking about, you have exactly that same  
19 equation. Price relevant to cost. But when you look  
20 at those numbers, the cost side of it becomes much  
21 heavier and you don't see the benefits that you do in  
22 the sections where Whirlpool is not under pressure to  
23 add features and therefore has to add costs. Also on  
24 the volume side.

25 I don't want to get into too much

1 confidential information, but that is something I  
2 would have the staff look at because it does  
3 underscore the point that in 2012 where the imports  
4 are not or whether their presence is limited, the  
5 turn-around is dramatic. Where the imports are and  
6 their presence is not limited, the problem persists  
7 and it goes directly to this issue of causation.

8 MR. TUBMAN: Mr. Pinkert, I see we're still  
9 green and not yellow yet, but if you look at the  
10 products here on the side of the room and I could get  
11 up and walk you through them, but I think just to  
12 answer the question quickly.

13 We talk about feature adds. Product C,  
14 which is the 8800 washer that we produce, that  
15 products basically had a refresh during the period of  
16 investigation. We grew the capacity, it added quite a  
17 bit of cost to do that. When you grow capacity it's  
18 one of the most expensive things because it's a  
19 structural add.

20 If you look at the glass lid, the chrome  
21 effects, the interior lighting, there's LED lighting  
22 on it. That's what we talk about in terms of adding  
23 features and those costs added to that product.

24 Whereas our VMW product, as mentioned, we  
25 brought it out and we've kept it the same other than



1 some small little refreshers which are insignificant  
2 investments.

3           So that may be a little bit of what Jack and  
4 John are talking about here.

5           COMMISSIONER PINKERT: Thank you.

6           Finally, did moving production from Mexico  
7 back to Ohio negatively impact profitability from 2010  
8 to 2011?

9           MR. LEVY: If I can answer that question  
10 from the U.S. producer response perspective. Nothing  
11 about the activities in Mexico or Germany hit the U.S.  
12 producers, PNO, in any way whatsoever. In terms of  
13 the overall washer business of Whirlpool, I suppose  
14 there is an impact but I'm not sure that's relevant  
15 for the Commission's examination.

16           MR. FETTIG: If anything, for the domestic  
17 market it helped because we brought new product, more  
18 volume into the U.S. factories. We still sell and  
19 make some of that product for Mexico and other  
20 markets. But we just could no longer afford to sell  
21 it in the U.S. So in terms of the economics of the  
22 domestic market, it helped.

23           COMMISSIONER PINKERT: Thank you. The red  
24 light went on at the very end of your answer, Mr.  
25 Fettig. So I thank you and thank the Chairman.

1 CHAIRMAN WILLIAMSON: Commissioner Johanson.

2 COMMISSIONER JOHANSON: Thank you ,Mr.  
3 Chairman.

4 I would like this panel to discuss at  
5 greater length the extent to which innovations and  
6 various features influenced purchasing decisions.  
7 This panel has already spoken on this issue, which I  
8 appreciate, but given the importance that the  
9 Respondents place on innovation and special features,  
10 I believe that this issue merits further discussion.

11 In your response, please speak on what  
12 innovations and special features are most sought by  
13 consumers.

14 MR. FETTIG: Let me ask Norb Schmidt to  
15 respond on our behalf.

16 MR. SCHMIDT: If we can go to Exhibit, start  
17 with Exhibit 10. So let me talk about Whirlpool  
18 innovation. As Jeff said in his earlier testimony,  
19 we've been innovating around washing machines for over  
20 100 years. We started as a washer company and it is  
21 the heart of our business today.

22 To say that we're not an innovative company  
23 in washers is absolutely not true. We walked, the  
24 Commissioners and the teams that were able to come to  
25 Clyde through a little bit of background on the

1 washers in general.

2           As consumers come into the store, what is  
3 the relevance of innovation? As I believe Mr. Bilas  
4 said, as Mr. Abdelnour said, a lot of consumers don't  
5 know what they're looking for.

6           There are very few consumers going in that  
7 store with a specific innovative feature in mind, as  
8 was discussed. They usually are looking for a larger  
9 washer, as Commissioner Aranoff may have said. The  
10 quicker the better. Because laundry is a task, it's  
11 not like cooking. But in terms of innovation that we  
12 have brought to market during the POI, Commissioner,  
13 this is just a sampling of the innovations that have  
14 launched just in the period of investigation on our  
15 larger residential washers.

16           We brought the largest capacity front load  
17 washer to market and as Jeff said, it launched with  
18 the top five spots in Consumer Reports.

19           A fantastic product. We brought the largest  
20 capacity top load washer to market. We were the first  
21 to bring a full color LCD model, which I think one of  
22 the Commissioners was playing with earlier today here.  
23 We have that product here. I'd encourage you to come  
24 up and look at it. We were the first to bring a full  
25 color LCD model to front load washers. We were the

1 first to bring laundry apps. We were the first to  
2 bring an optimized dispenser that holds up to 36 loads  
3 of detergent in the dispenser itself, eliminating the  
4 need to actually have that messy detergent put in  
5 every single time. So to say we haven't been  
6 innovative in the washer space, and I'm only hitting  
7 on a few. There are many, many consumer relevant  
8 innovations that we've brought to market, well beyond  
9 just capacity and esthetics that we would argue we are  
10 at least as competitive as our competitors.

11 I don't know, Casey, if there are other  
12 things you'd want to hit.

13 MR. TUBMAN: I'll try to use this  
14 microphone. Casey Tubman.

15 Mr. Schmidt talked about the fact that we  
16 brought bulk dispensing and optimized dispensing, so  
17 we talk about innovations as the consumer comes in.  
18 Things where they can store 36 loads of detergent in  
19 their product. Consumer driven innovation. Things  
20 that they want. This allows families with kids to  
21 just tell their son or daughter to go in and hit start  
22 because it already feeds the detergent in and it holds  
23 it for 36 loads.

24 At the same time it also saves resources, so  
25 you're not over-using detergent. It's using just the

1 amount it needs.

2           Everybody's concerned about the environment  
3 things of that nature. This allows for that. Again,  
4 it can use up to 30 percent less detergent.

5           We talked about large capacity. If you get  
6 a chance you can come and see this. But both of these  
7 products when they launched were number one in  
8 Consumer Reports. Both largest capacity as well as  
9 touch screen up here in front. Again, I would like  
10 you to come and actually play with it when you get a  
11 chance.

12           You notice this lid, I just gave it a lift  
13 and then it opened on its own. We also bring  
14 innovations such a lids that stay open on their own.  
15 So if you have cabinets here, these lids stay open.  
16 Other lids, they don't stay open.

17           The other thing we worry about is just to  
18 make it easy, you can just kind of walk away and it  
19 shuts on its own. It doesn't slam, it just comes down  
20 nice and light.

21           When you open this product or this product,  
22 you'll see the LED light comes on. So it comes on  
23 automatically for you.

24           Just small things, small innovations that  
25 we've brought, but they're consumer innovations.

1 They're not marketing gimmicks. They're really about  
2 when a consumer comes and wants to put that lid up and  
3 their cabinet's in the way, it will stay there for  
4 them as they load their large loads. The light, if  
5 it's dark, if it's in a basement, if it's in a laundry  
6 room where the light's not turned on, the light comes  
7 on and they can use it.

8           So several innovations. We touched on them  
9 here as well and we can submit this with our  
10 information, but I guess to no extent would we say  
11 we're limiting in innovation.

12           MR. SCHMIDT: The only thing I'd maybe want  
13 to add just as an example as well, Sam talked a little  
14 bit about the Sears SSI bid. Kenmore, again, has been  
15 in this industry for over 100 years. When they put  
16 their bid out, they're looking forward at the market  
17 and saying what are the features that I need to have?  
18 What styling, what innovation do I need to have to  
19 compete? They go head to head against manufacturers  
20 as well with their own brand. And when they submitted  
21 their bid to Whirlpool there wasn't a single feature  
22 that we did not have in our Alpha platform. Not only  
23 that, we offered them our winning platform in the  
24 Alpha line. But there was not, in terms of capacity,  
25 features, anything that we could not provide to them

1 as a manufacturer. So in terms of having all the  
2 consumer relevant innovation, we have it. This isn't  
3 about product.

4 Not only that, again for the Commissioners  
5 that were there at Clyde, if you were to open a  
6 Whirlpool catalog, we offer these colors and features  
7 across all price points. The thing that's maybe, what  
8 you see if you walk into the store, unfortunately,  
9 what you see on the floor is very different than what  
10 we actually offer as a company.

11 For instance, if you go to a Home Depot  
12 floor you may just see one of our tired products that  
13 comes out of Mexico that's white. That's the only  
14 thing that's on the floor. That doesn't mean that  
15 wasn't what was offered to Home Depot. Home Depot had  
16 the opportunity to take any of these products and put  
17 them on their floor. Because we go head to head at  
18 the wholesale level, a lot of this innovation does not  
19 make it to the floor because we can't compete with LG  
20 and Samsung on price.

21 MR. TUBMAN: One more thing, as you look at  
22 this product, this product was brought to market, it's  
23 basically an automotive concept car type styling. So  
24 you may hear fit, feel, finish, people talk about  
25 that. Again, this is as good as it gets right here.

1           We talked when we were in Clyde. I asked  
2 folks if they had seen this in the store if they had  
3 one in their home. They all replied they had not.  
4 Again, it comes back to what we were discussing. This  
5 was limited flooring. When it came down to wholesale  
6 pricing and competing we were undersold by other  
7 products. It didn't come down to the fit, the feel,  
8 the finish. Number one Consumer Reports and great  
9 innovation altogether with fit, feel and touch.

10           MR. SCHMIDT: The only other thing that I  
11 might add, if we go to the next slide, actually  
12 Exhibit 11, I know in LG's pre-hearing brief there  
13 were some alleged introductions or innovations on  
14 their product and Whirlpool at least offered a  
15 different perspective on some of those key  
16 innovations. While LG may talk about those features a  
17 little more loudly than Whirlpool does, it's certainly  
18 innovation that Whirlpool has had in its product for a  
19 long time. If you just look at some of the key  
20 things, for instance even an allergen cycle, Whirlpool  
21 was certainly the first with sanitization which  
22 includes allergen performance.

23           Back in 2001 when we introduced that in the  
24 first-ever top load high efficiency platform that we  
25 had in our line, and it was actually Whirlpool that



1 developed the testing protocol with NSF around  
2 sanitization and allergens.

3           If you go, for instance, direct drive, it's  
4 Whirlpool's belief that it was Fisher and Paykel that  
5 actually were the innovators around direct drive. And  
6 while it is a relevant feature, all of the  
7 manufacturers now have that in their platform. So  
8 again, if you're a consumer looking for a direct  
9 drive, all of us have that now in our platforms. Our  
10 top load high efficiency platform, Oasis, when it  
11 launched had direct drive technology. We have it in  
12 our platforms today. So again, Whirlpool has a long  
13 history of innovation and we wanted to offer that up.

14           The next exhibit, Exhibit 12, to end here on  
15 styling. I know there was a lot of discussion in the  
16 pre-hearing briefs around styling and who's following  
17 who. If you go back in history, and I gave this to  
18 the commissioners when they were there at Clyde, the  
19 first company to really introduce a front loader to  
20 the U.S. market was Maytag. You can see that product  
21 there, actually not very well in this exhibit. Maybe  
22 a little better in the printed handout. But it was a  
23 rear controlled front load machine. And while LG did  
24 try to follow that configuration, they also launched a  
25 rear control front load machine, had very little

1 success with that configuration. It was actually  
2 Whirlpool that revolutionized that here in the U.S. by  
3 introducing a front control round door execution for a  
4 front load machine which really defined today's  
5 execution.

6           You look at our top load high efficiency  
7 platform that launched back in 2005 and 2006, and  
8 compare that to the styling that's now prevalent in  
9 the industry, it's really Whirlpool that has defined  
10 the modern aesthetics for these large capacity washers  
11 that we now go to market with.

12           Again, I think I already showed Exhibit 13,  
13 but in terms of color and performance, another area  
14 where we were attacked on innovation, we've led in  
15 this area as well.

16           COMMISSIONER JOHANSON: Mr. Fettig, did you  
17 want to respond?

18           MR. FETTIG: In the end I think our products  
19 speak for themselves. The high ratings that we had  
20 during the period of inquiry speak for themselves.

21           The only thing I'd add to it is it's one  
22 thing to claim innovation. It's something very  
23 different to deliver it. We've been delivering it  
24 every day and we certainly were terrific at this  
25 during the period of inquiry.

1           MR. LEVY: Commissioner Johanson, I think  
2 part of your question was also sort of what are the  
3 most important features from a value perspective.

4           COMMISSIONER JOHANSON: Yes, if you can  
5 respond quickly.

6           MR. LEVY: I think both Petitioners and  
7 Respondents in their comments on the proposed  
8 questionnaires were in wide agreement as to what those  
9 characteristics were, and they're the same  
10 characteristics reflected in the questionnaire for  
11 eliciting quarterly pricing data which include of  
12 course capacity if it's a front load, whether or not  
13 it has steam, if it's a top loader whether or not it  
14 has a glass lid, whether or not it has a water heater,  
15 whether or not it has an LCD display, whether it's  
16 white or color finish, and whether it's CEE Tier 3  
17 which for purposes of the quarterly pricing data  
18 acquainted with high efficiency.

19           So I think those are the key factors or  
20 considerations and I think there's widespread  
21 agreement among the parties that the staff got it  
22 right in this regard.

23           COMMISSIONER JOHANSON: Thank you for your  
24 responses.

25           CHAIRMAN WILLIAMSON: Commissioner

1 Broadbent?

2                   COMMISSIONER BROADBENT: Thank you. I'll  
3 try to just do one or two last questions here.

4                   Mr. Schmidt, just following along that line  
5 of questioning, which innovations would you say that  
6 your competitors might have pioneered first? Are  
7 there any you would admit that they got there first?

8                   MR. SCHMIDT: Certainly. I don't mean to say  
9 in my testimony that they have not been innovative  
10 companies. As Dave Bilas said in his testimony,  
11 they're all great companies and we all make great  
12 product. Are there innovations where they beat us to  
13 market? During the period of investigation I wouldn't  
14 say there are many. There are certain styling  
15 differences. For instance they have a 3D drum  
16 pattern. We do not have a 3D drum pattern. I don't  
17 know how many consumers walking into the store though  
18 have that as a purchasing decision.

19                   In terms of vibration control I know Samsung  
20 talks a lot about having a vibration control system.  
21 We've had that in for years. I wouldn't say they're  
22 pioneers in that area. They just talk about it a lot  
23 more than maybe we do.

24                   I don't know if that answers your question,  
25 Commissioner.

1                   COMMISSIONER BROADBENT: That's helpful,  
2 thank you.

3                   MR. TUBMAN: Casey Tubman. Can you flip us  
4 to Exhibit 11?

5                   Norb mentioned about the vibration reduction  
6 technology and he mentioned it's been in washers.  
7 It's been in washers for 50 years. It's not that it's  
8 been in washers for five or ten, for 50 years. If you  
9 wash clothes and you have to spin them at a certain  
10 speed you have to have some kind of counter-balance to  
11 make it better. That has gotten better over time.  
12 Even if you look at our products, others' products.  
13 Every ten years, every decade you get a better  
14 improvement.

15                   I would say as you talk about VRT or as  
16 others talk about VRT, the components that make up VRT  
17 are already in the marketplace, were already in the  
18 marketplace.

19                   What we call six point suspensions on front  
20 loaders. Six point suspensions come out of Europe.  
21 They've been there for, if I had to guess, over 20  
22 years. But those are things that we had in the  
23 market.

24                   So from an innovation standpoint, calling it  
25 VRT, maybe changing the algorithm as to how it

1 actually senses it. They may have been there first. I  
2 wouldn't disagree.

3 I think the other one that I would mention  
4 is Powerfoam. You'll probably hear Powerfoam  
5 mentioned. Again, it's a marketing name for something  
6 that Samsung has brought to market. Powerfoam as we  
7 understand the technology and as we've studied it,  
8 taken the units apart, run them, and tested them,  
9 basically this is where they, if you think of your  
10 little kids with their bubble blowers where they blow  
11 through the hoop with the soapy water and create  
12 bubbles, that's what Powerfoam does. So while it may  
13 be good to talk about it as something in the  
14 marketplace, from a performance standpoint we haven't  
15 been able to show that it actually increases anything.

16 As we talk about our innovations, we  
17 research them with consumers, we test in consumers'  
18 homes, we make sure that anything we bring to market  
19 is going to be relevant to the consumer. We don't  
20 want to bring it to say hey, we have something new and  
21 this is why you should buy it.

22 COMMISSIONER BROADBENT: Is there a learning  
23 curve associated with being able to compete in a given  
24 segment of the washer market? For example, are the  
25 Koreans, the imports of the top loaded washers, are

1 they competing effectively with you on the quality of  
2 the product or are they still moving up a learning  
3 curve as they get in there?

4 MR. TUBMAN: I think from a quality  
5 standpoint I would say we would all be on a level  
6 playing field from a quality standpoint.

7 I have seen products that have come to  
8 market and had issues as they launch. Probably with  
9 any new platform there's bumps along the road I'll  
10 say. Think of automotives and others. There's always  
11 changes as you go to improve your quality. But I  
12 don't see a large learning curve, let's say, in any of  
13 the products. Again, some of them are based off  
14 technology out of Europe. I would say probably our  
15 biggest learning curve was when we brought HE top load  
16 to the market. It was something that no one else had  
17 brought. We did run into some launch issues, I'll  
18 call them, and very quickly addressed those and then  
19 relaunched with the Oasis product. I'll call it the  
20 current generation of top load HE and that's what both  
21 LG and Samsung as well now as GE coming to market with  
22 product. They resemble, and we talked about the  
23 style, they resemble the style because the form and  
24 the function inside the structure is very similar.  
25 They all have direct drive motors, they all have hung

1 suspensions, they all have plastic tubs, tub covers,  
2 stainless steel baskets, electronic drives, valves, so  
3 on and so forth. Very closely mimicked.

4 COMMISSIONER BROADBENT: Thank you very  
5 much.

6 Just a final question for Mr. Fettig, just  
7 to allow you to kind of respond to what I know is  
8 going to be coming here in the afternoon. This is a  
9 consumer product that a lot of people desperately need  
10 in their homes and don't have a lot of money to pay  
11 for. What do you think, if the margins that Commerce  
12 came up with in its preliminary determination which  
13 are very high, if they go into effect, what do you  
14 think pricing, what will be the effect on pricing for  
15 the washing machine market in the United States?

16 MR. FETTIG: You've seen the preliminary  
17 tariffs and they're in the 10 to 15 percent range.  
18 You've seen the underselling data.

19 COMMISSIONER BROADBENT: Some are 80.

20 MR. FETTIG: Yes. I was referring to two in  
21 particular.

22 But basically, our view is we always have to  
23 be competitive in the marketplace. If we're  
24 competitive off of a legitimate economic basis,  
25 competition is going to keep the marketplace



1 competitive. But having subject imports priced  
2 radically below an economic level in order to injure  
3 domestic manufacturing is what we think is unfair and  
4 not in line with the law.

5 I would suspect that one of two things --  
6 obviously if they are under the order of the tariffs,  
7 they'll have to raise their prices and basically  
8 compete where we compete. And in that environment  
9 then that is a fair field for the consumer. Give them  
10 a fair choice and let them make their choices.

11 On a level playing field I'm highly  
12 confident that the domestic market will do very well.

13 COMMISSIONER BROADBENT: I just want to  
14 thank the panel for your patience with us in sorting  
15 through all the issues. We really appreciate your  
16 time and the effort you've put into this.

17 I have no more questions.

18 CHAIRMAN WILLIAMSON: Thank you.

19 Mr. Levy, how should the Commission treat  
20 Whirlpool's imports from Mexico in its material injury  
21 analysis? I believe Mr. Fettig said they did not  
22 affect Whirlpool's financial condition. Should we  
23 disregard them in our volume analysis?

24 MR. LEVY: No, I would say, and we'll  
25 address this in our post-hearing submission, but I

1 think our position is you should very much count them.  
2 They are part of the universe of subject imports that  
3 was very much pertinent to the conditions of  
4 competition for certainly Bosch and U.S. producers  
5 generally during the period of investigation.

6 CHAIRMAN WILLIAMSON: Thank you.

7 MR. GREENWALD: If I may?

8 CHAIRMAN WILLIAMSON: Sure.

9 MR. GREENWALD: I think that is a question  
10 that goes to the heart of this case. Repatriation is  
11 at the center of this case. When you bring back  
12 production from Mexico or from Germany or wherever and  
13 put it in the United States you are definitionally  
14 lowering the imports and increasing your domestic  
15 production.

16 If what you do is let the formalities of,  
17 let's ignore this and let's ignore that, end up  
18 prejudicing companies, American companies that are  
19 repatriated, just in terms of the four corners of this  
20 case, I think you make a dreadful mistake.

21 MR. FETTIG: Mr. Chairman, if I could add to  
22 that.

23 The whole issue of repatriation for  
24 Whirlpool was done for the right reasons, to bring the  
25 most competitive product in the world possible to the

1 United States. In fact this was one of the points  
2 that Senator Portman submitted in his testimony and I  
3 happened to have read it. He noted he doesn't believe  
4 Congress would have written the trade laws in a manner  
5 which would discourage American companies from  
6 bringing their production and their jobs home. We  
7 absolutely agree with Senator Portman. We don't think  
8 we ought to be penalized for doing the right thing and  
9 creating jobs in America.

10 CHAIRMAN WILLIAMSON: Related to that, I  
11 think Respondents have asked us to exclude Electrolux,  
12 I don't think anybody's asked that question. What is  
13 your view on that?

14 Mr. LEVY: Maybe Jim Cannon wants to address  
15 that.

16 MR. CANNON: Thank you, Commissioner  
17 Williamson. Mr. Chairman, thank you.

18 Respondents have now made an argument for  
19 the first time, it wasn't made at the preliminary  
20 stage so you didn't address it because Electrolux  
21 didn't put their data on the record. They've now  
22 argued that Electrolux should be excluded.

23 Typically when you look at that issue over  
24 history, you've looked at four or five factors. I  
25 know there are at least two Commissioners who have

1 been avidly footnoting that they really look at just  
2 the interests test and they don't really care about  
3 distorting financial statements, so I'll stay away  
4 from distorting financial statements and I'll focus in  
5 my brief on financial statements for the remainder of  
6 the Commissioners.

7           But just quickly. If you look at the pre-  
8 hearing staff report at Roman number III-1, it shows  
9 that, sorry. My notes are terrible. If you look at  
10 the staff report, you have a table that shows U.S.  
11 production and it has the volume of imports. It shows  
12 Electrolux and it shows Whirlpool. I ask you to look  
13 at each year, because when you look over the period of  
14 years -- 2009, 2010, 2011 -- what do you see?  
15 Electrolux, U.S. production goes down and their  
16 imports go up because they're moving off-shore. So  
17 it's a moving target.

18           So I ask you first, look at 2009 and look  
19 how important they were in the market. Look also at  
20 how large the Whirlpool data are in that year, the  
21 rest of the domestic industry essentially in that  
22 period. You'll see that Electrolux is actually very  
23 significant and should not be ignored in this market.

24           If you consider the tissue paper case, the  
25 same issue arose. Virtually precisely the same.

1 There was a large American producer, Cleo, a  
2 longstanding, long time substantial company, and they  
3 exited the market over the period, and you carefully  
4 considered what to do in those circumstances. Looking  
5 year by year you found the same trend. Over the  
6 period, they started the period of investigation as a  
7 major player and they exited. You found that you  
8 should include that company in the domestic industry  
9 both because they were significant at the beginning  
10 and because, which is important, if you exclude them  
11 you basically distort the shipment data, you distort  
12 the employment data, you change the way the record  
13 looks. That takes me way back --

14 CHAIRMAN WILLIAMSON: Don't go back too far  
15 because I have a bunch more questions. But thank you.

16 MR. CANNON: It was my only chance.

17 CHAIRMAN WILLIAMSON: Go to Exhibit 7, the  
18 question about the \$800,000 Home Depot saying they  
19 would need \$800,000 in mark down for this to happen.  
20 I wanted to know, what does this mean? How do they  
21 calculate this \$800,000? What would be their basis  
22 for doing that?

23 MR. ABDELNOUR: We were proposing adding a  
24 new Maytag washer to the floor. It was going to  
25 replace a competitive model. And this leads to more

1 pricing and another way to collect money.

2           It's an opportunity to displace a competitor  
3 and in order to do that you've got to buy down the  
4 competitor model on the floor so it can be discounted  
5 and sold to consumers. The amount is \$800,000. That  
6 model on --

7           CHAIRMAN WILLIAMSON: Buy down, you mean  
8 you're paying them to take the model off?

9           MR. ABDELNOUR: Paying them to discount the  
10 model so there's over 2,000 Home Depot floors and the  
11 model sits on over 2,000 floors. They're saying we  
12 negotiated a deal for your new model, we want to put  
13 it on the floor, we still have all this competitive  
14 product, you need to pay us \$800,000 to discount the  
15 floor stock so it makes room to put yours on the  
16 floor.

17           CHAIRMAN WILLIAMSON: You're financing their  
18 disposal sales, shall we say.

19           MR. ABDELNOUR: Right.

20           CHAIRMAN WILLIAMSON: Thanks, I just wanted  
21 to understand that.

22           Are financial losses expected during the  
23 start of the phase of a new washer? Is it something  
24 you normally expect, and how long?

25           MR. FETTIG: Ever project is different. It

1 wouldn't be unusual for two or three or four months,  
2 but not years. Never. Because if you think of  
3 payback, if you run losses like we have during the  
4 period of investigation, you'll never recoup those.  
5 So for months, but not years.

6 MR. TUBMAN: One of the things we do also is  
7 we do a lot of that before the actual production  
8 starts full, so we start with runs of ten units and we  
9 start with runs of 100 units, 1000 units. We do that  
10 over a matter of almost three to six months. So we  
11 get those startup costs out of the way before we have  
12 to go into full production. So it doesn't affect the  
13 impact of every one that we're selling.

14 CHAIRMAN WILLIAMSON: A kind of related  
15 question, Whirlpool argues in its prehearing brief at  
16 page 60 that subject import competition forced  
17 Whirlpool to reduce its revision of pricing on front  
18 load washers below the target contained in its  
19 business plan. I was wondering how they determine the  
20 target price for front load washers and why those  
21 target prices would have been realistic but for  
22 subject import --

23 MR. FETTIG: When we were making the  
24 investment which was in the 2008 period of time, we  
25 simply looked at two factors. One, looked at current

1 marketplace prices for what selling prices are and  
2 know if we reached current selling prices with a  
3 better product we'd make money. One.

4           Two, we do an extensive amount of bench  
5 marking. We tear down every competitive product, we  
6 know every nut, every bolt, every screw. We know  
7 every supplier they get their product from. We know  
8 every factory they build from. So we have a great  
9 understanding of everyone's, including our own, cost  
10 structure.

11           So from a cost up standpoint, we knew that  
12 we're building a highly competitive machine. It was  
13 also reasonable to assume, one is marketplace reality  
14 and two is economics. Based on that the targeted  
15 price levels we had were completely reasonable. What  
16 we didn't anticipate because it wasn't logical would  
17 be that LG and Samsung would radically take down  
18 prices below cost and move the marketplace down so  
19 much. That was the mistake we made if you will, if  
20 you call it a mistake.

21           One thing we cannot anticipate was  
22 uneconomic behavior.

23           CHAIRMAN WILLIAMSON: Thank you.

24           A different question. Does the requirement  
25 to use HE detergent or non-HE detergent have anything



1 to do with high efficiency washers or not?

2           MR. TUBMAN: It does not. It goes back to  
3 the HE discussion of, depending on where your rebate  
4 is, again, you may need HE detergent in an agitator  
5 washer that uses a little less water but it's not CEE  
6 Tier 3 and therefore it wouldn't be called high  
7 efficiency by that salesperson that you're talking to.  
8 This whole thing of high efficiency is one of those  
9 things that again, you could be in different parts of  
10 the country and get a different answer. You could be  
11 the selling versus the buying side of it and get a  
12 different answer. If I go into the Clyde plant and  
13 visit some of my friends in the back and I say HE, all  
14 they think is impeller versus agitator.

15           So it changes.

16           Now back to your discussion about HE  
17 detergent, HE detergent was actually developed when we  
18 developed the Calypso washer back in '99. So as we've  
19 brought HE top loads to market we worked with Procter  
20 and Gamble to come up with a formulation so that it  
21 could actually be a low sudsing detergent. If you  
22 don't have the low suds, and this is one of the  
23 impacts that you see in the front load washers that we  
24 talked about earlier. If you don't use the HE  
25 detergent you get suds buildup in there and that can

1 cause some of that buildup of bacteria.

2           So when top load came to market we worked  
3 with them to come up with HE detergent. We made it a  
4 generic logo, you see the HE logo. It's prevalent now  
5 on all the places. Even when they came to market, we  
6 were working with them to get it out on store shelves  
7 as quick as they could because consumers that were  
8 buying those products needed to buy that detergent.

9           Again, that's just one of those development  
10 things that we do as we bring products to market. For  
11 consumer reasons you have to provide them with a  
12 consumer solution as well.

13           CHAIRMAN WILLIAMSON: Thank you for that  
14 answer.

15           Commissioner Aranoff?

16           COMMISSIONER ARANOFF: Commissioner Pearson  
17 was before me.

18           CHAIRMAN WILLIAMSON: Sorry.

19           COMMISSIONER PEARSON: Not a problem, Mr.  
20 Chairman.

21           I have just one last issue that I'd like to  
22 touch on and this is in the context of -- There's  
23 precedent for me changing a position before from a  
24 negative prelim to an affirmative final and it gets  
25 back to what we were starting to discuss in my last

1 round.

2           This may be mostly for the post-hearing, but  
3 either now or in the post-hearing could I ask counsel  
4 please to advise whether my determination in the  
5 preliminary was appropriately supported by substantial  
6 evidence on the record at that time. And the second  
7 part, why changes in the record since then would tend  
8 to strengthen or undermine my analysis?

9           MR. GREENWALD: The second part I think is  
10 very easy for us and we will do that.

11           The first part presents a more difficult  
12 issue. We know what your vote was, we would be  
13 perfectly happy to critique it but we certainly don't  
14 want to raise issues of sensibility.

15           So since you're inviting this I assume that  
16 you are looking for an unvarnished assessment, both a  
17 preliminary and --

18           COMMISSIONER PEARSON: I have a pretty thick  
19 skin. I don't take offense very easily.

20           It was a somewhat unusual opinion for me in  
21 that it was more detailed than the rest of the  
22 Commission and perhaps more commonly I might take a  
23 different approach, but I can recall in particular a  
24 former Commissioner and a good friend of mine who  
25 often used a much more detailed analysis than I did

1 considering thins from all angles, tipping them upside  
2 down and shaking them and perhaps that's what I had  
3 tried to do in the --

4 MR. GREENWALD: I do think the key point for  
5 us is how much more extensive this record is both on  
6 underselling, pricing coverage, purchaser  
7 questionnaire responses. There is a wealth of detail  
8 that you now have before you that you didn't have at  
9 the preliminary.

10 COMMISSIONER PEARSON: I'll look forward to  
11 reading that.

12 With that, Mr. Chairman, I have no further  
13 questions but would like to thank this panel very  
14 much. It's been a most helpful morning.

15 CHAIRMAN WILLIAMSON: Commissioner Aranoff?

16 COMMISSIONER ARANOFF: Thank you, Mr.  
17 Chairman.

18 Everybody, all of the parties in this case  
19 agree that the market for these washers is  
20 characterized by a small number of large and powerful  
21 purchasers. If purchasers are constantly pressing  
22 manufacturers to lower their prices or risk losing  
23 floor space, and in those circumstances a supplier of  
24 an imported product happens to buckle under the  
25 pressure sooner than a domestic supplier for whatever

1 reason, is that price suppression by reason of subject  
2 imports or by reason of the purchaser market power?

3 I haven't said this since law school, but it  
4 seems to me there's a proximate cause issue.

5 MR. GREENWALD: The short answer is, it is  
6 by subject imports, it takes both supply and demand or  
7 demand and the availability of the supply at that  
8 price to set a new price. but I'll let --

9 MR. FETTIG: I would just say very clearly,  
10 these big retailers have been around for a long time.  
11 So that isn't new. There's only one thing that's new,  
12 subject imports. The difference is they're willing to  
13 sell at completely uneconomical values in order to  
14 take -- They're buying market share in the U.S. market  
15 for whatever reason, you'll have to ask them, but it  
16 is not supported by economics. And the difference  
17 between now and a few years ago was domestic producers  
18 wouldn't do that. Domestic producers have to get some  
19 level of return or they can't stay in business.

20 So the only difference in this is the  
21 aggressiveness and uneconomical price decisions that  
22 subject imports are willing to make. That's the one  
23 change unbearable.

24 MR. LEVY: Commissioner Aranoff, it may also  
25 be helpful to think about that question in the context

1 of the Kenmore bid. Kenmore being a very important  
2 segment of the overall market. I think as you heard  
3 earlier today, Sears actually creates the bid  
4 template. It's a locked Excel spreadsheet and it  
5 lists as dozens of rows, specifying what the features  
6 are going to be for specific Kenmore SKUs and there's  
7 only a short area here where the bidder can provide  
8 information. The information where they have input is  
9 manufacturing location, and first cost among other  
10 points.

11           So what you have in this environment is  
12 Sears is lining up a bunch of prices from competing  
13 suppliers and it's a perfect apples to apples  
14 comparison because each individual Kenmore SKU is  
15 predefined by Sears in terms of what the features are.  
16 Down to every final bell and whistle.

17           In that environment Whirlpool gets pushback.  
18 You're nine percent too high. I think it's pretty  
19 clear what's going on in that environment. It's  
20 subject imports.

21           This is probably the example that puts the  
22 dynamic in the most stark relief. It may be less  
23 obvious to the observer in the context of the retailer  
24 dynamic with brand sales, but the same there is true  
25 as well.

1           While I'm on the subject of Kenmore, let me  
2 just make a point in passing. I think I read  
3 somewhere in Respondent's briefs the charge that  
4 Whirlpool did not produce during the POI from the U.S.  
5 Smaller capacity front loaders like 3.7 or 4.0 cubic  
6 feet. And that is technically true. But not only do  
7 these products compete with those smaller capacity  
8 units, but more to the point, during the period of  
9 investigation Whirlpool bid to produce and sell those  
10 products in very large volume, and it's right here on  
11 the Kenmore bid sheet. It's not rocket science to  
12 make a smaller drum in there. The reason they lost  
13 that bid to produce that product during the POI was  
14 because of price.

15           COMMISSIONER ARANOFF: It's true and  
16 Respondents have focused on the fact that a number of  
17 Petitioner's lost revenue and lost sales allegations,  
18 many of them cover events from the first half of 2012  
19 after the petition was filed. Respondents argue that  
20 these allegations arise out of an unprecedented review  
21 attempt to raise prices by Petitioner and that  
22 Petitioner proposed -- This is what they claim.  
23 Petitioners proposed the price increase knowing that  
24 it wouldn't stick in order to generate lost revenue  
25 allegations. I wanted to ask you to respond to that,

1 and in particular, also to answer why if it was  
2 possible to document so many lost revenue allegations  
3 in 2012 there weren't more alleged for the prior  
4 years.

5 MR. LEVY: I'd like to start trying to  
6 answer it. I think with regard to the petition we did  
7 the best we could with the information we had.

8 This is a very complicated industry with a  
9 lot of relationships and much of the information is  
10 exchanged over the phone. It isn't all documented to  
11 perfection.

12 Once the petition was filed, Whirlpool was  
13 excruciatingly diligent in trying to keep track of all  
14 of the instances of meet competition. What you find  
15 is a much more granular set of lost sales and lost  
16 revenue allegations for the final phase. It's simply  
17 a function of the fact that Whirlpool did much more  
18 work trying to record what happens in their daily  
19 conversations.

20 With regard to this final point though, it's  
21 a stunning point. Respondents' argument is that  
22 Whirlpool's effort to raise prices, to take effect in  
23 July of 2012 and I think Sam testified the price  
24 increase announcement was put out to the trade in  
25 April. Was somehow a sham, that it was a pretext,



1 that it was insincere.

2 I would ask you to look again at Petitioners  
3 confidential exhibit 2 as an example, or confidential  
4 exhibit 3, and look at the financial performance of  
5 Whirlpool at the end of 2011 and going into 2012.  
6 Even with the January 2012 price increase, Whirlpool  
7 is getting clobbered. It's losing money.

8 This proposed price increase was not a game.  
9 This is an effort to return the business to a state  
10 of profitability, sustainability, the ability to  
11 employ workers and to reinvest.

12 The notion that a company would try to raise  
13 prices above their cost is not a game, it's not a  
14 litigation tactic. It's basic business common sense.  
15 And as Jeff Fettig has testified, Whirlpool's ability  
16 to succeed in simply recovering on its investment has  
17 been fundamentally frustrated by uneconomic behavior  
18 by subject imports who parenthetically face the same  
19 basic cost structure that Whirlpool faces.

20 I hope that's responsive.

21 COMMISSIONER ARANOFF: Absolutely. I wanted  
22 you to have a chance to put that on the record.

23 One last question and this one is much more  
24 technical.

25 There's been a lot of reference today to

1 Consumer Reports ratings. Consumer Reports, as a  
2 reader I've noticed typically rates products on a  
3 somewhat limited range of attributes which tend to be  
4 amenable to some form of objective management.

5 Do you think the Consumer Reports ratings  
6 fully account for so-called intangible features like  
7 fit, feel and finish?

8 MR. FETTIG: First of all, I'd just answer  
9 at a high level. It is the leading third party  
10 endorser. So basically beyond them there is nothing.  
11 So the starting point is, it's the best available.

12 MR. TUBMAN: I think to answer that  
13 question, they test things which they can test  
14 independently. Things that are non-subjective. Fit,  
15 feel and finish, is completely subjective. Depending  
16 on who's looking at a product, they may, even as you'd  
17 look at the products here, someone may love the round  
18 door on this front load piece here. Others may say  
19 you know what? I really like the square door that's  
20 in the back of the room.

21 It's a consumer preference. Consumer  
22 Reports is all about testing things that are  
23 scientific that they can measure, that they can  
24 measure over and over and over and compare side by  
25 side.

1           They also are testing things that drive the  
2 consumer purchase. If you look at the things they're  
3 testing, wash performance. The most important thing.  
4 Wash performance. Capacity is right next to it.  
5 Sound. Ease of use.

6           So the ease of use does take into account  
7 some of the other factors. So how the knob works, how  
8 the touch screen works, things of that nature. It  
9 would take into account those items. But they really  
10 are focused on things they can test as well as things  
11 that are consumer relevant.

12           MR. LEVY: Commissioner, if I could add. I  
13 think it's right that Consumer Reports focuses on  
14 these more objective metrics. And so if one were  
15 interested in understanding where do you go to get  
16 evidence about the relative fit, feel and finish of  
17 various competing parties, I would point out in the  
18 first instance to the record in the staff report.  
19 There is a very robust evidence that speaks to the  
20 interchangeability of products among domestic  
21 suppliers and subject imports, and that deals with  
22 particularity on issues like fit, feel and finish and  
23 the relative importance of those features.

24           Respondents place great emphasis not on the  
25 record evidence but on consumer surveys. I would

1 simply make a few points on that subject as you weigh  
2 that evidence that they've placed on the record.

3           First to the extent there is discussion of  
4 JD Powers, there's no doubt that JD Powers is a  
5 relevant marketing tool, particularly at the retail,  
6 the consumer level. It gets used by a commissioned  
7 salesman when that's when he wants to push something  
8 that's well rated by JD Powers. But in the context of  
9 JD Powers please understand that one of the metrics  
10 that it uses for ranking washers is price. So JD  
11 Powers is not a very good place to look at when you're  
12 trying to understand non-price factors.

13           More generally, and this is true not just of  
14 JD Powers but all of the other surveys except one,  
15 they deal with brands with a very broad brush.  
16 Samsung, LG, Whirlpool.

17           What you will see out here if you are as  
18 discriminating as I am, is that there is a big  
19 difference in fit, feel and finish between Whirlpool's  
20 American made washers and the ones made in Germany and  
21 moving down the line to the ones made in Mexico in  
22 terms of fit, feel, finish, design and aesthetics.  
23 And to paint the Whirlpool brand with a broad brush  
24 without respect to country of origin is a gross  
25 distortion and it renders almost all of those consumer

1 surveys mud.

2           There is one consumer survey on this record  
3 that Whirlpool commissioned in anticipation of your  
4 interest in this issue, and it's attached to our  
5 questionnaire response which surveys consumers who  
6 made a purchase over one year, the last 12 months of  
7 the period of investigation. It asks them what SKUs  
8 they bought and it focused on those SKUs and their  
9 purchasing decisions and it discriminates based on  
10 country of origin.

11           So to the extent you want to understand  
12 what's driving their tastes, what's driving their  
13 purchasing decisions and the extent to which they're  
14 willing to switch between brands and across features  
15 based on relative price, I would refer you to that  
16 survey because I think it's the closest to being  
17 relevant. But most relevant of all is always going to  
18 be what's in the staff report, what's in the purchaser  
19 questionnaire responses because competition in this  
20 industry occurs at the wholesale level.

21           I hope that's helpful.

22           COMMISSIONER ARANOFF: That is very helpful,  
23 and I'm definitely way over my time, but fortunately  
24 that concludes all my questions for this panel so I do  
25 want to thank you very much for your perseverance.

1 Thanks, Mr. Chairman.

2 CHAIRMAN WILLIAMSON: Commissioner Pinkert?

3 COMMISSIONER PINKERT: Thank you, Mr.

4 Chairman.

5 I have just a few follow-up questions.

6 There was some testimony in the last round  
7 about the inability to recover investment costs  
8 associated with the newer products in the market. I'm  
9 wondering, this applies both to this panel and to GE  
10 if GE is out there somewhere listening.

11 Can you give us some analysis of the  
12 assumptions you made at the time the investments were  
13 undertaken regarding the level of profitability needed  
14 to justify the investment?

15 MR. LEVY: We'll be sure to do that. Thank  
16 you, Commissioner Pinkert.

17 COMMISSIONER PINKERT: Thank you.

18 My next question doesn't presuppose any  
19 particular result on the present injury analysis, but  
20 I wanted to give you the opportunity to take a  
21 position on whether cumulation is appropriate in the  
22 context of a threat analysis in this case.

23 Mr. LEVY: I think our view is that it would  
24 be in the context of that, but we'll address those in  
25 our post-hearing submission if we could.

1           COMMISSIONER PINKERT: Thank you.

2           I would just encourage you, at least for my  
3 own purposes, to pay attention to volume and price  
4 trends because those would be factors that I would  
5 weigh very heavily in the context of determining  
6 whether to cumulate for threat purposes.

7           Thank you.

8           COMMISSIONER PINKERT: There was also some  
9 testimony in the last round of questions about the  
10 importance of Kenmore in the marketplace. And it's my  
11 understanding that that level of importance has  
12 changed somewhat over the past five to ten years. I  
13 don't want to get you to say anything that might be  
14 offensive to anybody, but I'm curious as to whether  
15 this panel can comment on the dynamic that's occurring  
16 with respect to the Kenmore brand.

17           MR. TUBMAN: I guess as far as importance I  
18 will tell you it's one of the top brands. Probably  
19 some of you own Kenmore products purchased at Sears  
20 which is still the number one outlet, still has the  
21 most shoppers coming into it. So the Kenmore brand is  
22 extremely important.

23           They have -- again I'm not referencing data  
24 in front of me so I'll give you my best knowledge.

25           I believe they have lost market share over

1 time. I don't believe it is catastrophic at this  
2 point in time where other people may lead you to  
3 believe they're on their last legs.

4 Kenmore is a very strong brand.

5 The other thing is even if something were to  
6 happen with Sears, Kenmore brand stands alone. It can  
7 be sold anywhere. It can be sold in other outlets as  
8 well. In fact it is currently in other outlets outside  
9 of Sears.

10 But if you just look at the value of it and  
11 how important it is, and what it's worth within the  
12 box of Exhibit 8, half a million units, fourteen  
13 percent front load market share. This is an important  
14 player. I don't know how much more I can say or tell  
15 you, but it's very important.

16 COMMISSIONER PINKERT: Perhaps for the post-  
17 hearing if you could give us more of an historical  
18 kind of understanding of what's going on.

19 I see the snapshot up on the screen there,  
20 but give us some understanding of what the trend is  
21 with respect to Kenmore. I think that would be very  
22 helpful.

23 With that I have no further questions for  
24 the panel. I thank you. And I look forward to the  
25 post-hearing.



1 CHAIRMAN WILLIAMSON: Commissioner Johanson?

2 COMMISSIONER JOHANSON: Thank you, Mr.

3 Chairman. I have no further questions but I would  
4 like to thank the panel for appearing here today.

5 CHAIRMAN WILLIAMSON: Does any other  
6 Commissioner have additional questions?

7 Thank you.

8 Does staff have any questions for this  
9 panel?

10 MR. McCLURE: Jim McClure, Office of  
11 Investigations. Mr. Chairman, staff has only a few  
12 questions that may take an hour.

13 (Laughter.)

14 Just kidding.

15 Thank you to the Petitioner and in advance  
16 I'll say thank you to the Respondents. We've asked  
17 for a lot of information as you well know, and you've  
18 been very responsive and I'm sure we will be asking  
19 for even more so let me say thanks right now.

20 CHAIRMAN WILLIAMSON: Do Respondents have  
21 any questions for this panel?

22 MR. CONNELLY: No questions.

23 CHAIRMAN WILLIAMSON: Thank you.

24 With that I think it's time to take a lunch  
25 break, so we will reconvene at 2:40. An hour and five

1 minutes.

2           I need to remind everybody not to leave  
3 confidential business information because the hearing  
4 room is not secure. Therefore, this hearing is  
5 adjourned until 2:40. Thank you. Recessed, sorry.

6           (Whereupon, at 1:36 p.m., the hearing in the  
7 above-entitled matter was recessed, to reconvene at  
8 2:40 p.m. this same day, Tuesday, December 11, 2012.)

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1           The exclusion of top load washers of less  
2 than 3.7 cubic feet would exclude a vast portion of  
3 the industry which faces little if any import  
4 competition and hence cannot be injured by imports  
5 subject to any reasonable theory of causation.

6           Further, Whirlpool and its allies attempt to  
7 paint this case as a traditional tale of a domestic  
8 industry injured by unfair conduct of subject imports.  
9 This is inaccurate.

10           The U.S. industry has dominated the market  
11 and its market share has remained stable.

12           Further, Whirlpool has misallocated its cost  
13 data in order to concoct its story of injury.

14           But as the U.S. economy has slowly roused  
15 from the most crushing recession in 80 years, which  
16 you didn't hear about this morning, the washer  
17 industry has likewise rebounded.

18           The significant recent and ongoing  
19 investments by Whirlpool and GE in expanding their  
20 U.S. washers production facilities to the tune of a  
21 couple of hundred million dollars in just the past  
22 year or so are hardly indicative of an industry that  
23 is suffering injury, but rather of a thriving industry  
24 right here in the United States.

25           Whirlpool also attempts to link injury,

1 assuming there is any, to subject imports. Our panel  
2 will point out several fundamental problems with this  
3 argument.

4           For example, the underselling comparisons on  
5 which Whirlpool heavily relies are based on pricing  
6 data that are of questionable validity to say the  
7 least.

8           But even if you consider the underselling  
9 data, despite their grave flaws, the evidence also  
10 shows that the subject imports are causing no adverse  
11 price effects. Whirlpool's attempt to place the blame  
12 for any price declines on imports of higher feature  
13 laden imported products turns the causation analysis  
14 on its head.

15           On a more positive note, we'll discuss the  
16 exciting innovations that have occurred in this  
17 industry over the past eight to ten years, many of  
18 which were introduced by the Korean producers and  
19 imitated by Whirlpool.

20           A washer is no longer a white box that sits  
21 in your basement doing an average job of cleaning  
22 clothes. The recent innovations do not merely focus  
23 on style but also have to do with improvements in the  
24 functions of washers. That is their ability to wash  
25 laundry and to do so more rapidly and conveniently

1 with lower consumption of energy and water.

2           This is important because despite what you  
3 heard this morning, while price is a factor, there are  
4 also important additional considerations such as  
5 features, quality and reliability at which the subject  
6 producers excel.

7           Over the years Whirlpool has adopted some of  
8 those innovations and it has priced low to take market  
9 share. The view that washers are not a style product  
10 is an incorrect one and reflects Whirlpool's outdated  
11 thinking and its having gotten comfortable with the  
12 large market share and uncomfortable with competition.

13           Finally on a small note, you'll hear, our  
14 witnesses do not discuss the Bosch issue very much in  
15 our affirmative presentation because we're focusing on  
16 issues that we consider more important. However, they  
17 are knowledgeable about the Bosch developments and the  
18 situation and would be happy to answer questions you  
19 may have on that topic.

20           I'm now going to turn the floor over to our  
21 first witness, John Herring from LGE US. Thank you.

22           MR. HERRING: Good afternoon. I'm John  
23 Herring, Vice President of Sales for National Accounts  
24 for LG Electronics. I've been at LG just over six and  
25 a half years and prior to that earlier in my career I

1 spent over 12 years at Maytag, so collectively over 18  
2 years in the appliance business.

3 I'm very familiar with the washer industry.

4 Maytag, which is now part of Whirlpool, and  
5 LG are worlds apart when it comes to the laundry  
6 market. I have no doubt that the stark differences  
7 between how Whirlpool and LG approach appliance  
8 development is due at least in part to the differences  
9 in their history.

10 As a company that started in consumer  
11 electronics, LG is all about creating excitement.  
12 Number one, through innovations that respond to  
13 identified consumer needs; and number two, design and  
14 style that evoke high quality and positive consumer  
15 expediencies.

16 LG brought this consumer experience to  
17 appliances and it shows in our laundry products. We  
18 played a leading role in changing the laundry business  
19 from a very traditional white appliance business to a  
20 high tech design oriented product focus.

21 LG has and continues to lead in both  
22 innovation and product design. I'm going to focus my  
23 remarks this afternoon on those innovations and design  
24 characteristics because it is absolutely key to LG's  
25 success in the market today.

1 Suffice it to say that LG would not be so  
2 focused on innovation and design and Whirlpool would  
3 not be following LG's product leadership by following  
4 LG's design trends if these factors were not important  
5 to consumers.

6 When it comes to innovation and market  
7 firsts, LG has really led the industry with innovative  
8 technologies, quality product, and state of the art  
9 product design. Let's turn to the first slide and  
10 I'll use it to provide an overview of LG's leadership  
11 in both product and design innovation.

12 First off, LG was the first to bring direct  
13 drive technology to the front load laundry industry in  
14 2003. This design provides smooth, quiet and reliable  
15 operation with reduced vibration. As you can see,  
16 Whirlpool followed with this design but not until much  
17 later in 2010.

18 LG was also the first company to introduce  
19 steam into the washer platform which revolutionized  
20 and permanently changed the laundry industry, and we  
21 launched it at a premium price point of 1599 in a very  
22 classy midnight blue color.

23 Another product innovation LG brought to the  
24 market by utilizing our consumer electronics expertise  
25 is our smart diagnosis which provide remote



1 diagnostics capability. Consumers can now put their  
2 phone up to the washer for a quick diagnosis. In the  
3 unlikely event that an LG washer needs a repair, this  
4 capability can eliminate a service call or provide a  
5 preliminary diagnosis to allow a service technician to  
6 have any necessary part to repair on the very first  
7 trip.

8           Let's move to the lower part of the slide,  
9 and focus on LG's leadership in product design.

10           Once again, LG really changed the dynamics  
11 of the laundry business when we launched our wild  
12 cherry red washer in 2006 at a premium price of 1399.  
13 This was a huge success. The industry followed LG's  
14 lead by attempting to copy the successful color.  
15 Whirlpool followed LG and launched their red version  
16 much later.

17           LG again led Whirlpool by launching a very  
18 successful stainless look in 2009 which Whirlpool  
19 eventually followed in 2012. You'll get a chance to  
20 see both of these colors in a few minutes.

21           LG has also demonstrated design leadership  
22 through fit, feel and finish. We'll provide you an  
23 opportunity to see some of those design  
24 characteristics during our product demonstration, but  
25 you can see on the chart where Whirlpool continues to

1 follow LG when it comes to product design.

2           Let's now turn to slide two, to see how LG's  
3 successful launches of color have shaped the industry.

4           Prior to LG launching a black color in 2004  
5 the industry sold just 14 percent in color in the  
6 front load laundry market. Since the launch of these  
7 successful colors, color hare more than doubled, to 34  
8 percent.

9           On the right side you'll see that color is a  
10 major differentiator by seeing that LG outsells  
11 Whirlpool four to one in color sales. This is an  
12 important characteristic because the industry charges  
13 customers more for a color in a washer.

14           Let's now turn to slide three to see why  
15 consumers bought a particular brand.

16           The research data really shows that  
17 consumers bought LG for very different reasons than  
18 Whirlpool. In fact the features desired was the  
19 number one reason why consumers purchased LG.  
20 Features I previously described such as steam cleaning  
21 and smooth quiet direct drive design.

22           You will also see consumers selected LG more  
23 frequently than Whirlpool based on quality of product.  
24 This is reinforced by Consumer Reports in slide four  
25 which for the past four consecutive years has shown LG

1 as the most reliable front load washer. I suspect you  
2 know from your own experience as consumers Americans  
3 frequently consult Consumer Reports before making a  
4 purchase.

5 Consumers were also far more likely to  
6 select LG based on appearance. This would include  
7 items such as color and design characteristics such as  
8 fit, feel and finish. And you'll see Whirlpool leads  
9 LG when it comes to price. Consumers selected  
10 Whirlpool based on price 46 percent of the time.

11 Now let's turn to slide five to see what  
12 consumers are saying after they purchase their new  
13 washer.

14 This report provides an overview of on-line  
15 consumer reviews from the top five appliance  
16 retailers' web sites. Retailers that together account  
17 for approximately 70 percent of washer sales annually.  
18 With a maximum rating of five you can see that LG  
19 consumers were highly stratified in both front load  
20 and top load with ratings of 4.6 and 4.5 respectively,  
21 versus 3.6 for Whirlpool and Maytag.

22 This means consumers were very pleased with  
23 the corresponding reasons in why they purchased a  
24 product such as features, innovations, quality, fit,  
25 feel and finish.

1           Turning to the final slide, six, we can see  
2 how LG consumers are different from Whirlpool  
3 consumers. This slide shows consumer income  
4 demographics for each manufacturer. You can see LG  
5 consumers are far more affluent than Whirlpool  
6 consumers. This fact would explain why LG consumers  
7 are less price sensitive and more likely to pay for  
8 product innovation and design enhancements.

9           Consumers who are most price sensitive will  
10 be more likely to buy conventional top load machines  
11 which we don't sell in the United States.

12           In summary, it's clear that Whirlpool and LG  
13 play in very different segments of the market. While  
14 a significant portion of the offerings by Whirlpool  
15 and Maytag are in the entry level, LG is focused on  
16 the premium segment of the market. Through product  
17 innovation and design leadership I've talked about  
18 today, LG has successfully sold our washers at a  
19 higher average selling price than Whirlpool.

20           Many of our innovations have been followed  
21 by Whirlpool years later.

22           The research shows consumers are buying LG  
23 over Whirlpool based on innovative features, quality,  
24 appearance, and that LG consumers, who are generally  
25 more affluent and less likely to buy based on price,

1 are far more satisfied than Whirlpool consumers post  
2 purchase.

3 I'd like to make one final point. I heard  
4 this morning during Whirlpool's testimony that LG  
5 announced a price increase in 2012 after they filed  
6 the petition. This is not correct. We announced our  
7 2012 prices in notices that we sent to our customers  
8 in early November of 2011. This was well before the  
9 petition was filed and clearly not in reaction to the  
10 petition.

11 I look forward to answering your questions.  
12 Thank you for your time and attention.

13 MR. ELLIS: Thank you.

14 Our next witness will be Kevin Dexter from  
15 Samsung Electronics America.

16 MR. DEXTER: Good afternoon. My name is  
17 Kevin Dexter. I'm the Senior Vice President for the  
18 home appliance division of Samsung Electronics  
19 America.

20 I'm responsible for sales and marketing for  
21 the appliance business in the U.S. Before joining  
22 Samsung I worked for Electrolux for 15 years and prior  
23 to that I was with Maytag.

24 Samsung has a very different view from  
25 Whirlpool about what has happened in the market in the

1 last several years and why Samsung has been so  
2 successful. Whirlpool blames all of its misfortune on  
3 import pricing. If you believe that story, it's a  
4 wonder that Whirlpool is able to sell any washers at  
5 all. If our supposedly lower prices drive every  
6 purchaser's decision then why has Whirlpool always  
7 been the dominant washer producer in all three market  
8 segments? Why are their sales increasing? Why is  
9 their market share so big? In fact the reason story  
10 is much different. I will address two points today.

11           Number one. Both Samsung and Whirlpool know  
12 and accept that there are non-price factors that  
13 impact a consumer's decision. Number two, Whirlpool  
14 is at least as aggressive as other companies in  
15 pricing and promotion.

16           I want to be clear that Samsung is a  
17 vigorous and strong competitor, but we need to compete  
18 by offering innovative technology and consumer favored  
19 design and bringing these new products quickly to  
20 market.

21           We constantly survey consumer preferences  
22 and we use their feedback to develop and introduce new  
23 models, new features, and updated designs as quickly  
24 as possible. In fact we can introduce modifications in  
25 two months that might take some of our competitors at

1 least six months to do so.

2           We could take the cost out route. We've  
3 analyzed Whirlpool products and other competitors. We  
4 know there are savings of \$25 to \$40 per unit with  
5 aggressive material cost out, but we choose to deliver  
6 on design and innovation as a strategy.

7           Whirlpool's claim that all washers have  
8 comparable design and features and are equally  
9 attractive to consumers is simply not true. When it  
10 comes down to a choice between a Samsung model and a  
11 Whirlpool or Maytag model, we usually have the  
12 advantage.

13           In our handout Exhibit 1 contains some  
14 survey results that establish this point.

15           For example, the first page of this exhibit  
16 shows that retailers recommend Samsung and LG units  
17 far more often than Whirlpool and Maytag units.

18           The second page shows that Samsung and LG  
19 have a much stronger reputation on key purchase  
20 factors than Ge and Maytag and are better than  
21 Whirlpool.

22           The third page shows that only 37 percent of  
23 Samsung buyers even consider a Whirlpool model. They  
24 are far more likely to consider LG or Kenmore.

25           The fourth page shows that the category of

1 buyers known as penny pinchers are far more likely to  
2 consider a Whirlpool or a Maytag model than a Samsung  
3 or LG model. Samsung and LG simply have different  
4 consumers and are regarded differently than Whirlpool  
5 and Maytag.

6 Whirlpool has not been as responsive to its  
7 customers as we have, at least not until very  
8 recently, and we can demonstrate that by looking at  
9 Exhibit 2 in our handout.

10 It shows that Whirlpool competed by using  
11 their old style model all the way from 2007 through  
12 late 2010. There is absolutely no doubt that  
13 retailers and consumers vastly preferred the products  
14 from Samsung and LG. In a few minutes when Dean  
15 Brindle talks about the washers that we brought here,  
16 we will show in concrete ways the reasons why Samsung  
17 has been successful in the front load segment.

18 In the top load segment too, Samsung has  
19 been successful by introducing compelling products  
20 with innovative technology and great design.

21 Though we entered the top load relatively  
22 late, we immediately achieved the number one ranking in  
23 Consumer Reports. The products had a big capacity, a  
24 new design, a popular feature called Power Phone in an  
25 innovative platinum color. It was also priced in the



1 top three percent of the top load market.

2 I know want to speak on the subject of price  
3 and promotions. We agree that holiday promotions have  
4 become more important over the years. From time to  
5 time we have supported retailers with discounts and  
6 have allowed them to advertise reduced promotional  
7 MAPs or minimum advertised prices. But for Whirlpool  
8 to claim that Samsung, LG and Electrolux have always  
9 done this to a much greater extent is simply not  
10 right.

11 The most recent example of an aggressive  
12 holiday promotion is Whirlpool's Black Friday 2012  
13 promotion of its 3.6 cubic foot top load model.

14 In Exhibit 3 in our handout we have provided  
15 ads that show that retailers advertised a 50 percent  
16 discount on a Whirlpool brand model and a 33 percent  
17 discount on a Maytag brand model. The deep discounts  
18 on these models devastated our own top load sales last  
19 month.

20 This behavior by Whirlpool is not new . It's  
21 2011 Black Friday deals were equally hot as you can  
22 see in Exhibit 4.

23 Whereas Samsung tends to promote high end  
24 front load washers, Whirlpool tends to focus on  
25 smaller top load washers. when Whirlpool discounts

1 its smallest capacity models, it puts downwards  
2 pressure on all washer prices. Whirlpool's discounts  
3 act as a price anchor.

4           The price effects in the market are just the  
5 reverse of what Whirlpool has described. it is  
6 difficult for me as an industry veteran to understand  
7 how Whirlpool can claim injury when they continue to  
8 dominate the total laundry market when their sales of  
9 HE top load sales are growing, and when they continue  
10 to own the conventional top load segment and when  
11 their promotional strategy is successfully driving  
12 down sales in Samsung's sweet spot which is the front  
13 load segment.

14           We do not know the extent to which your  
15 record shows that Samsung has sold washers at lower  
16 prices than Whirlpool, but we do know that it's  
17 extremely difficult to make judgments about price  
18 leadership and underselling when the models that  
19 you're comparing have entered the market at different  
20 times and are being compared at different points in  
21 their life cycles.

22           Because prices decline as models age, there  
23 is a real apples and oranges problem that makes it  
24 difficult to draw reliable conclusions. If there were  
25 pervasive underselling we would see a much more

1 pronounced negative effect on Whirlpool than anyone in  
2 this industry can see.

3 I'd like now to address a few specific  
4 points in Whirlpool's brief. The first concerns  
5 Whirlpool's claims that our lower prices hurt sales of  
6 its new Alpha line. What they fail to point out is  
7 that Whirlpool's Alpha models entered the market at  
8 MAPs that were \$300 below our comparable models and  
9 then they promoted these models with support for an  
10 additional \$200 discount. As a result, consumers  
11 could buy their 4.3 cubic foot Alpha at \$999 or below,  
12 when our comparable 4.3 cubic food model was priced at  
13 \$1499. They simply tried to buy their way into the  
14 market.

15 Our Exhibit 5 shows you the pictures of  
16 Whirlpool Alpha and their promotional MAP.

17 A second concern involves a like product  
18 definition that Whirlpool has proposed. Whirlpool  
19 sells 3.6 cubic foot top load washers, Samsung sells  
20 3.6 cubic foot front load washers.

21 I can assure you that consumers consider  
22 both of them at the same time. Our hearing Exhibit 6  
23 which Mr. Connelly discussed in his opening remarks,  
24 illustrates how illogical their position is. For  
25 under 3.7 cubic foot models, top load is out but front

1 load is in. This makes no sense at all, and it  
2 contradicts everything Whirlpool has ever said about  
3 the extent of cross-shopping and the overlap in prices  
4 between front load and top load models.

5           If you ignore the effect of Whirlpool's 3.6  
6 cubic foot sales you will be ignoring the single most  
7 important competitive factor in the HE market.  
8 Whirlpool's 3.6 cubic foot model is the anchor that is  
9 pulling down prices in the entire HE industry.

10           Finally, Whirlpool claims that we raised our  
11 prices after they filed their petition. That is not  
12 correct. We announced our price increase to our  
13 customers in early December 2011 before the filing of  
14 the petition and after Whirlpool who first announced.

15           This concludes my remarks. Thank you for  
16 your time.

17           MR. ELLIS: Dean Bridle from Samsung and  
18 John Herring from LG are now going to do a short  
19 demonstration of some of the individual models.  
20 They're somewhat in the back, so we're welcoming the  
21 Commissioners if you'd like to come down and have a  
22 little walk-through with them. Thank you.

23           MR. BRINDLE: Good afternoon.

24           My name is Dean Brindle. I'm the Laundry  
25 Product Marketing Director for Samsung. I've been

1 with Samsung just over a year. Prior to Samsung I was  
2 with Electrolux for seven years, so I have over eight  
3 years' experience in the appliance industry, and six  
4 of those eight years in the washer market.

5 First of all I want to take a moment to  
6 explain the washers we brought before you today.

7 As you heard from Whirlpool earlier today,  
8 they'd like for you to believe that only the Alpha  
9 platform existed in front load washers during the POI  
10 when in fact there were actually several products that  
11 we brought before you to day to show you the  
12 differences in products between Samsung and Whirlpool  
13 to help you understand why we won in the market.

14 First of all let's talk about the grouping  
15 right in front of me here. These models represent the  
16 premium price points in the market sold during the POI  
17 in 2010 and 2011. We have both LG and Samsung units  
18 as well as Whirlpool. In the back we have models that  
19 were also sold from 2010 and 2011 comparing Samsung  
20 and Whirlpool specifically.

21 To help you understand, why are we comparing  
22 these units? Since Samsung entered the market in 2006  
23 we've focused our design on industry leading fit, feel  
24 and finish and quality. Part of our design  
25 incorporates key consumer touch points. Our focus is

1 in the doors and control panels because we realize  
2 from our consumer research how consumers shop for  
3 product.

4           They go into the store, they see the product  
5 from a distance first. Then they get closer to the  
6 product. They open the doors, they try the knobs,  
7 they try the buttons, they look at the displays if it  
8 has one, and they also look at the knobs.

9           Let's discuss these products in a little bit  
10 of detail. First we'll start with the Samsung unit.  
11 The Samsung first of all you'll notice has a higher  
12 door opening, more refined electronic display and a  
13 fully developed control panel with knobs as well as  
14 more features overall. Those features are more call  
15 outs for buttons and cycles from a software logic  
16 standpoint. The key thing here is we designed the  
17 product for consumer use whereas Whirlpool designed  
18 this product for cost.

19           We should not underestimate the impact of  
20 Whirlpool's cost decisions in driving consumer  
21 preference.

22           Since the recession began in 2008 consumers  
23 became much more concerned with durability and  
24 reliability. So when you think about a consumer's  
25 perception of quality, consider the missing knob, the

1 lack of a digital display, as well as the cheap  
2 buttons and interface on the Whirlpool units versus  
3 Samsung.

4           This lower perceived quality clearly drives  
5 a difference in sales. If we look at the sales of  
6 these two products during 18 months of the POI between  
7 2010 and 2011, you'll find that the Whirlpool 9050  
8 sold approximately 80,000 units; whereas the Samsung  
9 210 sold 185,000 units.

10           There are non-price factors involved clearly  
11 because consumers do look at the product and try  
12 different pieces of the puzzle, so to speak. They're  
13 going to look at the control panel, the doors, the  
14 knobs and more detail.

15           I encourage you to touch, feel the products,  
16 understand the difference in this interface because  
17 these are key consumer design differences where  
18 Samsung has an advantage versus Whirlpool.

19           To talk a little bit about the premium  
20 product in more detail, as I mentioned, the Alpha  
21 platform would be where Whirlpool would focus a  
22 majority of their attention. Prior to the Alpha  
23 platform which by the way represents nearly 20 months  
24 of your POI, is non-Alpha product. Whirlpool didn't  
25 have anything to compete with Samsung overall. What

1 we brought before you today is the actual Samsung 520  
2 and a Whirlpool 9700. These two models sold head to  
3 head. Let's look at the comparisons once again.

4           when we compare the door opening we see that  
5 the Samsung model has a larger door opening than  
6 Whirlpool. Consumers automatically associate the size  
7 of the door opening with capacity. As we heard  
8 earlier today, capacity carries a large value in the  
9 market and is a key consumer purchase factor.

10           When we look at the design, let's also think  
11 about the control panels. Those cost decisions made  
12 by Whirlpool drive the control panels to have less of  
13 an electronic feel. When we touch the knob you'll  
14 feel the audible click versus more of a high fi  
15 electronic knob.

16           When you look at the displays you'll see the  
17 difference in these products as well.

18           If these two products compete head to head  
19 how does the consumer make their choice?

20           Clearly one of the big differences is  
21 styling and esthetics. We look at the chrome trim,  
22 the electronics, the size of the door opening and the  
23 difference in knobs.

24           As a result, Samsung achieves a leadership  
25 position in style and esthetics.



1           In addition to our four consecutive years as  
2 JD Power rated number one in customer satisfaction,  
3 Samsung was also rated number one in style and  
4 appearance from 2010, 2011, and 2012 while all  
5 Whirlpool models remained below average.

6           COMMISSIONER PEARSON: Are these units  
7 identical in terms of their rated capacity?

8           MR. BRINDLE: In rated capacity, no. These  
9 would have been introduced in 2010 for the Samsung  
10 520. IN 2008 for the Duet platform for Whirlpool.  
11 One thing to keep in mind in rated capacity, each  
12 model that's introduced each year, the Alpha platform  
13 when it came on board would have been comparable to  
14 the 520. Prior to that they were inferior in  
15 comparison.

16           COMMISSIONER PEARSON: But which of these  
17 two holds more clothes?

18           MR. BRINDLE: The Samsung units does. It's  
19 actually a larger capacity.

20           COMMISSIONER PEARSON: That was the question  
21 I was trying to ask but did so ineffectively.

22           MR. BRINDLE: Understood.

23           CHAIRMAN WILLIAMSON: What's the capacity of  
24 that one, what's the capacity of this one, the Samsung  
25 versus the Whirlpool?

1           MR. BRINDLE: I'm speaking from memory on  
2 these two, so if In have to get corrected later In can  
3 be.

4           In think we're talking about four cubic foot  
5 and 3.9.

6           Lastly I'd like to speak a minute about  
7 innovation. WE heard a lot this morning about  
8 vibration reduction technology. One of the pillars of  
9 Samsung's innovation stories is vibration reduction  
10 technology. Clearly not an addition to leadership and  
11 style. Our leadership and innovation with VRT has  
12 given us a performance advantage.

13           Consumers began in the last two decades to  
14 move their laundry out of the basement, out of the  
15 garage, into the main floor and the upper floors of  
16 the home. As they moved the product out of the  
17 basement, that vibration and noise performance became  
18 absolutely critical. Samsung introduced ball bearing  
19 balancing rings in their VRT and carried it throughout  
20 our entire line since 2006, giving us the leadership  
21 advantage in performance. Whirlpool didn't introduce  
22 comparable technology until August of 2010 with the  
23 introduction of the alpha product and in fact remains  
24 inferior in vibration performance to the Samsung today  
25 in the non-Alpha products we've put before you.

1           Lastly, just to mention q quick Consumer  
2 Reports item for us as well, we've had Consumer  
3 Reports number one's in the past. The most recent  
4 rankings in Consumer Reports show that Samsung has the  
5 only front load washer rated excellent in vibration.

6           I'd like to turn the floor over to Mr.  
7 Herring to talk a little bit about LG.

8           MR. HERRING: Thank you, Dean.

9           In the essence of time I'm going to be real  
10 brief and try to reinforce two key areas with regard  
11 to LG. One is around product innovation and the  
12 second is around product design.

13           First off I talked earlier around direct  
14 drive. We had direct drive called out specifically on  
15 the control panel, provides smooth, quiet operation.  
16 LG was the first to put direct drive into the front  
17 load laundry market. It also provides us capability  
18 of having that true balance to reduce vibration for  
19 consumers.

20           A second key item was around steam. LG was  
21 the first to bring steam into the U.S. marketplace and  
22 really revolutionalized the market. That provides  
23 enhanced cleaning performance as well as allows us to  
24 be certified by the AAFA for reducing allergens for  
25 those that are allergy sensitive.

1           Third key item was around smart diagnosis  
2 which you have located on an icon right here. You'd  
3 simply push this button for a consumer, the consumer  
4 says they have a service call issue. They'll call the  
5 800 number to get service, they can push this button,  
6 it provides an audio sound that goes right through the  
7 cell phone into our service call center and they can  
8 pre-diagnose the call. Potentially eliminate the call  
9 or order the parts, and the consumer's repair is done  
10 on the very first trip.

11           LG is the only one that has this in the  
12 marketplace today.

13           The fourth item I wanted to show, one of the  
14 commissioners brought up the fact about mold and odor  
15 in a front load washer. LG recognized that was one of  
16 the consumer issues in previous front load  
17 comparisons. We have a magnet that we put on the  
18 bottom of the door to allow it to be closed but still  
19 open. As opposed to just swinging open in the  
20 consumer's laundry room. It keeps it somewhat closed  
21 but ajar to allow air to circulate to reduce that  
22 issue around mold and odor.

23           The next item I want to move onto is around  
24 product design. The first thing to point out is  
25 obviously the colors. This is LG's stainless steel

1 look. Once again, ahead of Whirlpool in terms of  
2 launching this color. This is a major part of the  
3 front load laundry business and even into the top load  
4 business with that color finish.

5           Wild cherry red as well. LG again was the  
6 first to bring that color to market and it really  
7 changed the dynamics. I think it's interesting to  
8 note that Whirlpool actually used a red washer in  
9 their slides today and we were the first to bring that  
10 to the U.S. market.

11           Other items around style and design is the  
12 big square door. We were the first, again, to bring a  
13 square door design. You'll see lots of chrome accents  
14 and trims around the door, the handles and the  
15 dispenser. Around the dial as well that really makes  
16 it pop and sets it apart.

17           The last item is digital controls. Again,  
18 LG's heritage in consumer electronics provides an  
19 optimum user interface that has great touch points and  
20 LCD displays.

21           Again, consumers are really drawn to this  
22 and they're willing to pay extra for this type of  
23 innovation and design within the laundry market.

24           The last item I want to point out on the  
25 design is what we call the wave design in the control

1 panel. This design we brought out in 2006 and you'll  
2 notice that Whirlpool's alpha design actually followed  
3 that design characteristics as well.

4           The last item before we turn you back over  
5 to the next presenter, there was a conversation  
6 earlier around top load laundry and slam proof lids.  
7 I find it interesting that they pointed that out. LG  
8 was actually the first to bring that to market a year  
9 ahead of Whirlpool.

10           That concludes the presentation on the  
11 product review and we're going to have the  
12 Commissioners go back up to the stand and we're going  
13 to turn it over to Mr. Chambers.

14           MR. CHAMBERS: Mr. Chairman, members of the  
15 Commission, I'm Mark Chambers. I'm Senior Vice  
16 President of Sales for Electrolux. I've been with  
17 Electrolux Company for about 17 years in a variety of  
18 capacities. Electrolux is the sole remaining exporter  
19 of large residential washers from Mexico. Electrolux  
20 manufactures washing machines at our laundry campus in  
21 Juarez, Mexico.

22           During the period of the Commission's  
23 investigation, Electrolux produced high-efficiency  
24 front-load washers in Juarez, which it exported to the  
25 United States and to Canada. Recently, we began

1 production of high-efficiency top-load washers in  
2 Juarez. All of these new HE top-load washers have a  
3 DOE capacity of 3.4 cubic feet. During the  
4 Commission's period of investigation, Electrolux also  
5 produced some smaller front-load washers and older  
6 conventional top-load washers in the U.S. at our  
7 production facility in Webster City, Iowa.

8 I heard this morning that representatives of  
9 Whirlpool state that imports from Korea drove  
10 Electrolux out of the large residential washer  
11 industry. This is simply untrue. You may recall from  
12 the recent investigation of bottom-mount refrigerators  
13 that in 2006 Electrolux decided to produce French door  
14 bottom-mount refrigerator/freezers in Juarez, Mexico.  
15 At that time, Electrolux was producing conventional  
16 top-load and high-efficiency front-load washers that  
17 had been state of the art when they were designed in  
18 1995, but they had lost their state of competitiveness  
19 by 2006.

20 Consumer preferences had changed, and this  
21 fact, together with the institution of new and more  
22 stringent energy-efficient requirements made these  
23 models uncompetitive, and Electrolux was losing money.  
24 As a result, a decision was made to develop a new line  
25 or platform for laundry consisting of a redesigned,

1 high-efficiency front-load washer and matching dryer.  
2 Having just made the decision to invest in a  
3 manufacturing plant for French door bottom mount,  
4 Juarez was a natural choice for this investment as  
5 well.

6           Electrolux developed a new laundry campus  
7 not far from where the refrigerator manufacturing  
8 facility existed. We determined that once this new  
9 platform was up and running, we would shut down our  
10 front-load production in Webster City. In 2007, the  
11 EPA changed the Energy Star requirements on all  
12 washers effective January 1, 2007. Over the next two  
13 years, Electrolux incurred significant losses on our  
14 conventional top-load washers and dryers produced at  
15 Webster City, Iowa, due to quality problems, which led  
16 to capacity utilization issues.

17           Competition from imports did not cause these  
18 losses as there are no imports of conventional top-  
19 load washers. To the contrary, to the extent we faced  
20 competitive pressures, our problem was with Whirlpool.  
21 As you know, in 2006, Whirlpool acquired its largest  
22 competitor, Maytag, giving Whirlpool a dominant  
23 position in the domestic washer market, and Whirlpool  
24 lost no time in using that dominance to squeeze  
25 smaller competitors, such as Electrolux.



1           During the 2007 to 2008 period, our volumes  
2 dropped significantly due to competitive pricing and  
3 positioning of the newly combined Whirlpool/Maytag  
4 brands in conventional top-load washers and dryers.  
5 For all of these reasons, by 2008 Electrolux concluded  
6 that we needed entirely new laundry platforms in top  
7 load as well as front load and laundry centers.  
8 Therefore, Electrolux made the decision to end all  
9 production of washers in the United States once the  
10 Juarez facility was completed.

11           The decision to produce in Juarez rather  
12 than Webster City came down to synergies. The  
13 investment in totally new platforms was an absolute  
14 given. The old platforms were not competitive from a  
15 featuring and design perspective with other domestic  
16 producers, and they were not delivering on consumer  
17 needs such as capacity. By establishing production in  
18 Juarez, Electrolux was also able to attract our supply  
19 chain and suppliers and subcontractors to locate on  
20 our new campus. Many of these subcontractors were  
21 common to the new French door bottom-mount  
22 refrigerator production.

23           Finally, there were efficiencies gained with  
24 respect to freight costs, which are significant in our  
25 industry. By locating washers and refrigerators on

1 the same site, we were able to mix truckloads of  
2 laundry and refrigerators outbound to our customers,  
3 which represents tremendous cost savings. This is an  
4 efficiency that just was not possible in Webster City.

5           At the end of the day, Electrolux shut down  
6 its Webster City production because the products  
7 produced there could not meet DOE standards and  
8 because Electrolux needed to totally revamp its  
9 laundry product line. Imports had nothing to do with  
10 that decision. I would also point out that our  
11 decision to move our washer manufacturing to Juarez  
12 does not mean that Electrolux has abandoned the U.S.  
13 market.

14           Our engineering, R&D and logistics  
15 operations were moved from Webster City to  
16 Electrolux's new North American headquarters in  
17 Charlotte, North Carolina. Charlotte is also the  
18 location of our Sales and Distribution operation for  
19 major appliances in North America as well as the  
20 Design Development for Electrolux's Small Appliance  
21 Division. All told, Electrolux has over 750 total  
22 employees in our Charlotte, North Carolina,  
23 headquarters.

24           For all the reasons you have heard this  
25 afternoon, Electrolux does not believe that imports of

1 large residential washers from Korea and Mexico are  
2 injuring the domestic market, and certainly,  
3 Whirlpool's assertion that Electrolux's decision to  
4 close its domestic large residential washer production  
5 is evidence of any such purported injury is false.  
6 Thank you.

7 MR. ELLIS: Thank you, Mark. Our next  
8 witness is Dan Klett. No, it's not. Go ahead,  
9 George. I apologize.

10 MR. HAWRANKO: Good afternoon. My name is  
11 George Hawranko, and I'm the Senior Associate General  
12 Counsel with Electrolux North America. I have been  
13 with Electrolux in various capacities for 16 and a  
14 half years. During much of this time, I've been in  
15 charge of intellectual property and regulatory matters  
16 applicable to Electrolux's laundry products. I am  
17 therefore very familiar with both the design and  
18 engineering of the Electrolux LRW products and with  
19 the application of DOE energy efficiency and capacity  
20 measurement regulations and requirements for washers  
21 sold in the United States.

22 I would like to discuss the matter of  
23 Whirlpool's shall we say creative approach to the  
24 issue of capacity measurement. Since the J-1  
25 standards were implemented in the early 1990s, the

1 Department of Energy has regulated energy standards  
2 and has established guidelines for measuring washer  
3 capacity. Without getting overly technical, these  
4 standards required all manufacturers to measure the  
5 capacity of their washers based on a formula that  
6 measures actual usable capacity for washing clothes.

7           The goal was to give the consumer a common  
8 standard that would allow the direct comparison of the  
9 various types of brands of washers based on the  
10 practical usable capacity of the unit. Beginning in  
11 approximately 2009, it came to the attention of  
12 Electrolux that Whirlpool was using a methodology for  
13 measuring the capacity of its top-load models that  
14 counted as part of the usable capacity space under the  
15 top cabinet panel on which the door was hinged, and  
16 that could not, in fact, be used to hold clothes.

17           The effect of this approach was to inflate  
18 the DOE capacity of its top-load models. I'm not  
19 aware of any LRW manufacturer that measured the  
20 capacity of its top-load LRWs using this method. Our  
21 concerns over Whirlpool's capacity circumvention led  
22 us to request guidance from the Department of Energy.  
23 In 2010, DOE issued guidance on capacity measurement  
24 that undermined Whirlpool's practice, but it was not  
25 until some time in 2011 that Whirlpool brought itself

1 into compliance.

2           As a result, Whirlpool reclassified the  
3 capacity ratings on many of its top-load washer models  
4 beginning in April of 2011. I want to emphasize that  
5 this revision in Whirlpool's rated capacity for these  
6 products was not due to any new DOE standard for  
7 measuring capacity, nor was it due to any change in  
8 the actual capacity of the washers. Rather, Whirlpool  
9 simply began to follow the existing standards. Thank  
10 you.

11           MR. ELLIS: Thank you. Now our next witness  
12 is Dan Klett from Capital Trade, Inc.

13           MR. KLETT: Good afternoon. My name is  
14 Daniel Klett. I'm an economist with Capital Trade  
15 testifying on behalf of LG, Samsung and Electrolux. I  
16 will address five issues. First, competition is  
17 attenuated between U.S. producers and subject imports.  
18 Second, there are important volume and price  
19 ramifications of Whirlpool's revised scope,  
20 particularly relating to its new 3.6 cubic foot high-  
21 efficiency top-load models. Third, underselling  
22 reported in the staff report does not support a  
23 finding of adverse price effects.

24           Fourth, Whirlpool's investment suppression  
25 is not credible. Fifth, there are serious problems in

1 Whirlpool's reported financial and price data.  
2 Competition between U.S. and imported washers is  
3 attenuated. First and most significant, a very large  
4 share of U.S. production is top-load washers under 3.7  
5 cubic feet, much of which is conventional as shown in  
6 Slide 1. Imports from LG, Samsung and Electrolux have  
7 never entered and have no intent to enter this market.  
8  
9 Second, Slide 2 shows that a significant  
10 volume of U.S. production is exported. Over one  
11 million units worth over \$300 million annually. This  
12 is additional U.S. production that can't have been  
13 adversely affected by subject imports. Third,  
14 competition is attenuated in each of the high-  
15 efficiency categories based on capacity and features.  
16 As shown in slide three, a much larger share of  
17 subject imports of high-efficiency top-load washers  
18 are extra large, over 4.5 cubic feet DOE capacity as  
19 compared to U.S. producers' offerings.

20 Now, relating specifically to high-  
21 efficiency top-load washers, as shown in Slide 4,  
22 Whirlpool first introduced high-efficiency top-load  
23 washers and has dominated this market segment. LG  
24 entered in mid-2010 and Samsung in mid-2011, and their  
25 entry helped demand grow as consumers switched away  
from front-load and conventional top-load washers. In

1 addition, changes in Whirlpool's model lineup in the  
2 high-efficiency top-load category illuminates a reason  
3 for their scope change.

4           Slide 5 shows that Maytag and Whirlpool both  
5 include 3.6 and 4.0 cubic-foot capacity models in what  
6 they categorize as their large-capacity washer  
7 categories. Maytag even classifies 3.1 cubic-foot  
8 capacity as large. Slide 6 shows that Maytag and  
9 Whirlpool's current model offerings for 3.6 cubic-foot  
10 high-efficiency top-load washers. Whirlpool's 3.6  
11 models were introduced in mid-2010 at retail, and they  
12 now offer only 3.6 cubic-foot models in the large  
13 category. Slide 7 shows the increase in sales at  
14 retail of these models.

15           Whirlpool's 4.0 cubic-foot models had been  
16 the largest volume in this large category, but were  
17 phased out during 2011 being replaced by the 3.6  
18 cubic-foot models. Whirlpool's scope change includes  
19 its models whose volumes were declining, but excludes  
20 its models whose volumes were increasing. By doing  
21 so, Whirlpool presents artificially weaker U.S.  
22 industry volume and market share trends that have  
23 nothing to do with subject import competition but  
24 reflect a normal shift in its model lineup.

25           Whirlpool's exclusion of 3.6 cubic-foot

1 high-efficiency top-load washers from the scope and  
2 industry also hides its aggressive pricing of these  
3 models. For example, Slide 8 shows average retail  
4 prices for Whirlpool and Maytag brand 3.6 cubic-foot  
5 models compared to average prices for LG brand 3.7  
6 cubic-foot top-load washers. Whirlpool's 3.6 model  
7 was always lower priced after it was entered.

8           Regarding underselling, the Commission did  
9 not collect prices for top-load washers under 3.7  
10 cubic feet, so it's price comparisons are confined to  
11 an artificial U.S. industry that accounts for a very  
12 small share of U.S. production. The volume for the  
13 four high-efficiency top-load pricing models accounts  
14 for a small share of the U.S. industry's total high-  
15 efficiency top-load washer sales.

16           Prices in the staff report show no linkage  
17 between the underselling and adverse effects to U.S.  
18 producers' prices or volume. Respondents' brief  
19 discusses in detail the absence of such linkages for  
20 each of the 11 pricing products. However, I do want  
21 to make a few general points. The Commission  
22 recognized in the refrigerators case that price  
23 declines at the end of a model's life cycle are  
24 normal.

25           Slide 9 shows retail prices for two



1 Whirlpool imported models that correspond to the  
2 specifications of pricing product 6. Both models  
3 display classic price and volume life cycle patterns.  
4 Price is very high when the model's introduced and  
5 decline somewhat as volumes increase. Prices decline  
6 over time, and the price and volume declines  
7 accelerate at the end of the model's life. By the  
8 way, this is not a cost-driven phenomenon, it's a  
9 model life cycle phenomenon.

10           There are month-to-month variations and a  
11 promotion by Whirlpool for the newer imported front-  
12 load model is clearly evident in September 2010. The  
13 same life cycle patters are evidence in your quarterly  
14 pricing data. Given this pattern, you should not find  
15 that U.S. producers' prices are depressed simply  
16 because you see quarterly prices fall over the POI.  
17 Moreover, if the market is as price sensitive as  
18 Whirlpool claims, then with the underselling margin in  
19 the staff report, you would expect to have seen U.S.  
20 producers losing market share to subject imports or  
21 lowering their prices closer to subject import levels.

22           However, excluding Electrolux, we do not see  
23 market share losses by the U.S. industry however  
24 defined, neither do we observe from the quarterly  
25 pricing data U.S. producers reducing their prices to

1 meet subject import prices. On the issue of  
2 investment, Whirlpool alleges that its investment in  
3 the Clyde, Ohio, front-load facility is jeopardized  
4 and that it has not made additional investments that  
5 it would have liked to have made.

6 Whirlpool says it decided to invest in U.S.  
7 front-load production in 2008, and it gives specific  
8 volume and price point targets that it "developed in  
9 its business plan for the production of Alpha front-  
10 load LWRs in Clyde, Ohio." The U.S. and world  
11 economies crashed at the end of 2008. Also, U.S.  
12 demand for front load fell in 2011 and 2012 as  
13 consumers switched to high-efficiency top-load  
14 washers.

15 Whirlpool asserts that competition from  
16 subject imports resulted in it not meeting its 2008  
17 front-load washer targets when they were introduced in  
18 2010. Plans made in 2008 were invariably turned  
19 upside down by the economic events that followed and  
20 cannot be the basis for comparisons to 2010.  
21 Referring now to Whirlpool's reported financials and  
22 prices where I'm going to refer to some confidential  
23 slides, there are severe problems and inconsistencies  
24 that have not been resolved in this reporting of cost,  
25 prices and discounts.

1           These are detailed in Exhibit 7 and 8 of the  
2 LG brief, and I'll summarize two of the issues here.  
3 On profitability and costs, companies normally have  
4 SKU or model-specific standard costs. This detail  
5 allows for a ground-up approach to aggregate costs for  
6 each washer category based on specific SKUs in each  
7 category and then appropriately allocated variances.  
8 This method would be the most accurate.

9           Instead, as shown in confidential Slide 1,  
10 it appears based on unit value and unit raw material  
11 relationships that Whirlpool aggregated standard costs  
12 and variances for a broader group, which it then  
13 allocated to the different washer categories based on  
14 their relative sales values, and I point you  
15 specifically to the unit raw material cost in Scope  
16 LWR and AGTL, less than 3.7 cubic-foot columns where  
17 you can see the raw material costs differences as well  
18 as trends.

19           This method is highly distortive because it  
20 necessarily over-allocates costs to higher-priced  
21 products resulting in artificially low profits for a  
22 higher-priced category of washers. Whirlpool's  
23 reported net prices in its final questionnaire were  
24 consistently and significantly higher than in its  
25 preliminary questionnaire, and we identified problems

1 with these changes.

2           Refer to confidential Slide 2 for a specific  
3 internal inconsistency that indicates Whirlpool  
4 overstated values and prices in its quarterly prices,  
5 and I would have you compare column A with column B.  
6 These are both from Whirlpool's questionnaire and the  
7 numbers should match, or they should come close to  
8 matching, and they don't. On discounts, the  
9 verification report indicates that our concerns are  
10 valid and that prices reported by Whirlpool require  
11 additional adjustments, even beyond any corrections  
12 that Whirlpool may be making based on the  
13 verification.

14           The verification report also refers to  
15 certain segment financial statements kept by Whirlpool  
16 in the normal course of business. These and other  
17 verification documents and worksheets identified in  
18 the report should be provided to the Commission to  
19 enable the Commission and the Respondents to fully  
20 evaluate the problematic issues we have identified.

21           Finally, Mr. Fettig, I believe, said that  
22 all the concerns and issues that we had raised were  
23 addressed at verification. I don't see how this can  
24 be the case since verification occurred before the  
25 prehearing briefs went in where a lot of these issues

1 were identified. Thank you.

2 MR. BAIRD: Okay. I'm Bob Baird. I'm with  
3 Home Depot, one of those evil retailers that makes the  
4 manufacturers do things that they don't want to do. I  
5 will tell you first of all it's pretty awkward for me  
6 to be here. Quite frankly, I've known Jeff and Sam  
7 and Dave since Rin Tin Tin was a pup, so it's not  
8 good. I really don't view myself on this side versus  
9 that side. I'm kind of an industry expert, and I  
10 guess my value is probably more in Q & A than  
11 anything.

12 I started in the appliance business 46 years  
13 ago. As a matter fact, as I started in the appliance  
14 business in 1966, we were just closing out pink,  
15 turquoise and yellow. Somebody mentioned those  
16 colors. That was mid-60s. Part of that 46 years, I  
17 was actually with Maytag as was John and Kevin, so in  
18 a very short amount of time, I'll be an official  
19 pensioner, and they'll be sending me a check every  
20 month, so it's not like I'm against Whirlpool here.  
21 I'd love for them to thrive, but I think there's  
22 information that I could probably provide.

23 I go pretty fast. One, I don't like the  
24 designation between 3.6 and 3.7 at all. It makes no  
25 sense to me. I went to every retailer's website.

1 Quite frankly, I went to every manufacturer's website,  
2 and nobody views the business as somebody wants to buy  
3 a 3.6 and under or 3.7 and over. Nobody views it that  
4 way, and to the extent you can make the claim the  
5 imports versus that, as you heard from Mark, real  
6 quick, you're going to have imports in the other  
7 group, so it just makes no sense to cut it in that  
8 form.

9           If you look at what we did in refrigerators,  
10 whether that was right or not, you probably can make  
11 the cut front load/top load because they look  
12 different just like a French door looks different, but  
13 an arbitrary cut between 3.6 and 3.7 makes no sense.  
14 I also want to talk a little bit about GE. I think it  
15 is important because we just launched, as a matter of  
16 fact, the new GE HE laundry.

17           They invested about \$120 million to make  
18 this product. We have it on our floors. I would tell  
19 you it has the fit, feel and finish certainly of LG  
20 and Samsung. It's a very good product. To give you  
21 an example, the least expensive HE washer comes in at  
22 \$799. It's a 4.6 cubic feet. If you go to the LG,  
23 it's the same thing as 4.5, not that .1 cubic foot  
24 makes much difference, but it is larger capacity than  
25 the LG. If you look at the same feature pack on the

1 Maytag or Whirlpool, it's \$899, so it's actually \$100  
2 cheaper than the Maytag or Whirlpool.

3           If you go to the next piece up, it's \$999.  
4 It's a 4.8 cubic feet, and if you go to the LG, you're  
5 going to be at 4.7. If you go to the Whirlpool or  
6 Maytag, you're at 4.6, so again, it offers at the same  
7 price point bigger features, and in terms of  
8 innovation at \$1,199 they've got a 5.0 cubic feet  
9 which makes it the largest capacity of any HE machine.  
10 They came into the market last, so they have product  
11 that is very price competitive, very feature  
12 competitive.

13           To address the question somebody asked, I  
14 actually called GE during the lunch break, and their  
15 prices and costs, when they did this and decided to  
16 invest a \$120 million, they didn't know this was going  
17 to be a case at all, so all those decisions in costs  
18 were done before this came up, so it's not dependent  
19 on the fact there's going to be import penalties here.

20           Next, I want to talk a little bit about path  
21 to purchase, and I'll go back in history a little bit,  
22 but we'll start in 1949. Maytag actually invented the  
23 automatic washer in April of 1949. It was raining, a  
24 rainy day. That was a joke. From the late '40s all  
25 the way to I would say the '80s, the power actually

1 laid with the manufacturers. There were literally  
2 10,000 little retailers around, and typically what  
3 they would do they all had a select assortment of  
4 brands.

5           You'd have a GE dealer that had GE and  
6 probably Zenith TVs, and then you'd have a  
7 Maytag/Frigidaire dealer that probably had Magnavox  
8 TVs, and you'd have an RCA/Whirlpool dealer. It was a  
9 pretty structured environment. Then, a couple of  
10 things happened in the '80s. One, both Sears and  
11 Wards that had all house brands added national brands,  
12 and probably the big thing is Circuit City came out  
13 and started opening mega stores, particularly in Los  
14 Angeles, but all over.

15           All of a sudden a consumer could actually go  
16 to one place and see all the brands where before they  
17 had to go to a number of different stores to get that  
18 same experience, and I think from the '80s to probably  
19 the early 2000s, I would say the retailers pretty much  
20 were the power players in the formula, and then  
21 somewhere in the early 2000s that all changed, and  
22 quite frankly, it's a function of the internet. All  
23 of a sudden customers, if their washer stopped on  
24 Tuesday night, they could go to the internet, and in  
25 15 minutes they can shop every brand, every model,



1 every retailer, check availability, check anything  
2 they wanted to.

3           Clearly, they say the power of the decision  
4 is in the hands of the customer, and when I hear Dave  
5 talk about steering customers, I can tell you if any  
6 manufacturer doesn't understand the customer's in  
7 charge is in trouble, and any retailer that thinks  
8 that they can steer customers to things they don't  
9 want is in trouble. You have to be a go with-the-grain  
10 retailer. That's the only way you can exist today.

11           I want to talk a little bit about how we  
12 sort our floor, and again, since Dave brought it up,  
13 we do have a small floor. We have three brands in  
14 most floors, and we took a tour of the store in Aspen  
15 Hill. It's a larger format, so that's got all the  
16 brands in it, but most of our stores just have the  
17 three, so he's correct in saying it's a little  
18 different experience than a lot of other stores, and  
19 how we sort that floor really has nothing whatsoever  
20 to do with margin.

21           We're trying to maximize the sales we can  
22 get out of the footprint. The fact is margins, at  
23 least for us, and in some of the styles, I can see  
24 where Dave's group buys stuff better than me, so I  
25 took note of that, but in our case, margins they just

1 don't go like from 10 to 50. I mean, our least  
2 expensive washer would be an Admiral washer that comes  
3 from Whirlpool. We make about 18 points of margin on  
4 that. The highest-priced washer we have, quite  
5 frankly is the LG 5.0 at \$1,500. We make 25 points on  
6 that.

7           We make 25-26 points on the Whirlpool  
8 Maxima, but that's kind of the range we have, so for  
9 us, it's much more a function of trying to maximize  
10 sales than try to figure out the margin of each piece,  
11 and quite frankly our sales people on the floor and  
12 even the store managers done even know what the  
13 margins or costs are, so it's strictly whatever the  
14 customer wants. We try to guide them to what the  
15 customer wants and needs. I also want to address  
16 fashion.

17           I hate to keep addressing Dave here, but in  
18 part I think Dave's right. Having been in the  
19 appliance business a long time and a lot of washers  
20 are in basements, you're tending to think that fashion  
21 isn't too important in washers because they are in the  
22 laundry, but I've been proven wrong a lot of times.  
23 Labor Day 2006, we introduced the LG red washer back  
24 then, and quite frankly, I didn't think anybody would  
25 buy it.

1 I'm the one that came up with the color to  
2 be honest with you, correct? Okay. And I thought  
3 we'd put it on a cap end. It would be kind of fun to  
4 look at and people will say something, but the fact is  
5 people wanted to buy that, and they paid \$1,400 a  
6 piece, and we were oversold for six months, so fashion  
7 is a part of it. It's probably not very important if  
8 you're going to buy an Admiral washer for something  
9 under \$399.

10 In fact, if they made that washer a little  
11 bit uglier, we'd sell the same amount. If they made  
12 it a little bit prettier, we wouldn't sell a lot more,  
13 but when you get up the continuum, and you got to  
14 remember when you're talking about French door  
15 refrigerators, by definition you're talking about the  
16 top third of the business, and you've got the same  
17 kind of thing in washers, but once you get to that top  
18 third, all of a sudden cosmetics and style matters.

19 In fact, I think Jeff said he spent \$100  
20 million to make that product there. I mean, a lot of  
21 that's because it looks a lot better. I mean, he  
22 wouldn't have invested that \$100 million if he didn't  
23 think cosmetics were pretty important, so I think to a  
24 large extent price always counts. The \$1,500 washer  
25 we have from LG, if it was \$3,000 my guess is we'd

1 sell less, but it's less at \$1,500 than it is at \$399,  
2 and if you look at color, you guys were asking about  
3 color, if you made the Admiral in color and instead of  
4 being \$399 it was \$499, we wouldn't sell many of them  
5 because nobody's going to pay a \$100 premium on that  
6 price point.

7           If you get above \$1,000, we sell lots of  
8 color. In fact, on the LG probably about half of our  
9 business above \$1,000 will be in color, so again, it  
10 varies a lot by price point, okay? I think my time's  
11 up, but just real quick on Bosch because I never sold  
12 Bosch. I think Bosch had a couple of pairs at Lowe's  
13 and a couple of pairs at Sears. The fact is I think  
14 their market share maxed at 2 percent, so to the  
15 extent you lose share, and I guess it goes from 2 to  
16 1, so they were never a factor in the business.

17           I think it was a good-quality machine. I  
18 think it was built like a tank, and quite frankly it  
19 looked like tank, and that's probably why it didn't go  
20 very well, but they're just a very small part of the  
21 business, so I think I'm done.

22           MR. ELLIS: All right. Thank you. That  
23 concludes our presentation. We're happy to take your  
24 questions. Thank you.

25           CHAIRMAN WILLIAMSON: Okay. Thank you. I

1 want to thank all the witnesses for coming today.  
2 Their taking time from their businesses to be here is  
3 very important to us. This afternoon, the questioning  
4 will begin with me. Mr. Baird entered on the Bosch  
5 point, and Mr. Herring in all those samples talking  
6 about how, I guess, LG had introduced things faster  
7 than Whirlpool, but I was wondering, you never  
8 mentioned Bosch, and I guess I always had this idea  
9 the European styling, maybe that's what worked in  
10 their dishwashers, but was it true for washing  
11 machines at all?

12 I mean, were they doing innovation? And  
13 before you answer, I understand it's kind of warm in  
14 here, so anybody's free to take off their coat if they  
15 want to and be more comfortable. We won't stand on  
16 formality on that point.

17 MR. HERRING: This is John Herring. Bosch,  
18 as it relates to the laundry business, we never really  
19 looked at them or considered them in terms of a  
20 benchmark. In dishwashers we do, but not in laundry,  
21 so they never were much of a factor in any part of our  
22 design direction. Does that answer your question?

23 CHAIRMAN WILLIAMSON: Yes. Well, if Bosch  
24 wants to respond post hearing, you're welcome to  
25 because I was wondering about that given their

1 reputation in other areas. Mr. Baird?

2 MR. BAIRD: Well, my opinion is that  
3 whatever Bosch was, I wouldn't call that European  
4 styling.

5 CHAIRMAN WILLIAMSON: Okay. Okay. I just  
6 remember the red dishwashers. I'm sorry. Okay. On  
7 the like-product issue, I was wondering if you could  
8 respond to Whirlpool's contention that Commission  
9 precedent counsels that the domestic like product  
10 should neither be expanded beyond the amended scope  
11 nor subdivided, so do you want to comment on that  
12 argument?

13 MR. CONNELLY: Well, let me take the first  
14 shot at it. First of all --

15 CHAIRMAN WILLIAMSON: Mr. Connelly, yes.

16 MR. CONNELLY: Yes, the original scope was  
17 the exact same definition we're asking for. They cut  
18 it back, so I think we're in a little different  
19 situation first of all.

20 CHAIRMAN WILLIAMSON: Okay.

21 MR. CONNELLY: Secondly, there is no rule  
22 that says you can't go beyond the scope, and third,  
23 we've given you a number of cases in our brief that  
24 say exactly that, so it's always a factual issue, and  
25 I think a question was asked earlier this morning

1 what's different about this record. Well, let's think  
2 about what's different about this record with respect  
3 to the like product issue. What's different about  
4 this record is you have got a substantially greater  
5 amount of evidence that the original like-product  
6 definition was the right one. That's why we changed  
7 our position.

8           When we looked at the final record, it  
9 became clear to us that the extent of cross-shopping  
10 was significant, and that to maintain the position,  
11 for example, that a 3.6 cubic-foot front-load washer  
12 does not compete with a 3.6 cubic-foot top-load  
13 washer, both made by Whirlpool by the way, although  
14 their front load is 3.5, ours is 3.6, that's an  
15 untenable position, so I think the basis for a like-  
16 product definition, which is the one we advocate, and  
17 which apparently Whirlpool is fine with is  
18 overpowering.

19           CHAIRMAN WILLIAMSON: Mr. Ellis?

20           MR. ELLIS: I'm a lawyer, so I can't just  
21 sit here when you talk about like product. This is  
22 Neil Ellis. I would just want to agree of course with  
23 what Warren said and just note the obvious point which  
24 is that there's a going-in assumption that scope  
25 matches the like product, but that is not by any means

1 what binds the Commission. In fact, the Commission  
2 has a long history of saying that is just the initial  
3 position, and there are many cases where you have in  
4 fact defined a like product differently.

5 In this case, the focus is on what is scope,  
6 if you will, of the domestic industry, what products  
7 are covered by that, and here, there is no boundary,  
8 and certainly there's not a boundary at 3.7 cubic  
9 feet. It's just an irrational number. Thank you.

10 CHAIRMAN WILLIAMSON: Ms. Trossevin?

11 MS. TROSSEVIN: I would just like to take  
12 one second.

13 CHAIRMAN WILLIAMSON: Marguerite Trossevin.

14 MS. TROSSEVIN: I'm sorry.

15 CHAIRMAN WILLIAMSON: I'm reminding people  
16 to identify themselves for the court report.

17 MS. TROSSEVIN: I forgot. I apologize.  
18 Marguerite Trossevin.

19 CHAIRMAN WILLIAMSON: Okay.

20 MS. TROSSEVIN: I'd just like to take that  
21 one little point further, and I'm going to base this  
22 on the Commission's position in litigation that I was  
23 in against the Commission, and as the Commission  
24 themselves described the issue of like product, first  
25 of all, the Commission made it very clear there is no



1 presumption that like product is coextensive with the  
2 scope, so you don't start there.

3           In looking for your like product, when you  
4 say you start with the scope, it's not presuming that  
5 the scope and the like product are coextensive, but  
6 the way it was described is you start there, and then  
7 you say okay, does the boundaries of the scope mark a  
8 clear dividing line between those products and other  
9 products in the market? If not, you keep looking  
10 outward until you find that clear dividing line, so  
11 what you've heard here today is if you start with the  
12 scope, and you look outward into the marketplace, you  
13 don't find a clear dividing line, certainly not at  
14 3.6. You may find it somewhere else in the market,  
15 but not there.

16           CHAIRMAN WILLIAMSON: Okay. Let's to the  
17 question I guess that's probably more important is the  
18 Petitioners this morning argued that the adverse price  
19 effects on the top line actually extended down into  
20 the products that were below the scope or smaller than  
21 the scope, and this kind of capping of the pricing of  
22 the lower-sized products, and I don't remembering  
23 anybody addressing that during the testimony, so I was  
24 offering you a chance to do so now.

25           MR. KLETT: Commissioner Williamson, this is

1 Dan Klett. I didn't address it in my testimony, but I  
2 think this is what they refer to as their cascading  
3 price effect, and think about it logically. You have  
4 washers in different categories at different price  
5 points, let's just say front load for the same  
6 capacity as highest-priced high-efficiency top-load  
7 and next in conventional top load you have the next  
8 highest price.

9           They're saying that essentially imported  
10 high-efficiency top-load drives down prices for lower-  
11 efficiency conventional top load or higher-priced  
12 imported front load drive down for the same capacity  
13 lower-priced high-efficiency top load. Well,  
14 logically, why couldn't it work the other way? I  
15 mean, why couldn't lower-priced conventional top load  
16 pull down higher-priced high-efficiency top load or  
17 the example we gave this morning about the 3.6 high-  
18 efficiency top load, which is outside the scope, the  
19 effect of that pricing on the larger high-efficiency  
20 top load.

21           As an economic matter, it's a chicken or egg  
22 kind of a thing, and I think that's one of the reasons  
23 you compare prices, who's lowest prices, who's highest  
24 priced, and at least in terms of cross-type price  
25 effects, we did some analysis in the brief where we

1 compared, based on the record, to the extent we had  
2 information, how imports and how domestic producers  
3 compared across these different categories and found  
4 that imports across categories were higher priced than  
5 domestic producers' prices, so given that fact, I  
6 don't think their cascading adverse price effect is  
7 valid. I mean, it could as much go just the other  
8 way.

9 CHAIRMAN WILLIAMSON: Mr. Ellis, yes.

10 MR. ELLIS: If I may add a point,  
11 Commissioner Williamson? We heard this morning Mr.  
12 Greenwald relied on a question to trigger this issue,  
13 which was in the staff report III-27, which is, "does  
14 availability of high-featured washers at a low price  
15 affect the sales of less highly-featured washers?" And  
16 he noted 19 of 19 said yes. With all due respect, I  
17 think the staff's wonderful. They did a fabulous job.  
18 This is a great staff report, but this particular  
19 question is not very illuminating because it begs for  
20 an affirmative answer.

21 The key question really is something  
22 different. For example, one more penetrating question  
23 would be, would availability of high-featured washers  
24 at higher prices affect the sales of less-featured  
25 washers? There, the answer probably would be no.

1           CHAIRMAN WILLIAMSON: I'm sorry. Repeat  
2 your example again?

3           MR. ELLIS: Would the availability of  
4 highly-featured washers at higher prices affect sales  
5 of less-featured washers? Or how about the opposite as  
6 Dan just said, do low-price, low-featured models pull  
7 down the prices of higher-featured models? That sounds  
8 like more traditional logic and more traditionally the  
9 way the ITC evaluates the price in competition. And in  
10 fact, this is very close to the reason why you  
11 rejected the feature dumping concept in refrigerators.  
12 It's just reared its ugly head once again. Thank you.

13           CHAIRMAN WILLIAMSON: Okay. So you're  
14 saying that if there's undercutting of say higher-  
15 featured or let's say premium product that has no  
16 effect on shall we say the less-featured or smaller  
17 product below it?

18           MR. KLETT: Commissioner Williamson, I'm not  
19 saying that. As a matter of economics, let's say you  
20 have a higher-featured product at a higher price and a  
21 lower-featured product at a lower price, or let's say  
22 high-efficiency top load and conventional top load,  
23 and consumers decide that they are going to purchase  
24 high-efficiency top load rather than a conventional  
25 top load even though the higher efficiency top load is

1 higher priced, the demand for a conventional top load  
2 goes down, and that demand effect will have adverse  
3 effects on that, so there are cross-type effects.

4           What we're saying is that the high-  
5 efficiency top load is higher priced, so to the extent  
6 the consumer decides to buy high-efficiency top load  
7 rather than conventional top load, it's for non-price  
8 reasons. It's because there's features for the high-  
9 efficiency top load that result in their being willing  
10 to pay a higher price for the high-efficiency top  
11 load. So there's an adverse effect, but I don't think  
12 it's an adverse effect due to price.

13           CHAIRMAN WILLIAMSON: One of the factors  
14 might be compared to what they consider the difference  
15 in value the difference in price, so they can get the  
16 higher value for less price than maybe before, that  
17 might be an incentive, so I think it's something to do  
18 with relative prices, too. It's not just whether it's  
19 a lot higher or lower.

20           MR. ELLIS: If I may?

21           CHAIRMAN WILLIAMSON: I'm going way over.  
22 I'm sorry.

23           MR. ELLIS: I know, but this is a great  
24 issue. What you're recounting again was discussed in  
25 refrigerators. This is the sort of subjective item

1 that is impossible to quantify. Different people have  
2 different values as to what a different cluster of  
3 features may give, so as a result in refrigerators,  
4 you pointed out, you just look at price-to-price  
5 comparisons for specifically this reason, but you  
6 don't know the arrow of causality if you will. The  
7 arrow of causation.

8 CHAIRMAN WILLIAMSON: Okay. Let's come back  
9 to that because I'm going way over.

10 MR. ELLIS: Okay. I'm sorry.

11 CHAIRMAN WILLIAMSON: I apologize. I got so  
12 engrossed I didn't see the time. Commissioner  
13 Pearson?

14 COMMISSIONER PEARSON: Mr. Chairman, one of  
15 the great prerogatives to the Chairmanship is that you  
16 may continue as long as you wish, and we won't  
17 complain.

18 CHAIRMAN WILLIAMSON: I still have to set an  
19 example.

20 COMMISSIONER PEARSON: That's a different  
21 issue.

22 MR. BAIRD: I can give you an example. If  
23 you're talking about line structure, and I know  
24 everybody likes to talk about MPS, but if the MPS on  
25 our product represent value as you're saying value

1 steps, I'll give you a good example. Do you still  
2 have the Whirlpool handout? If you go to Exhibit 3,  
3 you see on Exhibit 3, you've got a Whirlpool washer  
4 there. It's the 8800 washer.

5 CHAIRMAN WILLIAMSON: I'm sorry. Are we  
6 answering my question?

7 COMMISSIONER PEARSON: Mr. Baird may  
8 continue on my time.

9 CHAIRMAN WILLIAMSON: Okay. Good. You have  
10 to give him permission.

11 COMMISSIONER PEARSON: Yes. Okay.

12 MR. BAIRD: So I'm just saying if you look  
13 at that washer, the 8800 there, that's a year-old  
14 model, but if you look at the current model for Black  
15 Friday, we had that in that color at \$799, normally  
16 \$1,199. It was \$799, and when you do that, what  
17 happens on the page before that? If you look at  
18 Exhibit 2, and you see the one in the middle, that  
19 washer is also a \$799.

20 The fact is when you take a 4.6 and make it  
21 the same price as a 3.7, you'll sell none of that  
22 washer, so the very fact if you actually reduce prices  
23 in a logical line structures, it will affect the  
24 pieces below it because it creates more value in the  
25 piece on top.

1           COMMISSIONER PEARSON: And could you  
2 clarify, which of the various handouts you received  
3 are you referring to?

4           MR. BAIRD: It's called Large Residential  
5 Washers to Korea and Mexico. It's Whirlpool.

6           COMMISSIONER PEARSON: LG? Whirlpool?  
7 Okay. Thank you.

8           CHAIRMAN WILLIAMSON: And which page?

9           MR. BAIRD: I started out on Exhibit 3, and  
10 the Whirlpool washer on the right side there, the  
11 8800. I'm just referencing Black Friday. This is  
12 what happens on price compressions is what I'm trying  
13 to demonstrate. That normally is \$1,200. For Black  
14 Friday, it was \$799, and it was the largest discount  
15 we had of any washing machine we had for Black Friday  
16 of any brand, but what happens on the page before  
17 that, you see there's a model below it, the 3.7, and  
18 all of a sudden if you have two pieces the same price,  
19 people will buy the one with the most features, okay?

20           COMMISSIONER PEARSON: Okay. Good. Thank  
21 you.

22           MR. BAIRD: So what happened, just so  
23 everybody knows, what happened is, and Whirlpool has  
24 to reduce that piece, so that's the piece that Kevin  
25 was talking about if you went to h.h. Gregg, they ran



1 that piece for \$399 on Black Friday because if you  
2 don't reduce that price and keep the gap somewhat  
3 similar, you won't sell any of them. You'll just sell  
4 the \$799, which may not be that bad actually, from a  
5 retailers perspective.

6 COMMISSIONER PEARSON: Well, okay. Thank  
7 you for that continued explanation. I'd like to  
8 welcome this panel. I see a number of familiar faces  
9 here, not the least of which is Mr. Baird. I would  
10 like to extend special thanks to you for hosting us up  
11 at Aspen Hill for the tour here a few weeks ago. It  
12 was the first and only time that I've ever enjoyed  
13 coffee in the contractors' section of the store, which  
14 made me feel like a real person. It was good.

15 MR. BAIRD: You were the only Commissioner  
16 that didn't buy anything, by the way.

17 COMMISSIONER PEARSON: Yes, I have that  
18 reputation. Okay. Well, let me shift now to some  
19 other questions. Mr. Chambers, I asked some questions  
20 this morning about the whole issue of the energy  
21 efficiency tax credits, and so I'm curious. I don't  
22 know if some of this confidential. You could respond  
23 in the post hearing, but to the extent you're able to  
24 discuss this, did Electrolux qualify for any energy-  
25 efficiency tax credits when it was manufacturing

1 washers in the United States?

2 MR. CHAMBERS: Yes. Commissioner, George  
3 will answer that question.

4 COMMISSIONER PEARSON: Please.

5 MR. HAWRANKO: Commissioner Pearson, there  
6 was a period of time when Electrolux was manufacturing  
7 and selling high-efficiency washers out of Webster  
8 City and did in fact qualify for some tax credits for  
9 a period of time. That was prior to the period of  
10 time that Mark indicated that our products became less  
11 competitive, so we're going back to the 2006 period,  
12 2007. I think it was prior to the period of inquiry  
13 here.

14 COMMISSIONER PEARSON: Okay. Yes, that  
15 would be. Did you observe any influence on the  
16 decisionmaking process within Electrolux or any other  
17 member of the U.S. industry because of those credits,  
18 and did it have some influence investment decisions,  
19 on production or marketing decisions?

20 MR. CHAMBERS: Not that I'm aware of.

21 MR. HAWRANKO: I'm not aware of any as well,  
22 and I believe that the situation that Electrolux is  
23 facing is similar to the situation that Mr. Fettig  
24 described earlier that we have the tax credits, but  
25 we're in a very competitive market, and we're waiting

1 to use them.

2           COMMISSIONER PEARSON: And would it be  
3 correct to understand that they were on kind of a  
4 stop-go basis that you never new for sure whether they  
5 were going to be there for a very long planning  
6 horizon. Thus, it would have been difficult to make a  
7 major decision on reliance of the receipt of the  
8 credits?

9           MR. HAWRANKO: That's my understanding as  
10 well.

11           COMMISSIONER PEARSON: Okay. Well, to the  
12 extent that you can clarify that in post-hearing terms  
13 when the credits existed and when they didn't and what  
14 uncertainties or certainties there might have been,  
15 that would be helpful. Okay. A related question  
16 relative to whether they influence decisions, do these  
17 tax credit confer a financial benefit that's  
18 meaningful?

19           MR. HAWRANKO: Yes, we believe that they do.

20           COMMISSIONER PEARSON: Okay. That's what I  
21 thought, which gets me back to a question that I was  
22 addressing this morning, but I did so perhaps not  
23 entirely thoroughly, and so if purposes of the post  
24 hearing the domestic industry would wishes to respond  
25 to this, that would be fine also. We're required by

1 the statute to determine whether the domestic industry  
2 has been materially injured, and so the question is,  
3 is it a "relevant economic factor which has a bearing  
4 on the state of the industry in the United States,"  
5 which is pretty much a paraphrase of the statute? I  
6 mean, the benefit received from the tax credit, does  
7 it qualify as a relevant economic factor that has a  
8 bearing on the state of the industry in the United  
9 States?

10 MR. CAMERON: Commissioner, Don Cameron. We  
11 think that the statute is drafted broadly enough that  
12 certainly it does. I mean, they are qualifying for a  
13 tax credit based upon the production of high  
14 efficiency. There was a goal of the tax system in  
15 order to encourage high-energy production, and as a  
16 result of that, they are getting a benefit. It's not  
17 only for washers.

18 It's for other products as well, but to the  
19 extent that's there, it certainly is something that is  
20 within your purview to take into account. The  
21 question as to what weight you want to put into it,  
22 that of course is something up to the Commission, but  
23 we think it is well within your legal ability to do  
24 so, and it's relevant.

25 COMMISSIONER PEARSON: Right. Right.

1           MR. CAMERON: It's money. To suggest, as  
2 was suggested this morning, that it's not real, my  
3 understanding is that tax credit lasts for  
4 approximately 20 years. That's real, and people  
5 actually spend that. When you get a tax credit, I  
6 don't know about you, but if I get a tax credit, I  
7 like it. It means something to me.

8           COMMISSIONER PEARSON: Well, that's what I  
9 had thought, but I just wanted to kind of clarify  
10 this.

11          MR. CAMERON: You were correct.

12          COMMISSIONER PEARSON: I don't recall a  
13 previous investigation that I've been involved with  
14 where we had this sort of issue, and so frankly, I  
15 don't know whether there is any Commission precedent  
16 regarding how we might attribute some type of  
17 financial benefit that's not immediately cash but is  
18 perhaps helpful to the domestic industry. What does  
19 that mean for whether they are materially injured? I  
20 really could use your help on that and the domestic  
21 industry counsel also.

22          MR. KLETT: We'll be glad to give you our  
23 help, Commissioner.

24          COMMISSIONER PEARSON: Mr. Connelly?

25          MR. CONNELLY: Commissioner Pearson, let me

1 just add two points. First of all, they're up there  
2 lobbying Capitol Hill right now very hard for  
3 extension of that tax credit. Ask them. That means a  
4 lot to them that \$225 a unit. Now let me turn it  
5 around. Let's say it was the Korean producers that  
6 who were getting \$225 a unit subsidy from the Korean  
7 government.

8           Is there any doubt that they would be saying  
9 that that is an incredibly harmful, competitive factor  
10 that hurts them, the \$225 credit that the Korean  
11 producers theoretically get? I think so. I think  
12 there's no doubt about it, so if you look at it that  
13 way, there's no question that it's a benefit to them.  
14 Now, tax planning is totally different. Mr. Fettig's  
15 answer was very artfully worded, very artfully worded.  
16 What he said was we're losing money in our washer  
17 business, so we can't use the tax credit on washers.  
18 That's now how the tax law works. They're making  
19 money on their entire business in the United States.

20           COMMISSIONER PEARSON: In fairness, I did  
21 understand him to say that it would be applied on an  
22 entity-wide basis so that it could cover income from  
23 other --

24           MR. CONNELLY: Okay. And that's exactly the  
25 point.

1           COMMISSIONER PEARSON: Yes. Okay. Fine.  
2 That's probably about enough on this issue, but  
3 really, for post hearing help me with this because  
4 this is something that I don't know what to do with  
5 it. It looks to be like a lot of money, and whether  
6 it counts as an indication of lack of material injury,  
7 I don't know.

8           MR. KLETT: Commissioner Pearson, just real  
9 quickly. There's also an issue, and I know Mr. Fettig  
10 said is doesn't affect their behavior, but it's not  
11 just in terms of injury, in terms of where it goes on  
12 their financials, but also there's a question of  
13 whether it affects behavior, not just investment  
14 behavior in terms of whether to invest in the U.S. or  
15 not, and I know he said it did not, but also once the  
16 investment is made, does it have an effect on  
17 production decisions?

18           COMMISSIONER PEARSON: Yes. Well, if you  
19 have information on that, by all means, give it to us  
20 because right now the record isn't very clear on that  
21 point. With that, Mr. Chairman, my time is expired.

22           CHAIRMAN WILLIAMSON: Commissioner Aranoff?

23           COMMISSIONER ARANOFF: Thank you, Mr.  
24 Chairman. Thank you to everyone on this afternoon's  
25 panel for taking the time to be here. Let me start

1 with a question for Mr. Baird. Mr. Baird, in its  
2 brief, Whirlpool quotes a statement that you made when  
3 testifying in the refrigerators investigation in which  
4 you said that you had been asking Whirlpool for six  
5 years to keep up with fashion, and the fact is that  
6 they've done that with laundry.

7 Whirlpool considers in its brief that this  
8 means you agree with them that the fit, feel and  
9 finish of their domestically produced washers are  
10 equivalent to what LG and Samsung offer. Is that a  
11 correct understanding your remark, or would you like  
12 to qualify what you said?

13 MR. BAIRD: No, it is a correct  
14 understanding. What I said was that, and Sam's back  
15 there, I gave Sam the knob speech probably once every  
16 six months for four years and saying at some point why  
17 don't you just buy knobs from LG and get it over with,  
18 but the fact is, if you look at this product right  
19 here, as I told you on the tour at the Aspen Hills  
20 store, that's a fine product. That front-load washer  
21 right there looks very LG-ish, let's put it that way,  
22 and I think they've come a long way in design.

23 The knobs, if you look at the knob down  
24 there on that front load versus that knob, I mean,  
25 there's a world of difference. Let me explain one



1 comment because it's relative to that. It's on  
2 Exhibit 7, again of the Whirlpool handout this  
3 morning, relative to what you're talking about is that  
4 email there about the \$800,000. Let me explain what  
5 that is because it is relative to style. Somebody  
6 said it had something to do with promotion. That had  
7 nothing to do with promotion.

8           That has to do with two pieces on our floor  
9 and how you get pieces on our floor, and somebody has  
10 to fund the mark down to get rid of the two pieces  
11 that are on the floor. I don't care what you're  
12 changing. If it's Whirlpool for Whirlpool, Maytag for  
13 Maytag, Maytag for LG, somebody has to fund that, so  
14 that is not part of cost. That's not part of  
15 promotion. That just helps us liquidate the old  
16 stuff.

17           I didn't write that email, I mean, Jack  
18 probably thought I did, but I didn't write that actual  
19 email, but I told somebody to write the email because  
20 I wanted to put the Maxima, which is the Maytag  
21 version of that on all 2,000 floors because, quite  
22 frankly, it was the same price as LG, and it was a 4.3  
23 versus the 4.0 LG. My assumption all along was that  
24 it would sell very well, or I wouldn't have put on  
25 2,000 floors because it's a pretty large investment

1 for us.

2 COMMISSIONER ARANOFF: Okay. Microphone.

3 MR. RIDDLE: Is that better? My name is  
4 John Riddle. I'm Vice President of Sales for Regional  
5 Accounts at LG. I spent 21 ½ years at Maytag Corp.,  
6 Vice President/GM when I left the company. Just  
7 responding a little bit to the fashion question. I  
8 think one of the things that I was thinking about this  
9 morning during the questioning process around this  
10 area of fashion and fit, feel and finish also has to  
11 do, in my view, with branding because it's one thing  
12 in my opinion, and I think most retailers' and also  
13 consumer opinions, how that fashion relates to the  
14 brand.

15 It's one thing in a consumer product to have  
16 fashion. It's another thing to have the brand that  
17 the consumer resonates that fashion with. I think one  
18 of the things that has changed over time in the major  
19 appliance industry is this area of brand, and  
20 particularly a noticeable difference in the last 10  
21 years has been LG and Samsung from a brand resonance  
22 standpoint with a consumer.

23 I think if you look at Whirlpool's portfolio  
24 from a brand standpoint, certainly, historically  
25 Maytag, which was a premium brand in the marketplace

1 in laundry products particularly, was hurt because of  
2 what happened with the Neptune washer and their front-  
3 load product, particularly with the two million  
4 customers that had a class action litigation. To the  
5 point that was made this morning on how long a  
6 consumer is out of the marketplace, that type of issue  
7 with consumers over a product and a brand lasts a long  
8 time in a consumer's mind and also has a way of sort  
9 of repeating itself in the marketplace.

10 I believe one of the things that is  
11 different in this issue around fashion is not just the  
12 fashion of LG and Samsung product and that fit feel  
13 and finish, but that the consumer recognizes LG and  
14 Samsung in a different way as premium brand in the  
15 marketplace.

16 COMMISSIONER ARANOFF: Okay. That's an  
17 interesting point, and I'm going to think about that  
18 some more. One of the arguments that I understood  
19 Whirlpool to be making this morning was that when they  
20 are in negotiation with a retailer to get a product on  
21 the floor, their argument was basically the retailers  
22 are interested in getting the most features for the  
23 lowest price onto the floor.

24 Now, in some industries, purchasers will  
25 take a look at the cost factors that are facing their

1 suppliers because they want low prices, but they also  
2 want their suppliers to stay in business and be there  
3 to supply them. The allegation here it seemed to me  
4 was that retailers just don't care about that. They  
5 want to get the best product for the lowest price, and  
6 they don't care whether that forces manufacturers to  
7 sell below cost. Does anyone on the panel want to  
8 comment on that?

9 MR. DEXTER: Yes. This is Kevin Dexter with  
10 Samsung, and you heard quite a bit this morning about  
11 the negotiation process, and there wasn't anything  
12 that either Sam talked about or Dave talked about  
13 that's unique because as vendor and retailer, we go  
14 through that process. I say it would be a bit  
15 overstated to think that in part of that negotiation  
16 that was described that the retailers don't give  
17 credit to the fact that the manufacturing community  
18 has to be healthy, so I don't think it would be fair  
19 to make that statement.

20 I think that is part of that negotiation  
21 process, at least in my experience in the industry,  
22 that there is a give and take that balances the  
23 consumer wants and needs, the features, the lineups,  
24 the steps that we've talked about in several areas  
25 today as well as both the health of the manufacturer,

1 what your business driving needs are combined with the  
2 retailers', and it's that sort of rather complicated  
3 process with what you finally end up with your lineup  
4 selection, but, Bob or John, you'd like to add some  
5 more?

6 MR. HERRING: John Herring. There's quite a  
7 few points I think that go into a merchant's decision  
8 on whether or not they're going to floor a product.  
9 Certainly, margin is one of them. The consumer has a  
10 bit vote in that because once the product gets to the  
11 floor, if it doesn't sell, I'm not going to  
12 materialize the margin, right, so you got to have  
13 sell-through velocity.

14 They're looking at the marketplace trying to  
15 go from consumer's eye to say where are the consumer  
16 trends? Is it towards front load, is it towards  
17 color, capacity, whatever the trends are. They try to  
18 sort floors that meet consumers' needs. As Bob  
19 referenced, that's how you're in business for the long  
20 term. The other part of that is reliability. If you  
21 sell a product and make a good margin, but it comes  
22 back, comes back in a return, customer  
23 dissatisfaction, I don't know of any retailer that  
24 wants to sell anything that's not a good, reliable  
25 product because it reflects on them.

1           There is more to it than just price. It's  
2 one of the pieces of the equation.

3           COMMISSIONER ARANOFF: Okay. There has been  
4 some debate over the course of the day about the  
5 question of whether model prices really do decline  
6 over time, whether there is some predictable product  
7 life cycle. I think that the witnesses from Whirlpool  
8 sort of agreed that the price drops at the very end  
9 when you're trying to clear out what is left of a  
10 product, but they weren't too agreeable to the idea  
11 that there is any kind of a three-year cycle where the  
12 prices can be expected to go down.

13           And one of the things that I'm confused  
14 about is that I think there has been a lot of  
15 different terminology used with respect to the  
16 difference between the life cycle of a platform, the  
17 life cycle of a particular model, and the question of  
18 annual or otherwise timed price adjustments by  
19 manufacturers.

20           So if any of you want to address the  
21 relationship of those three things to what you've  
22 argued is an expectation that a model price will  
23 decline over time, I think I would find that helpful.

24           MR. BAIRD: I think a lot of it is related  
25 to innovation, like the GE washer I was talking about

1 a minute ago at \$999. It's going to be 4.8. That  
2 kind of tells you that quite frankly the LG that's 4.7  
3 and the Whirlpool that's 4.6 at \$999 probably are  
4 going to have a problem, and we're going to have phase  
5 those out. And quite frankly, Whirlpool has already  
6 announced they're going to have a 4.8 at that price  
7 point probably in April or May.

8           So it's more -- it's not just the natural  
9 life cycle. It's more that there is new stuff that  
10 come on all the time. It's a very -- in my opinion, a  
11 very fashion-oriented, innovative business. And what  
12 is happening all the time, because all these suppliers  
13 are trying to beat each other, and it's very  
14 competitive. We have new, better stuff come now all  
15 the time.

16           MR. KLETT: Commissioner Aranoff, this is  
17 Dan Klett. I mean, I would agree that you're not  
18 going to see a product life cycle pattern that's going  
19 to be exactly the same for each model. For example,  
20 there is not always a three-year life cycle pattern  
21 for every model that comes out and that's lockstep in  
22 terms of the same pattern.

23           But I think what you do see, and it's  
24 reflected here, and it's reflected in other data as  
25 well, is that when the product is first introduced --

1 and it may be, as Bob said, it has a new and  
2 innovative feature, it comes in at a relatively high  
3 price because it's new, it's innovative. People are  
4 willing to pay for something that wasn't available  
5 before.

6           But that high price point may limit its  
7 sales, so the price comes down a little bit, and you  
8 see volume going up as that happens, and you see bumps  
9 up and down, and you see bumps up and down because of  
10 promotions and so on and so forth. And then at the  
11 very end of the product cycle, you see declines in  
12 both volume and price as the model is old and it's  
13 being liquidated, and you see it here. You see that  
14 in product four of your pricing data, which goes back  
15 to the 4.0 being replaced by the 3.6. You see that  
16 clearly in the 4.0 price data in product four.

17           So I think that's what we're saying, you  
18 know, on a model-specific basis.

19           COMMISSIONER ARANOFF: But when you're using  
20 the term "model," are you referring to a specific SKU?  
21 I mean, is a model something that has very precise --  
22 everything is exactly the same about it, and as soon  
23 as you change something, a .1 increase in capacity or  
24 you, you know, change the color, or you change the  
25 dial, that's a different SKU. It's a different model.



1           MR. KLETT: That's true, and I think this  
2 graph shows it because essentially these products are  
3 similar in features, but you see the green line, which  
4 is one model, being overtaken by the red line, which  
5 is a different front-load model. These are both  
6 Whirlpool. They're imported. But the red line is a  
7 model that kind of wasn't -- had a newer model than  
8 the green line. So you see it replacing the green  
9 line model at a higher price point, but still showing  
10 the same kind of downward pattern.

11           COMMISSIONER ARANOFF: Okay. I'm going to  
12 come back to this, but time is up. Thank you very  
13 much. Thank you, Mr. Chairman.

14           CHAIRMAN WILLIAMSON: Commissioner Pinkert.

15           COMMISSIONER PINKERT: Thank you, Mr.  
16 Chairman. And I thank all of you for being here and  
17 helping us understand these issues. I want to begin  
18 with something that you may not be able to comment on  
19 in the public session. You may have to comment on it  
20 in the post-hearing submission. But I'd like to know  
21 whether the panel can help to explain or account for  
22 the performance of the domestic industry in the small,  
23 high-efficiency area or segment of the market, if you  
24 will.

25           MR. KLETT: Yeah. That's the 3.6 high-

1 efficiency top-load for the most part. There may be  
2 some others in there as well. I think the explanation  
3 you heard this morning was that they were doing better  
4 just because their costs were lower for that  
5 particular item or that particular part of the market.  
6 He was talking -- I think the discussion was  
7 specifically with 3.6 AGTL.

8           We have issues, as shown in our slide,  
9 confidential slide one, with the cost allocation  
10 methodology, which we think may explain what you're  
11 seeing, that that's a -- you know, we believe certain  
12 costs may have been over-allocated to higher-priced  
13 products and under-allocated to lower-priced products,  
14 and that may be one of the reasons you see what you  
15 see for the smaller, high-efficiency top-load washers.

16           MR. CONNELLY: There is one other aspect of  
17 this, Commissioner Pinkert, I think. Remember that  
18 we've got two --

19           COMMISSIONER PINKERT: Mr. Connelly.

20           MR. CONNELLY: I'm sorry, I'm sorry. Warren  
21 Connelly. We've got two trends going on here. We've  
22 got demand in the premium front-load sector. The  
23 alpha platform sector is declining rapidly. This is  
24 the high end of the entire continuum.

25           In these times, people aren't buying these

1 kinds of washers anymore. Yeah, they're popular with  
2 higher income people. But as a percentage of the  
3 overall LRW segment, by which I mean everything,  
4 demand for this is going down considerably. But what  
5 you're seeing is the move back to top-load. And I  
6 would suggest to you that is one factor also that is  
7 influencing the performance in HE top-load in both  
8 segments.

9           Now, you made a remark about the  
10 performance. We won't get into the relative  
11 performance. But I would suggest to you that if we  
12 look at that top-load, HE top-load, segment together,  
13 as we should, then you will see what is happening.  
14 Consumers are going back from that premium front-load  
15 to HE top-load, for all the obvious reasons.

16           MR. KLETT: Commissioner Pinkert, this is  
17 Dan Klett again. Just one point on volume. I mean, I  
18 think by definition you would see positive volume  
19 effects for that category just because the 4.0 was  
20 being phased out and the 3.6 was being phased in  
21 starting about 2010, or mid 2010 rather, so that  
22 because the Whirlpool 3.6 high efficiency was  
23 replacing the 4.0 high efficiency, you necessarily see  
24 an upward trend in the volumes.

25           I showed in one of my graphs where you saw

1 none in 2009, and then fairly significant growth in  
2 2010-2011 in terms of the volume.

3 MR. BAIRD: Let me confuse it some more.  
4 What we're finding in retail now is we really haven't  
5 defined small, but people who are buying a washing  
6 machine with under 4.0 cubic feet are opting for  
7 agitator models that are Energy Star. Quite frankly,  
8 we've had a lot of issues with small HE machines.  
9 Customers tend to overload them. They don't wash  
10 well. So we're seeing a huge trend back toward  
11 agitator models in the small capacities.

12 In fact, GE is getting 2-1/2 points of  
13 market share this year with exactly that.

14 COMMISSIONER PINKERT: Okay. Well, then  
15 staying with you, Mr. Baird, I'd like you to think  
16 back to the Black Friday advertising by Home Depot  
17 this year. Did your advertising characterize the 3.7  
18 cubic foot GE conventional model as large capacity?

19 MR. BAIRD: Yes.

20 COMMISSIONER PINKERT: So did it  
21 characterize models smaller than 3.7 cubic feet as  
22 also being large capacity?

23 MR. BAIRD: The only one we had underneath  
24 the GE at 3.49 was the Admiral at 2.99, and my guess  
25 is we probably called it large capacity.

1                   COMMISSIONER PINKERT: Okay. Well, if you  
2 could look at that --

3                   MR. BAIRD: We usually just use the numbers.  
4 We don't really use names anymore. So the Admiral,  
5 for example, would say 3.4, and the GE, for example,  
6 would say a 3.7. I'm not sure we describe it large,  
7 medium -- we use the actual cubic footage, down to the  
8 tenth.

9                   COMMISSIONER PINKERT: If in the post-  
10 hearing you could take a look at that advertising, I  
11 think it would be helpful. And then explain whatever  
12 it is, the designation, large, small, non-large,  
13 whatever designation you used for anything below 3.7  
14 cubic foot. Okay. Thank you.

15                   Now, at the risk of indicating my age, I  
16 want to get into this issue of direct drive. I  
17 remember back in the 1970s that there were turntables  
18 that were introduced with direct drive technology, and  
19 those turntables initially were very popular. They  
20 were considered to be low on noise, which is something  
21 we heard today about the direct drive units that are  
22 on display here. And gradually, I'd say over maybe a  
23 decade, they lost out to belt drive turntables. And I  
24 think the reason they lost out to the belt drive  
25 turntables was that even though they did have those

1 lower noise specs, they also had more mechanical  
2 problems over time.

3           Is there a similar problem looming in the  
4 future of the direct drive, high efficiency unit?

5           MR. ELLIS: That's because those weren't LG  
6 turntables.

7           MR. HERRING: John Herring here. The  
8 reliability of the direct drive is fantastic. In  
9 fact, as I pointed to earlier, *Consumer Reports* has  
10 rated LG the most reliable front-load washer over the  
11 last four years. So fewer moving parts, fewer things  
12 to go wrong, provides smooth, quiet operation. In  
13 fact, we were so confident when we launched direct  
14 drive, we put a 10-year motor warranty on it. So we  
15 find it to be an enhancement to the quality of the  
16 product.

17           MR. DEXTER: Yeah. I think -- this is Kevin  
18 Dexter with Samsung. Same thing, and you would see  
19 over the time since the introduction of direct drive  
20 into the industry, the movement actually towards  
21 direct drive, for the same reasons that John -- for  
22 the reasons that John has pointed out. I'd like,  
23 Dean, if you would, just to weigh in from your  
24 background.

25           MR. BRINDLE: Sure. I think there are three

1 key benefits when we look at direct drive versus a  
2 belt-driven system. First of all, there is a service  
3 instant rate. We've heard about that earlier today as  
4 well. You typically see much lower service instant  
5 rates with the direct drive washer versus a belt-  
6 driven machine.

7           Second is noise, right? So you do see a  
8 quieter operation without a gear box or a belt or any  
9 type of pulley. And third, just the overall  
10 performance of the unit. They actually less energy  
11 than a belt-driven machine as well. So those three  
12 benefits, combined with the fact that both Samsung and  
13 LG offer a ten-year motor warranty make it a superior  
14 solution for the consumer.

15           MR. DEXTER: And maybe, Dean, just comment a  
16 little bit, too, as -- you know, we've heard a lot  
17 about capacity today, but what effect does using  
18 direct drive versus belt systems have on the ability  
19 to go after capacity?

20           MR. BRINDLE: It depends on your design  
21 factors as far as the overall capacity. We do see  
22 that the direct drive units are the leader in the  
23 industry as far as the overall machine capacity  
24 because that design allows us to balance the load more  
25 quickly and also design for a larger usable load size.

1           COMMISSIONER PINKERT: Thank you. Now, you  
2 heard the testimony earlier today about the impact of  
3 the petition on the fortunes of the domestic industry.  
4 And I'm not limiting it just to the petition, but  
5 there is also the preliminary relief. Do you disagree  
6 with the domestic industry that the petition has had a  
7 positive impact on the domestic industry's  
8 performance?

9           MR. CONNELLY: Yes. Warren Connelly. I  
10 would like to read you a quote from the Whirlpool  
11 third quarter 2012 earnings conference call on the  
12 issue of the impact of the petitions on Whirlpool.  
13 The question from an analyst, quote, "How much of the  
14 ITC petition -- there is two of them, obviously the  
15 refrigerator being appealed, but the current tariff in  
16 place on washers, how should we think about benefits  
17 you're already receiving from these petitions relative  
18 to your internal actions related to price," unquote.

19           Answer of Mark Bitzer, president of  
20 Whirlpool, quote, "Simple answer is zero. I don't  
21 think we have any benefit in our current Q3  
22 performance," unquote. This was October of 2012 that  
23 Mr. Bitzer said this.

24           So we believe his testimony is completely  
25 inconsistent with what you heard this morning.



1           MR. KLETT: Commissioner Pinkert, also I  
2 think you heard testimony about price, and I think  
3 Whirlpool said that, you know, they were able to  
4 increase prices in January 2012 after the petition was  
5 filed. You heard testimony from Samsung and LG that  
6 they actually announced their price increases well  
7 before that. And in fact, I think Whirlpool had  
8 announced its January 2012 price increase before that.

9           So essentially, you know, everyone had  
10 announced price increases in 2012 before the petition  
11 was filed.

12           MR. ELLIS: I also have a point, but can we  
13 cover it a little bit?

14           COMMISSIONER PINKERT: Please go ahead,  
15 briefly.

16           MR. ELLIS: Briefly. We heard this morning  
17 also Mr. Greenwald, I think, said that the 2012 data  
18 supported in fact causation because conditions  
19 improved after the petition was filed. And what he  
20 said -- I believe I heard him say -- U.S. prices  
21 increased for individual pricing products where the  
22 subject imports were not to be found because somewhere  
23 there is no imports, whereas they stayed low, that is,  
24 the U.S. prices stayed low where pricing -- where  
25 subject imports were found, okay?

1           So he's saying that where there were subject  
2 imports, U.S. prices had to stay low. But where  
3 subject imports were not, U.S. was able to raise  
4 prices after the petition. This is not correct. If  
5 you take a look at the staff report, various pages,  
6 it's all confidential. But, for example, pages V-24,  
7 26, 27, 28, 29, and 30, there are a lot of individual  
8 products where even with the existence of subject  
9 imports, the U.S. was able to raise its prices,  
10 meaning that there is not a causation, there is not an  
11 impact here from the filing of the petition.

12           COMMISSIONER PINKERT: Thank you. Thank  
13 you, Mr. Chairman.

14           CHAIRMAN WILLIAMSON: Thank you.  
15 Commissioner Johanson.

16           COMMISSIONER JOHANSON: This is a question  
17 for Mr. Hawranko of Electrolux. Did Electrolux  
18 employees who lost their jobs qualify for TAA benefits  
19 as Whirlpool contended this morning? And if so, what  
20 does that say about whether import competition had  
21 anything to do with Electrolux closing its domestic  
22 large residential production?

23           MR. HAWRANKO: Commissioner Johanson, George  
24 Hawranko speaking. Yes, Electrolux filed a petition  
25 for TAA benefit for its employees in Webster City. We

1 don't believe that it says anything about the fact  
2 what that closing of Webster City had to do with  
3 foreign imports. The petition itself was for the  
4 benefit of the employees. And if you look at the  
5 petition, there is a provision in there that says that  
6 it is for conditions involving the movement of  
7 factories, which is the condition under which we filed  
8 the TAA petition for the benefit of the employees.  
9 But we do not believe that it has anything to do with  
10 foreign imports.

11 MR. CAMERON: Commissioner, we'll be glad to  
12 submit the application with part of the post-hearing  
13 briefs so you could see it. But self-evidentially,  
14 the fact that we were moving the factory to Mexico and  
15 closing down was no reason to make the workers pay for  
16 that. There is TAA assistance available, and the  
17 company actually performed their responsibility and  
18 got that assistance for them. That has nothing to do  
19 with imports.

20 COMMISSIONER JOHANSON: Could you possibly,  
21 along with the petition, which I'd appreciate you all  
22 providing the TAA petition, provide us with any press  
23 releases which Electrolux might have put out at that  
24 time?

25 MR. CAMERON: Sure.

1                   COMMISSIONER JOHANSON: Thank you. That  
2 would be helpful. LG and Samsung claim that their  
3 products are situated in a higher segment of the  
4 market than is the case for Whirlpool products due to  
5 LG and Samsung's innovative features and fit, feel,  
6 and finish. If that is the case, have LG and  
7 Samsung's large residential washers fared differently  
8 than Whirlpool washers in the current economic  
9 downturn?

10                   MR. DEXTER: So, Commissioner Johanson,  
11 Kevin Dexter with Samsung. I would say that on behalf  
12 of Samsung, and then certainly I'm sure it applies to  
13 LG, but, you know, we're all caught up in the  
14 phenomena that you describe where there is a shift  
15 from -- a dramatic shift, as Mr. Connelly said  
16 earlier, over the last several years from front-load  
17 to HE top-load and top-load.

18                   I think that one of the things that, you  
19 know, we've also talked about is the timing of our  
20 entry into the marketplace. And also we have also  
21 been clear about our speed-to-market. You know, when  
22 we started to recognize those trends, we said that we  
23 were late to the market, but as we see the trends  
24 develop, we have certainly started to fill the product  
25 pipeline near term and for the future in order to make

1 sure that we're positioned well in the marketplace  
2 based on the trends.

3 MR. CONNELLY: I'm sorry, Commissioner  
4 Johanson.

5 COMMISSIONER JOHANSON: Yes.

6 MR. CONNELLY: Warren Connelly. I think  
7 there is just one more point, which is an APO point,  
8 and we'll develop it more in our brief. But the  
9 trends, relative trends, Whirlpool, GE versus subject  
10 imports, show a more favorable trend in market share  
11 to Whirlpool and GE recently. In other words, our  
12 subject imports are declining by a greater rate than  
13 apparent consumption.

14 COMMISSIONER JOHANSON: Yes, Herring. But  
15 first, Mr. Connelly, to what would you attribute that?

16 MR. CONNELLY: Well, let's look at GE's HE  
17 top-load prices, for example. That's one big factor.

18 COMMISSIONER JOHANSON: All right. Thank  
19 you. Mr. Herring?

20 COMMISSIONER JOHANSON: Yeah. John Herring.  
21 As was mentioned earlier, around the decline in  
22 front-load and consumer shift from front-load to top-  
23 load, LG is heavily weighted in the front-load  
24 segment, and the top-load, as you saw in some of the  
25 slides, is still an emerging area for us. But because

1 of our heavy weighting in front-load and that industry  
2 decline, as a result of probably economic conditions,  
3 we are certainly being impacted in that way.

4 COMMISSIONER JOHANSON: Thank you. Anyone  
5 else?

6 MR. BAIRD: Yeah. In terms of washers, our  
7 average retail in washing machines is up 6 percent  
8 over last year. So we're not seeing a decline in  
9 retail or mix, if that's what you're saying.

10 COMMISSIONER JOHANSON: Is that decline in  
11 sales or in sales volume or profits?

12 MR. BAIRD: No. We're up both in units --  
13 but I'm saying the dollars are up more than units.

14 COMMISSIONER JOHANSON: Okay.

15 MR. BAIRD: We're actually doing better in  
16 dollars than we are units.

17 COMMISSIONER JOHANSON: Okay. Thank you.  
18 Kind of along the same lines, if subject imports were  
19 qualitatively superior to the domestic-like product,  
20 as LG and Samsung argue, shouldn't those products have  
21 commanded a price premium in the U.S. market? Mr.  
22 Herring?

23 MR. HERRING: John Herring. Yes, they  
24 should, and we show -- we don't have access to a lot  
25 of the data that you see in terms of a cost structure.

1 But where we look at the marketplace is I just map  
2 average selling price, what consumers are actually  
3 paying for our products from our retailers, and we  
4 consistently have higher average selling prices than  
5 Whirlpool.

6 So we do see -- in fact, as part of my  
7 testimony, we continually collect a higher average  
8 selling price in the categories that we compete in.

9 MR. DEXTER: The same would be true for, you  
10 know, our view of the marketplace. We introduced --  
11 we talked about some models earlier. When we  
12 introduced the emerging HE top-load market, as it was  
13 dramatically developing, we launched in the top 3  
14 percent of the market. That is generally our approach  
15 to the market. And also, as we look at an ongoing  
16 steady state, when we look at average price index, you  
17 know, we're very cognizant that we're above the  
18 marketplace.

19 COMMISSIONER JOHANSON: Yes, Mr. Ellis.

20 MR. ELLIS: Thank you. And if I may, that  
21 leads to puzzlement over the pricing data that you may  
22 be referring to that we can't show to the company  
23 folks, where there has been this massive swing in  
24 prices of Whirlpool from the preliminary to the final  
25 staff report here.

1           It doesn't make sense. It certainly doesn't  
2 make sense to the folks sitting here because they do  
3 understand their products to be at premium prices,  
4 which is why -- one of the reasons why we've asked you  
5 to dig deeper and see what is going on with the  
6 pricing data. Thank you.

7           COMMISSIONER JOHANSON: Thank you. And this  
8 question would perhaps best be answered by Mr. Herring  
9 and Mr. Brindle. Do you all have any information that  
10 would document that homeowners are increasingly moving  
11 their washers out of their basements, garages, et  
12 cetera, and placing them in more visible places in  
13 their houses? This, of course, goes to the whole fit,  
14 feel, and finish argument.

15           MR. BRINDLE: This is Dean Brindle with  
16 Samsung. Yes. I think when you look at historical  
17 trends, we have a usage an attitude survey. We've  
18 asked consumers where they locate their laundry, and  
19 we do see the trend increasing for main floor and  
20 second floor laundry. Samsung was a leader in that  
21 area with the RT and recommending our product for  
22 second floor installation for many years.

23           MR. RIDDLE: Commissioner, if I could just  
24 add -- this is John Riddle. I spent a number of years  
25 in the builder/contract side of the business. If you



1 -- NAHB, National Homebuilders Association, today  
2 quotes a couple of stats. Ninety-five percent of all  
3 consumers in the U.S. market desire a laundry room  
4 facility. Sixty-one percent of all U.S. homes today  
5 have laundry rooms.

6           But probably even greater -- and when I was  
7 in the homebuilding business on the side of actually  
8 procuring products from Whirlpool with a national  
9 homebuilder, all of those entry-level homes had  
10 laundry products in them. And I would venture to say  
11 that whether you look at national builders from a D.R.  
12 Horton or Centex, sort of that mid-level home up to  
13 Toll Brothers or a custom builder, those homes today  
14 over the last 10-15 years would have laundry rooms in  
15 the main part of the home.

16           And in many cases, there is a fashion part  
17 to that in the laundry area as well. It is not hidden  
18 in the basement anymore. I think that's a dated look,  
19 frankly, at the industry.

20           MR. DEXTER: Mr. Johanson?

21           COMMISSIONER JOHANSON: Yes.

22           MR. DEXTER: Kevin Dexter again with  
23 Samsung. I think one of the things that, you know, as  
24 we talk about features a lot -- and this is -- you  
25 know, once in a while we have to think again about

1 what does that mean at the retail floor and the  
2 consumer. What you're hearing here a lot is the so  
3 what. So when you hear things like vibration  
4 technology, and you hear things like color, as you  
5 just heard from Mr. Riddle, well, vibration reduction  
6 technology, one of the big benefits to that is to be  
7 able to move into these second floor installations  
8 where it's a real problem if you don't have flooring  
9 that is solidified that if you have a large amount of  
10 vibration you have troubles with the performance of  
11 your machine.

12 I think the other one was the fashion point.  
13 As people move these things closer to their dwelling  
14 rather than in the basement or the garage, fashion  
15 does become more important because you're more likely  
16 to walk by in your living space and see that red  
17 washer that's in there rather than just something  
18 that's basic white.

19 So I think you're starting to hear the  
20 benefits now, the so-whats, the what really triggers  
21 consumers to think that those features are important.

22 COMMISSIONER JOHANSON: All right. Thank  
23 you for your responses. My time is about to expire,  
24 so I will move on. Thank you.

25 CHAIRMAN WILLIAMSON: Commissioner

1 Broadbent.

2           COMMISSIONER BROADBENT: Thank you. This is  
3 for Mr. Brindle and Mr. Herring, that did the  
4 demonstration for us out there on the floor. You  
5 showed us a lineup of comparable products in order to  
6 demonstrate the leadership of Samsung and LG over the  
7 domestic production in terms of all of these features.  
8 I guess if we would have asked Whirlpool to compare  
9 products side by side, they would have probably picked  
10 different products. And I think they've got a Samsung  
11 product over there in their lineup.

12           Can you just go over again why the products  
13 you picked were specifically comparable products, just  
14 to make me feel a little more reassured about that?

15           MR. HERRING: This is John Herring. With  
16 respect to the products we picked, this was in 2010,  
17 before the launch of their alpha design. We selected  
18 their most premium front-load washer they had in the  
19 market today, or at that point in time. We selected a  
20 comparable premium product that we had. The products  
21 were positioned approximately \$200 apart. Ours was  
22 1399 in white. I believe theirs was 1199 in white.

23           So for consumers, you know, looking in the  
24 premium segment of the market above \$1,000 at that  
25 time, that's what they would be looking at in terms of

1 options if they were displayed on the same retail  
2 floor.

3 MR. BRINDLE: Dean Brindle with Samsung as  
4 well. I think the product selection, you know, each  
5 of us could debate the merits of which products were  
6 selected. But I think from our perspective it was  
7 really simple. We took a look at what were some top-  
8 selling models during the POI. And prior to the alpha  
9 introduction, Whirlpool models simply didn't have the  
10 design and style to compete. So if we look at that  
11 total time frame overall, we pick comparable price  
12 point models that represent the first 20 months of the  
13 POI before the alpha introduction.

14 When we look at those models in comparison,  
15 we see the difference pretty clearly.

16 COMMISSIONER BROADBENT: Okay. Mr. Klett,  
17 I'm still struggling here with the product life cycle  
18 concept. You say, and there is data on page 9 of your  
19 presentation showing a decrease in prices for models  
20 as they go through their life cycle. I think that's  
21 it, isn't it? I'm not sure.

22 MR. KLETT: Yes, that's true.

23 COMMISSIONER BROADBENT: Yes. However, I  
24 think the pricing data selected by the Commission is  
25 at a broader level than the individual model level,

1 and that there is an adjustment that for a given model  
2 you could update it within the broader category during  
3 that life cycle. But I'm out of my depth here, so I'd  
4 like you to clarify.

5 MR. KLETT: Commissioner Broadbent, this is  
6 Dan Klett. You're correct. And fortunately, though,  
7 your quarterly pricing data actually asked for each  
8 pricing observation what the model was that  
9 corresponded -- or what the largest volume pricing  
10 product was that corresponded -- I'm sorry, what the  
11 largest volume model was that corresponded to that  
12 particular quarterly price.

13 So in the LG brief, where we went through  
14 product by product, I actually tried to evaluate  
15 product life cycle trends with your quarterly data  
16 given that additional information I had with regard to  
17 the specific models that were associated with each  
18 quarter.

19 So it's not as precise as this. But still,  
20 given your quarterly data and given -- or knowing what  
21 the largest model was for each quarter, I was still  
22 able to discern product life cycle patterns in your  
23 pricing data, which I tried to describe -- or which we  
24 tried to describe in the brief. And just as an  
25 example, product four is probably one of the best

1 examples of that phenomenon, which is the 4.0 -- or  
2 would include anyway the Whirlpool 4.0 models. But we  
3 tried to do that with other pricing products as well.

4           COMMISSIONER BROADBENT: Thank you. In the  
5 Petitioner's testimony, they referenced their success  
6 in gaining recognition from *Consumer Reports* magazine.  
7 What is your opinion of *Consumer Reports* as an  
8 objective benchmark of quality and consumer  
9 preference? Do you win accolades from *Consumer*  
10 *Reports* as well, and then maybe an LG and a Samsung  
11 representative could answer that.

12           MR. HERRING: This is John Herring.  
13 *Consumer Reports*, we certainly do look at. They're an  
14 important entity. I will tell you that their  
15 importance has diminished over the last few years as  
16 consumers have the ability to go online and develop  
17 their own online product reviews. Consumers are more  
18 empowered to go find out what everyone says about  
19 products. And that's while you'll see in my  
20 presentation I talked about consumer reviews.

21           So, you know, just like newspapers are not  
22 as important as they once were, you know, 15 or 20  
23 years ago, I would tell you *Consumer Reports* is not as  
24 relevant as it once was in terms of how consumers shop  
25 in advance of the purchase process. So before they

1 make a purchase decision, there are certainly  
2 consumers using it. It's still a very important  
3 document. But it's becoming less important as  
4 consumers go online and do their own research and  
5 seeing what everyone else is saying.

6 I will point out a couple of points, though.  
7 We actually -- the November 2012 edition, printed  
8 *Consumer Reports* edition, actually LG was the number  
9 one rated washer in front-load and the number one  
10 rated washer in top-load. So we certainly have  
11 enjoyed that success as well.

12 COMMISSIONER BROADBENT: So there is not as  
13 bad now.

14 MR. HERRING: Pardon? No. I'm just trying  
15 to give you a balanced view. So I think as well I  
16 referenced *Consumer Reports* as it relates to repairs.  
17 And so they're surveying people after the fact, so  
18 after they purchase it. So it's not a -- the ratings  
19 are important, you know, to a certain extent. But the  
20 repair index afterwards is actually data that's pulled  
21 out. It's not -- it's reflective of what they  
22 experience in terms of repair history.

23 MR. BAIRD: I will tell you after that  
24 rating came out on the top-load, our sales almost  
25 tripled on that model. Unfortunately, about the same

1 time LG decided to discontinue the model, so it didn't  
2 last long. But it does affect sales.

3 COMMISSIONER BROADBENT: And then what about  
4 this J.D. Powers and Associates? They seem to be -- I  
5 don't know. There are allegations that their product  
6 reviews are more skewed by price and maybe not by the  
7 features. Does anybody have a comment on that?

8 MR. CONNELLY: Warren Connelly. Yes,  
9 Commissioner Broadbent. First of all, we submitted  
10 several of the J.D. Power studies. We put some  
11 excerpts in our brief, but the full J.D. Power study,  
12 2011 study, was part of our questionnaire response,  
13 and we rely on it heavily.

14 That is a consumer satisfaction study of  
15 about 6,000 consumers of all types of washers.  
16 Seventeen different brands are evaluated by consumers.  
17 And apparently the domestic industry relies heavily  
18 on that survey as well because I heard Mr. Bosshard of  
19 BSH say this morning at one point his washers were  
20 rated very highly by J.D. Power.

21 Now, J.D. Power assigns a weight of 13  
22 percent to price. In other words, when consumers are  
23 asked to evaluate the extent of their satisfaction,  
24 they assign a much greater weight, that is, J.D. Power  
25 -- they assign a much greater weight to fit, feel,



1 finish, quality, all of these intangible things that  
2 don't get evaluated, as we heard this morning, by  
3 *Consumer Reports*. They do, however, evaluate  
4 reliability and performance.

5           So we would encourage the Commission to look  
6 very carefully at the J.D. Power studies. I'll make  
7 one other point about J.D. Power. Whirlpool at one  
8 point criticized these J.D. Power studies. They  
9 criticized them for reasons which are bogus. And I  
10 think that we don't want to get into why that's true  
11 because the critique was in the APO submission.

12           However, J.D. Power just doesn't evaluate  
13 washers. I encourage you to go on their website.  
14 J.D. Power is owned by McGraw-Hill, a very reputable  
15 company. They evaluate automobiles. They evaluate  
16 just about every product under the sun. And the  
17 notion that Whirlpool suggested that somehow these  
18 studies were biased in favor of Samsung and LG is  
19 simply not believable.

20           One more point. They have got a lot of  
21 studies about consumer behavior that they did not  
22 submit. And I think we heard this morning that they  
23 didn't submit them because they were worried that the  
24 Commission might confuse the fact that some of these  
25 studies talked about their Mexican and German origin

1 models, and they didn't want you to be confused by the  
2 extent of what consumers had to say about those  
3 models.

4           But that's our exact point about the demo.  
5 These are the Mexican and German models that were  
6 uncompetitive against Samsung and LG. I'll stop  
7 there.

8           COMMISSIONER BROADBENT: Okay. This is for  
9 Mr. Baird. Can you talk a little bit about how these  
10 different washing machine suppliers compete on their  
11 own Internet platforms? I mean, how is the consumer  
12 interfacing with all these different companies on the  
13 Internet before they get into your shop?

14           MR. BAIRD: Well, they pretty much all have  
15 Internet sites, and the customer can go in there and  
16 do a lot of research and get information. Generally,  
17 they don't sell directly. I mean, there are some  
18 exceptions. I think Whirlpool sells Maytag closeouts,  
19 and I know they sell Amazon something. So they do  
20 some direct business. But in general, most  
21 manufacturer sites are just there to provide  
22 information.

23           COMMISSIONER BROADBENT: Do some do it  
24 better than others?

25           MR. BAIRD: I'm probably more focused on

1 homedepot.com. So that's where most people go. We  
2 get a lot more traffic than they do on our site.

3 COMMISSIONER BROADBENT: Thank you.

4 CHAIRMAN WILLIAMSON: I do the same thing.  
5 Okay. Thank you. How should the Commission treat  
6 Whirlpool's imports from Mexico in this material  
7 injury and threat analysis? Did those imports injure  
8 the domestic industry? If so, how? If not, should we  
9 disregard those imports in our analysis?

10 MR. CONNELLY: Well, first of all, we  
11 encourage you to look at the underselling evidence  
12 concerning their Mexican imports and reach your own  
13 conclusions about whether they injured, oh, a company  
14 like BSH, for example.

15 You know, BSH, we heard, was injured by  
16 imports. Well, Whirlpool's imports were coming in  
17 from Mexico. We don't know anything about the German  
18 imports with respect to their prices. We had asked I  
19 guess a rather unusual question, which wasn't accepted  
20 in the comments that we filed. We actually would have  
21 appreciated seeing quarterly pricing volume data, and  
22 we still would, on Whirlpool's German imports. But I  
23 think you can draw the same conclusions about the  
24 German imports as you do about the Mexican imports.

25 In other words, they are a highly relevant

1 factor. They help to explain a lot of things,  
2 including what happened to BSH.

3 MR. CAMERON: Mr. Chairman, Don Cameron on  
4 behalf of Electrolux. Actually, we don't agree with  
5 the idea that Whirlpool has injured BSH. The reality  
6 is that BSH wasn't competitive, period. When you talk  
7 about European styling, what they're saying is that it  
8 is small. We've already heard that it was boxy and/or  
9 tank-like. They weren't a factor in the market. They  
10 weren't competitive. And frankly, no, we aren't  
11 taking the position that Whirlpool's Mexican imports  
12 are what drove BSH out of the market. BSH got driven  
13 out of the market because BSH wasn't in the market.

14 Secondly, as far as Whirlpool, they are  
15 suggesting that somehow they injured themselves. In  
16 other words, their imports from Mexico somehow injured  
17 what? Whirlpool's domestic production. And therefore  
18 we should cumulate Mexico and Korea and find that  
19 imports injured the domestic industry. There is no  
20 sense to that.

21 Whirlpool had its Mexican operations.  
22 Whirlpool shut down its Mexico operations. And no.  
23 You should discount the Whirlpool Mexico because  
24 Whirlpool Mexico is not a factor, and it wasn't a  
25 factor. They made their decisions, and they're out of

1 it. Electrolux is the last standing Mexican producer,  
2 and we've already given you our arguments as to why  
3 Mexico should be decumulated from Korea if you get to  
4 the issue of threat. But no. We think that the way  
5 the Commission should treat the Mexico operations is  
6 they should basically discount Whirlpool's Mexican  
7 imports.

8 CHAIRMAN WILLIAMSON: Okay.

9 MR. KLETT: Commissioner Williamson, this is  
10 Dan Klett. On the volume side, you definitely have to  
11 include Whirlpool's imports from Mexico and Germany in  
12 terms of your market share analysis. Definitely that  
13 can't be excluded. They're part of the market.

14 But beyond that, I think it's important to  
15 understand that the Whirlpool brand, which included  
16 front-load imports from Mexico and Germany, were a big  
17 part of the market. And Whirlpool overall as a brand  
18 was a big part of the market when you included their  
19 domestic and their imports. And I know at one point  
20 Mr. Connelly made reference to, you know, domestic or  
21 Whirlpool and GE brands relative to imports. And I  
22 think in that context, it's relevant as well.

23 CHAIRMAN WILLIAMSON: Okay. Thank you. Mr.  
24 Dexter, can you explain why Samsung decided to close  
25 its Mexican facility so soon after starting production

1 there?

2 MR. DEXTER: Kevin Dexter with Samsung. Mr.  
3 Williamson, I think as we look at our capabilities  
4 across the globe as a global entity, we are always  
5 evaluating what our best opportunities are as far as  
6 delivering both quality product and from a position of  
7 where we have the best return for ourselves. So  
8 really for us it's embedded in the fact that, you  
9 know, we've moved some production from Mexico, but  
10 that's no different than we've done over our history  
11 of appliances since we entered the market here in  
12 2006. And as I look out to the future, we'll always  
13 look across the globe for the best options for us.

14 CHAIRMAN WILLIAMSON: Oh, so you're saying  
15 basically you're looking at alternative costs and --

16 MR. DEXTER: Yes. Every year during the  
17 business planning cycle in the three- and the five-  
18 year cycles as we look out as a company, we're always  
19 evaluating again what our best opportunities are from  
20 all the manufacturing facilities that we have  
21 available to us, the different models. We do new  
22 model product introductions. So that's a continuous  
23 evaluation that we do to deliver the best results for  
24 us as a company.

25 CHAIRMAN WILLIAMSON: Okay. Thank you. Mr.

1 Baird, you mentioned that I think you saw 6 percent  
2 growth -- you saw pretty good growth in value and  
3 volume last year. Can you say what you contribute  
4 that to? Is consumer demand just picking up?

5 MR. BAIRD: You mean 2012?

6 CHAIRMAN WILLIAMSON: Yes. I think that was  
7 your statement. I heard a 6 percent.

8 MR. BAIRD: Yes. We're running -- we're  
9 having a good year, so we're running up in units and  
10 dollars. Probably excellence in merchandising.

11 CHAIRMAN WILLIAMSON: Okay. I'll give you  
12 that one. What else?

13 (Laughter.)

14 MR. BAIRD: No. I mean, we do a good job.

15 CHAIRMAN WILLIAMSON: Okay.

16 MR. BAIRD: Our website is good. We talked  
17 about online a while ago. We do about 10 percent of  
18 our business online. We know 90 percent of our buyers  
19 go online, 10 percent buy. Quite frankly, on washers,  
20 it's 16. Washers is one of our highest online  
21 categories in terms of purchasing it online. Now,  
22 those customers may have been to the store for all we  
23 know. We don't know that. But we actually do 16  
24 percent of the washer business online.

25 CHAIRMAN WILLIAMSON: Okay.

1           MR. BAIRD: We have a much higher market  
2 share online than we do in our stores. We have a  
3 great website.

4           CHAIRMAN WILLIAMSON: So I was wondering  
5 whether you were going to address the question of  
6 overall demand based on -- not just from Home Depot,  
7 but --

8           MR. BAIRD: Overall demand is not so good.  
9 I mean, talking about the appliance industry, I mean,  
10 we're going to finish the year probably down 2 percent  
11 for core appliances, and front-load washers will be  
12 down 20 percent year over year. So, I mean, in terms  
13 of overall, it's not so good.

14          CHAIRMAN WILLIAMSON: Okay. Thank you. On  
15 page 8, Mr. Klett, the Capital Trade, Incorporated,  
16 you have this price for LG 3.7 and showing the price  
17 of the Whirlpool and Maytag 3.6 model. And I notice a  
18 very sharp drop in the price in that. And I was just  
19 wondering what is the explanation for that. Is this a  
20 rather sharp product life cycle? That's the one on  
21 page 8, the one before.

22          MR. KLETT: I'm sorry. Commissioner  
23 Williamson, this is Dan Klett. This is an LG 3.7,  
24 November. I mean, it's possible that was promotional.  
25 It would be in that period. But we'd have to go back



1 and look.

2 CHAIRMAN WILLIAMSON: Okay.

3 MR. KLETT: But still, it's higher priced  
4 than the Whirlpool.

5 CHAIRMAN WILLIAMSON: Okay. I was just  
6 wondering because, I mean, you were talking about the  
7 length of the product life cycle and things like that.

8 MR. KLETT: That was a Black Friday special  
9 at 499.

10 CHAIRMAN WILLIAMSON: Okay, okay. Thank  
11 you. Let's see, okay. I was wondering, Mr. Baird,  
12 what is the -- I don't think we've asked you this.  
13 What role does placement in a store play? And we had  
14 testimony about the end caps and power alleys. And I  
15 guess according to public sources big box stores sell  
16 end cap space for a million dollars. I was wondering,  
17 is this true? Is there that much -- and what is a  
18 power alley, by the way?

19 MR. BAIRD: I've never sold an end cap, but  
20 who said I could sell it? What supplier?

21 CHAIRMAN WILLIAMSON: Actually, I'm not sure  
22 where this came from. I just have it as a question.

23 MR. BAIRD: To my knowledge, we've never  
24 sold an end cap. That's something Walmart would do  
25 for their store. We don't sell end caps.

1                   CHAIRMAN WILLIAMSON: Okay. I wasn't sure  
2 if it was Home Depot. I'm sorry.

3                   MR. BAIRD: Okay.

4                   CHAIRMAN WILLIAMSON: I was just saying in  
5 general.

6                   MR. BAIRD: But you think there is an  
7 opportunity for us then?

8                   (Laughter.)

9                   CHAIRMAN WILLIAMSON: You don't listen, do  
10 you? But in any case, I was just wondering to what  
11 extent at least for some stores is this -- how big is  
12 that -- and thinking about now how your things are  
13 displayed that might not apply there.

14                  MR. BAIRD: Well, I don't think -- to my  
15 knowledge, nobody sells end caps in our business. I  
16 mean, they may put a feature, an end cap, if there is  
17 an ad or something. But to my knowledge, there is no  
18 sale of end caps. Quite frankly, we display laundry  
19 by brand. So we'll put all the Maytag together,  
20 pretty much all the LG together, and the GE together,  
21 and we'll do it, you know, top-load and front-load.  
22 That's how we display it on the floor.

23                  CHAIRMAN WILLIAMSON: Okay. Does anybody  
24 else want to address this question or have any  
25 knowledge? Mr. Herring?

1 MR. HERRING: Yeah. This is John Herring.  
2 I'm not aware of any customers that are charging for  
3 end cap space.

4 CHAIRMAN WILLIAMSON: Okay. Thank you.  
5 Good. Okay. Let me see. Commissioner Pearson.

6 COMMISSIONER PEARSON: Thank you, Mr.  
7 Chairman. I think I have just two issues yet that I'd  
8 like to touch on. Mr. Baird, the first is for you.  
9 You started to talk earlier about the email on Exhibit  
10 7 of the domestic industry's brief. And I heard you  
11 start that, and I thought I got to get out of here  
12 because he's going to try to sell me something, and so  
13 I stepped out.

14 (Laughter.)

15 COMMISSIONER PEARSON: But how do you  
16 consider -- I thought I had better understand what  
17 your interpretation is of this email. And this is the  
18 one that says, "We are looking to floor your new  
19 Maxima in white in December to replace the MW02501  
20 pair. I would need 800,000 marked down for this to  
21 happen. This would mean the Maxima would be on all  
22 floors. Please advise."

23 Was this part of a negotiation? What was  
24 going on here?

25 MR. BAIRD: Yeah. I mean, yeah. I made the

1 decision. I wanted to put the Maxima on all floors.  
2 And there are two pieces in those two spots, so I got  
3 to get rid of those two pieces. In this case, it  
4 happened to be LG. But they were 1099, so I decided  
5 you've got a pair on 2,000 floors. So you've got  
6 4,000 pieces. I thought we'd get clearance at 897. So  
7 I needed that much money. You know, I needed the \$200  
8 times 2,000 floors times washer and dryer.

9 COMMISSIONER PEARSON: Okay.

10 MR. BAIRD: That's the 800,000.

11 COMMISSIONER PEARSON: And you're talking  
12 about the inventory that you actually have on the  
13 floor because you don't own inventory offsite. Is  
14 that right?

15 MR. BAIRD: That's correct. So I had to  
16 liquidate the display pair that was in those two spots  
17 in 2,000 floors.

18 COMMISSIONER PEARSON: Okay. And are you in  
19 a position to say anything about how this negotiation  
20 proceeded? Was there a response, and did you reach an  
21 agreement with Whirlpool?

22 MR. BAIRD: Yes. I mean, I did reach  
23 agreement. If you go actually to two pages later,  
24 Exhibit 9, you're talking about a year and a half  
25 later. You can see by the time you get to April 27th

1 of 2012, I bought those 2,000 pairs. I spent \$6  
2 million of Home Depot money. The fact is they didn't  
3 work out so well. I mean, I make some mistakes. That  
4 period did not sell well, despite the fact that it was  
5 at the same price point. It was over-featured  
6 compared to the LG. It didn't sell. So at some point  
7 in time -- this is probably relative quite frankly to  
8 the price increase that Whirlpool was talking about  
9 today. We said it's not selling well now. If you  
10 raise the price another 100, it probably won't sell  
11 any better, okay?

12           And subsequently, quite frankly, last week  
13 we discontinued the Maxima pair to make room for the  
14 new GE HE.

15           COMMISSIONER PEARSON: Okay. Ms.  
16 Trossevin --

17           MR. CAMERON: Commissioner?

18           COMMISSIONER PEARSON: First Ms. Trossevin,  
19 if we could.

20           MS. TROSSEVIN: Yeah. I just wanted to  
21 emphasize that on the first email, that \$800,000,  
22 that's not support that has anything to do with price  
23 competition at all. This is just something that he  
24 has -- regardless of who he is trying to move into  
25 that space, he has got to make room for the space. So

1 it's not an \$800,000 discount to meet any kind of  
2 import competition.

3 COMMISSIONER PEARSON: Right, no, okay. I  
4 understand.

5 MR. CAMERON: Commissioner, it might be  
6 helpful if Mr. Baird could explain to you what  
7 transitioning costs are because this is what they're  
8 referring to. This is a transition in models, and the  
9 producers have to help defray the cost of the  
10 inventory. And that happens with every model. That  
11 happens with all producers and all retailers.

12 COMMISSIONER PEARSON: So is this transition  
13 cost different than a spotting fee?

14 MR. BAIRD: In this case, that's not  
15 correct. What this was, this was to subsidize a price  
16 reduction on the two pieces that were in the spots  
17 that were leaving. That's all it was. I had to  
18 reduce those pieces from 1099 to 897, and that was  
19 money to do that. Nothing to do with inventory other  
20 than those two display pieces.

21 COMMISSIONER PEARSON: Okay. Is there  
22 something we should know about transitional costs?

23 MR. BAIRD: Well, we basically -- if we had  
24 a piece -- if we had a washer that was 499 and we were  
25 going to replace it, 20 percent is probably a

1 reasonable estimate on what it costs you to reduce it.  
2 So I would probably in that case try to take that  
3 piece to 397, and I would get \$100 for every spot we  
4 put it in. It's very -- there is nothing unusual  
5 about that at all. It happens every time we do a  
6 transition.

7 MR. HERRING: This is John Herring. Just to  
8 add a little flavor to it, retailers have to liquidate  
9 the floor displays. It's not an uncommon practice in  
10 our business to have the retailer request from the  
11 manufacturer for support to liquidate and get out of  
12 their old models. Regardless of brand, it's a pretty  
13 common across large regional customers.

14 It's a huge expense in transitioning, and  
15 they ask for that support to help them liquidate and  
16 move it off the old model and get the new one placed  
17 on the floor.

18 COMMISSIONER PEARSON: Okay. So some  
19 retailers have slotting fees to get product onto  
20 shelves. Is that playing a part in this discussion?

21 MR. BAIRD: You can call it that. But  
22 that's not really what it's for. But you could say  
23 there is a price for the spots, and the price is to  
24 help us liquidate the pieces that are there.

25 MR. HERRING: But one of the questions

1 earlier -- again, this is John Herring. One of the  
2 questions earlier was do you pay for end cap space.  
3 The answer is still I don't have anybody asking us for  
4 money to pay for end cap space. But there is costs  
5 associated with transitioning, and retailers  
6 frequently will ask the manufacturers to help support  
7 in that to help transition and accelerate the launch  
8 of the new product.

9 COMMISSIONER PEARSON: Okay.

10 MR. DEXTER: This is Kevin Dexter with --

11 COMMISSIONER PEARSON: Mr. Klett, yes. Mr.  
12 Dexter rather, excuse me.

13 MR. DEXTER: Yeah. I would just say that  
14 the mechanisms may be slightly different across  
15 retailers, and I say slightly. But it's really to  
16 address what Mr. Herring is saying, that in your  
17 annual review and the negotiation that was talked  
18 about earlier this morning, certainly how the  
19 inventory of the old models going out is going to be  
20 dealt with is always a subject that's on the table.

21 COMMISSIONER PEARSON: Okay. Thank you for  
22 those clarifications. My last issue just has to do  
23 with the determination I made in the preliminary phase  
24 of this investigation. You know, I did look at a  
25 single domestic like product, but I found three



1 identifiable segments and analyzed them independently.  
2 Was my decision appropriately supported by  
3 substantial evidence on the record at that time? And  
4 you may want to say more in post-hearing, but if you  
5 have anything to say now, go ahead.

6 MR. CONNELLY: Warren Connelly. Yes.

7 COMMISSIONER PEARSON: Okay.

8 MR. ELLIS: Neil Ellis. Yes.

9 MR. CONNELLY: And we will add more in post-  
10 hearing.

11 MR. CAMERON: We concur. It was.

12 COMMISSIONER PEARSON: Okay. The changes  
13 that we've seen in the record from then to now, do  
14 they strengthen or undermine the arguments as I  
15 presented them at that time?

16 MR. CONNELLY: Warren Connelly.  
17 Commissioner, you did something which we thought was  
18 quite appropriate. And in fact, we tried to do that  
19 in our brief this time. What you did -- and I don't  
20 want to, you know, characterize it in a way that you  
21 might think is inappropriate. But what you did is you  
22 looked at what is going on in each of the segments.  
23 Whether you define the like product as all LRWs or you  
24 define it as on a segment basis, you still have to  
25 look at what is going on in each segment. I mean,

1 that's what we've tried to do. And there are dynamics  
2 that go across segments. There are dynamics within  
3 segments. And I think that's what you were trying to  
4 do, is figure out what is going on, what happens when  
5 front-load pushes top-load, or vice versa, or  
6 conventional pushes AGTL.

7           That's completely appropriate, well within  
8 your discretion, any commissioner's discretion, to  
9 look at it that way. At the same time, you have to  
10 look at the big picture if you accept our like product  
11 definition. So I think you can do both, frankly.

12           COMMISSIONER PEARSON: Okay. Well, I would  
13 just -- thank you for the kind comments. But they  
14 really should go to good staff work. Michael Robbins  
15 took the time to dig through the record with great  
16 detail and explain to me what -- how it could be  
17 understood. Mr. Ellis?

18           MR. ELLIS: I would just add that we think  
19 there was substantial evidence at the preliminary  
20 phase to support your decision. We also think that  
21 the evidence that has been gathered since then  
22 reinforces in fact that view of the industry. So we  
23 think that the final decision could be or should be on  
24 the very same basis.

25           COMMISSIONER PEARSON: Okay. But now -- and

1 I think you may have been addressing this a couple of  
2 minutes ago. But in the event that I should decide  
3 this time to look at the like product as a single mass  
4 rather than as segments, does the record support a  
5 negative either way? Or does one only get to a  
6 negative by looking at the market in segments?

7 MR. KLETT: Commissioner Pearson, this is  
8 Dan Klett. I mean, I think at the point that Mr.  
9 Connelly made, even with a single-like product, you  
10 still have to go through the analytics of what  
11 happened. And you need to do that on a more narrow  
12 basis because it's not just cement. You've got a lot  
13 of different models, a lot of different market  
14 segments.

15 So whether it's a single like product or  
16 three separate like products, the competitive  
17 analytics is pretty much still the same, and I think  
18 you still come to the same conclusion.

19 COMMISSIONER PEARSON: Okay. Well, in  
20 anticipation that the council for the domestic  
21 industry may have a different view and provide  
22 different guidance to me, put this all clearly in the  
23 post-hearing, and then we'll be able to weigh the  
24 merits of both sides.

25 MR. ELLIS: Yes. I'm happy to do that. I

1 just want to rephrase what Mr. Klett said, which is  
2 that if you look at it just as a single kind of  
3 undifferentiated mass, it's going to be very hard to  
4 even talk about it because the point is that this  
5 industry does have separate segments or groups or  
6 however you want to call it, and it's hard to talk  
7 about trends and activities if you can't talk  
8 separately about conventional TL, HETL, and so on  
9 because there have been different things going on  
10 within them. But we'll put that in the post-hearing.

11 COMMISSIONER PEARSON: Okay. Well, thank  
12 you. My time has expired, and with good coincidence  
13 my questions have expired also. Thank you very much  
14 for your participation in this hearing. I appreciate  
15 your testimony very much.

16 CHAIRMAN WILLIAMSON: Commissioner Aranoff?

17 COMMISSIONER ARANOFF: Thank you, Mr.  
18 Chairman. This morning I asked the panel a question  
19 about price suppression, specifically whether if it's  
20 -- the fact that there are powerful retailers in this  
21 market who are limiting the prices that manufacturers  
22 can charge to retail customers, does that mean that  
23 there is price suppression by reason of retailer  
24 market power, as opposed to by reason of subject  
25 imports. And the response, not to -- well, and I'm

1 paraphrasing, but the response was basically there  
2 have always been -- there have been powerful retailers  
3 for a while -- I think that's what Mr. Baird said too  
4 -- that it goes back to maybe the '80s, but that they  
5 never had this problem until subject producers entered  
6 the market in significant quantities. So I wanted to  
7 give this panel an opportunity to comment on that  
8 issue.

9 MR. CONNELLY: Okay. I'll take the first  
10 shot. Warren Connelly. Commissioner Aranoff, let me  
11 just disagree slightly with the premise. I think the  
12 question is, is it possible to say or conclude based  
13 on the record that something different is going on  
14 when retailers are negotiating with subject importers  
15 and when retailers are negotiating with Whirlpool and  
16 GE. In other words, are we somehow so much more  
17 aggressive as they claim that what's happening at the  
18 retail level is solely attributable to our actions and  
19 Whirlpool is just an innocent bystander that but for  
20 our presence would be still having 100 percent market  
21 share as they seem to want to have in top load.

22 So when you look at the record, I just don't  
23 think you can reach that conclusion. You look at the  
24 promotions, for example. We I think gave you a list  
25 of Whirlpool's promotions in one of our hearing slides

1 and we gave you some others in the brief. I just  
2 don't think it's possible to conclude that that's  
3 what's going on. I think the testimony here and maybe  
4 even from both sides is that companies decide what  
5 they're going to promote. Retailers decide what  
6 they'd like to promote. And maybe Mr. Baird has a  
7 much more informed view on this than I do, but it just  
8 I don't think is a permissible conclusion from the  
9 record that somehow it's all the importer's fault,  
10 that somehow we are the most aggressive.

11           You know, the issue of promotions obviously  
12 goes well beyond washers. It goes well beyond  
13 laundry, home appliances, consumer electronics. You  
14 see those flyers in the Washington Post on Black  
15 Friday. This is an industry phenomenon. Everybody  
16 has to deal in this environment. And so try to  
17 attribute causation to a company or a group of  
18 companies I think is just an impossible task.

19           MR. RIDDLE: This is John Riddle. If I can  
20 try to take a stab at it. I think there are a couple  
21 of things that have occurred over time. I think that  
22 if you look at our industry's trade magazines, HFN, At  
23 One Time, Twice, you would see over the last 30 years  
24 a fluctuation of dominant retailers come and gone, in  
25 many cases by name. And I think that if you look at

1 the general channels, if you will, of regional or  
2 dealer channel, big box stores, and so forth, there  
3 has been some degree of consistency there.

4           So I think there always have been for many  
5 years powerful retailers, some erosion I think with  
6 Mom and Pops. But frankly if you look over the last  
7 two to three years, those independent dealers that are  
8 part of Davie Bilas's group and others have actually  
9 been pretty healthy from a share standpoint.

10           I think one of the other things that  
11 occurred, when I joined the major appliance industry  
12 at wholesale out of my family's retail appliance  
13 business, there were 37 U.S. appliance manufacturers.  
14 So the U.S. appliance industry was very, very healthy  
15 from a standpoint of 37 major manufacturers in the  
16 industry. Over that period of time in the '80s and  
17 '90s, there was dramatic consolidation and that  
18 dramatic consolidation predates Samsung and LG,  
19 predates frankly Electrolux's acquisition at the time  
20 of white consolidated and all the Westinghouse  
21 acquisitions.

22           And so I think if you look at that, there  
23 have also been fluctuations in competition. And so I  
24 think the competition today for the marketplace that's  
25 in the market is actually healthy because the consumer

1 is seeing new products. There's new innovations and  
2 so forth and it gets away from a dominated industry  
3 that was made up of two or three major companies.

4           One last point, since 2007 when the market  
5 was enjoying two million starts in housing and dipped  
6 to as low as 400,000 starts, the domestic  
7 manufacturers had a very high share of business in the  
8 builder market and so historically General Electric,  
9 very strong, Whirlpool certainly strong as well. The  
10 fact that that business went away I think has put  
11 accentuation to some degree on this focus, this part  
12 of the business. Laundry was in many cases sometimes  
13 not as much attached to the home building side of the  
14 business.

15           But I think what you're seeing there is not  
16 an unhealthy thing from a standpoint of competition,  
17 at least for someone from my eyes who have spent my  
18 whole life in this industry. I think what you're  
19 seeing there is just somewhat of a fluctuation and  
20 then a little bit the fact that retail is more  
21 accentuated now because a big part of the appliance  
22 business, the home building side has gone dark since  
23 2007.

24           COMMISSIONER ARANOFF: Okay.

25           MR. BAIRD: Bob Baird, just let me add, you



1 know, we have five vendors, the five big ones, and we  
2 don't treat them as a couple of them as importers and  
3 a couple of them as domestic. In our viewpoint,  
4 they're all domestic suppliers. The fact that GE gets  
5 ranges from Mexico is relatively irrelevant to us. We  
6 treat GE as a domestic vendor. So we don't single out  
7 people that buy stuff -- you know, that make their  
8 stuff somewhere out of the U.S. They're all vendors,  
9 whether it be Whirlpool getting refrigerators from  
10 Mexico, whatever it is, they're all -- in our case, we  
11 buy everything domestically. They're all domestic  
12 vendors.

13           COMMISSIONER ARANOFF: I think I've heard a  
14 range of answers to the question, so I'm going to move  
15 on. I hesitate to ask this question, but I want to  
16 ask it before we close out the hearing. Obviously a  
17 lot of Respondent's briefs are focused on arguments  
18 about flaws in the data, both the financial data and  
19 the pricing data. Our staff have performed the  
20 verification. They've told us that Whirlpool's data  
21 reconcile.

22           And so the question I'm -- and I know you  
23 argued that they couldn't know about all your  
24 arguments you were raising at the time that they did  
25 the verification; but like I said, they did tell us

1 that the data reconcile. So the question that I have  
2 at this point in the investigation is whether the  
3 critique of the data goes to credibility. In other  
4 words, the concern is that Whirlpool has pulled the  
5 wool over the eyes of our staff and is not telling the  
6 truth, which calls for the Commission to make a  
7 credibility determination. Or whether the issue is  
8 that there is perhaps more than one acceptable  
9 methodology under generally accepted accounting  
10 principles or some other standard for organizing the  
11 data and that you would prefer a different methodology  
12 than the one that Whirlpool used. That is not so much  
13 a credibility determination, but then asks the  
14 Commission to go in and look at the mechanics of those  
15 two different methodologies and decide which one we  
16 think is more useful or applicable in this case.

17 MR. KLETT: Commissioner Aranoff, this is  
18 Dan Klett. I think there is two issues. And in terms  
19 of what we're suggesting is probably more the latter  
20 than the former. But on the other hand, I want you to  
21 look at confidential slide 2. And this really is more  
22 of a -- you know, if A is supposed to equal B and A is  
23 verified and B is verified, but A still doesn't equal  
24 B, then something is still wrong with the data. So,  
25 you know, what the source of that is, I don't know.

1 But you have trade data for a particular product  
2 segment. You have price data for a particular product  
3 segment that represents a very high share of the trade  
4 data. So you would think that on a FOB total  
5 discounts, rebates, and delivered basis, the AUVs  
6 would be relatively the same, and they're not.

7           So that's not a methodology issue -- I mean,  
8 that's not a methodology issue. It's not a  
9 credibility issue. It's just the data don't reconcile  
10 internally where they should and it has a huge effect  
11 on whether the pricing data are correct or not. And  
12 we identified in our brief some of the reasons we  
13 think that the average prices for the price data are  
14 lower than for the trade data when they should be  
15 relatively close. So that's kind of one issue.

16           On slide 1 that I think -- confidential  
17 slide 1 that I think gets more to your -- directly to  
18 your question in terms of, you know, credibility  
19 versus methodology, this does go to methodology. But  
20 we think that based on our analysis of the unit raw  
21 material costs, we have a serious problem with the  
22 methodology and thinks that introduces distortions  
23 into the financial data.

24           So, you know, whether one is accepted, is  
25 GAPP accepted, or both GAPP accepted and one is more

1 acceptable than the other, I think the key issue is  
2 that if the methodology we think was used over  
3 allocates cost to higher price products, by definition  
4 it's going to result in lower profitability for those  
5 higher cost or for those higher priced products as  
6 well. And I think it introduces a distortion into the  
7 causation analysis. I think that's what we're saying.

8 MR. ELLIS: Excuse me, I know your time is  
9 up, but I'd like to address this quickly also because  
10 I think it's a critical issue.

11 COMMISSIONER ARANOFF: Mr. Chairman, do you  
12 want to grant them time?

13 CHAIRMAN WILLIAMSON: Yes, go ahead.

14 MR. ELLIS: Okay, thank you. As between  
15 your choices, no one likes casting aspersions on other  
16 parties, okay. But the fact is, and we talk about  
17 this in detail in our brief, there were 23  
18 combinations of quarters and products that overlap  
19 from the prelim to the final for the staff report, all  
20 right, for pricing products. For all 23, for all 23,  
21 the invoice prices reported by Petitioners increased  
22 significantly. For almost all, I can't tell you the  
23 number, the amount of discounts declined.

24 If you want to call it credibility, I will  
25 call it credibility. This is a credibility issue.

1 The result is a huge swing from massive overselling to  
2 massive underselling. And to the extent that you  
3 Commissioners were going to rely on underselling to  
4 decide this case, you have to get to the bottom of  
5 this.

6 The problem also is that discount reporting  
7 as we know well from the Department of Commerce side  
8 in this case is murderously complex and it took weeks  
9 of verifying of the Respondents to get to the bottom  
10 of -- and to make sure that we were reporting it  
11 accurately. And Petitioners were kibitzing nonstop  
12 from the sidelines to make sure that it was done  
13 correctly.

14 Now your staff, they're great and they  
15 worked really hard and there's no impugning them  
16 whatsoever. The point is that this is a difficult  
17 issue. It's a core issue. And a severe data problem  
18 I think has occurred in this case. It has to be  
19 gotten to the bottom of. Thank you.

20 COMMISSIONER ARANOFF: Okay. Well, I  
21 appreciate those answers. I invite both sides to  
22 address this further in post-hearing, but only if you  
23 have something to add to the point that you've made  
24 here because, I can't speak for my colleagues, but I  
25 don't want to read 30 pages about this unless it can

1 tell me something you haven't already said and your  
2 clients probably don't want to pay you to write it  
3 under those circumstances either.

4           But with that, I do want to thank this panel  
5 very much for all of your answers this afternoon. And  
6 I don't have any further questions. Thanks, Mr.  
7 Chairman.

8           CHAIRMAN WILLIAMSON: Commissioner Pinkert?

9           COMMISSIONER PINKERT: Thank you, Mr.  
10 Chairman. Following on to Commissioner Aranoff's  
11 questions about the leverage in the marketplace, are  
12 domestic prices for small conventional washers used  
13 against LG and Samsung as leverage by the retailers to  
14 get a lower price?

15           MR. DEXTER: Commissioner, Kevin Dexter with  
16 Samsung. What you've heard a lot today I think during  
17 the entire day is this whole notion of there being  
18 I'll call it steps between models, a logical sequence  
19 that happens through a continuum of pricing and  
20 features. So I think really there's no overt threat  
21 there. It's more about the fact of how does the  
22 market play out in that continuum. In other words, if  
23 you have -- and we call it the price anchor -- if you  
24 have a model that's very, very low or dropped to be  
25 out of sequence, then the logical sequence of the rest

1 of that continuum falls in line with it.

2           So I think it's more about the logical steps  
3 between feature, price, benefit to consumer and where  
4 that plays relative to the whole line up.

5           COMMISSIONER PINKERT: Well, the answer to  
6 my next question may appear to be obvious to you, but  
7 it's not obvious to me. One side says that those  
8 small conventional washers, below 3.7 cubic feet, are  
9 being pressured by the pricing of the subject imports.  
10 The other side may be saying that they're getting  
11 pressure from the inexpensive small conventional  
12 washers holding down their prices. And there is some  
13 question about the role of the large retailers is in  
14 this process, but one can assume that they would be  
15 the transmission mechanism for this pressure, right?

16           So how do you distinguish between the  
17 pressure coming from the one direction or the pressure  
18 coming from the other direction? Is there some sort  
19 of time series analysis that I can do to see whether  
20 it's the chicken or the egg?

21           MR. CONNELLY: Well, Warren Connelly. It's  
22 a problem. Frankly we think there's a hole in the  
23 record and the hole in the record has to do with the  
24 fact that there was not quarterly pricing data  
25 collected for any CTL model and there is no quarterly

1 pricing data collected for any HETL model under 3.7  
2 cubic feet.

3           So the questions you're asking, Commissioner  
4 Pinkert, are ones that I think we find very difficult  
5 to answer. We had requested that pricing data be  
6 provided and it was the scope definition that  
7 prevented I believe the staff from accepting those  
8 questions. In other words, they limited the quarterly  
9 pricing products to only what was in the scope.

10           By the way, we didn't know at the time what  
11 Whirlpool's like product definition was going to be at  
12 this hearing or in their pre-hearing brief. We  
13 thought it was a perfectly reasonable request given  
14 the like product definition in the preliminary phase  
15 to be asking for the kinds of information I think we  
16 would have all found useful to talk about the dynamics  
17 between CTL and small capacity HETL. But frankly, I  
18 think it's just very difficult for us to answer.

19           MR. ELLIS: And just to add to that, that  
20 existential difficulty, if you will, you're hearing  
21 again pretty much the same theory as was presented and  
22 rejected by the Commission in refrigerators. The idea  
23 -- it's contrary to your basic principles the idea  
24 that a higher priced product, higher featured product  
25 is somehow pushing down the prices of some things over



1 featured and lower priced. Normally you look at it  
2 the other way. And that's one reason why you do want  
3 quarterly pricing data, where you get to match product  
4 to product, so you don't have to deal with the noise  
5 of the differences among the products, because then  
6 you can't tell the causation arrow, as I said earlier.

7           But to assert this new -- or to accept this  
8 new theory that somehow the higher priced, higher  
9 feature products is pushing down the price of  
10 something lower, you're going to have base that on  
11 something more than just people saying that, and we  
12 don't have that.

13           COMMISSIONER PINKERT: I believe I heard  
14 support for that view on this very panel. This new  
15 theory about compression, I believe I heard from this  
16 panel that there's a phenomenon like that going on.

17           MR. KLETT: Commissioner Pinkert, this is  
18 Dan Klett. You used the word -- I mean you said  
19 chicken or egg and actually when I heard the cascade  
20 there this morning, I thought the same thing because  
21 you've got a continuum of prices. And I think  
22 Commissioner Williamson asked me this earlier today  
23 and what I said was that, sure, you've got a continuum  
24 and you have a higher featured model at a higher price  
25 and a lower featured model or -- at a lower price and

1 the consumer -- you know, if the consumer chooses to  
2 buy this model rather than this model, given that it's  
3 willing to pay more given more features, the demand  
4 for this model will go down and, therefore, there's an  
5 adverse price effect.

6           And conversely you can have -- you know, the  
7 consumer may choose to buy this lower price model  
8 rather than this HETL model, so the price -- so the  
9 demand for this goes down and the price transmission  
10 is in the other direction. So I think that's the  
11 chicken or egg phenomenon you're talking about.

12           But I think that if it's going in this  
13 direction, the consumer is buying the higher priced  
14 product not because it's lower price or because it has  
15 non-price factors that enable it to be higher priced.  
16 And I'm not sure the adverse effect in that direction  
17 therefore is cognizable injury for the reason that Mr.  
18 Ellis gave.

19           COMMISSIONER PINKERT: Well, I would invite  
20 both sides to comment on this issue in the post-  
21 hearing submission because I think it's a difficult  
22 one as Mr. Connelly recognizes. And we go into this  
23 determination with the record that we have, perhaps  
24 not all of the data that one might want to try to  
25 resolve this kind of an issue. So if you can help us

1 to grapple with what we have, I think that would be  
2 helpful.

3           Now turning to one particular color, I'm  
4 just curious about the dynamic mechanism regarding  
5 color. Does the consumer pay the full freight for the  
6 additional feature of let's say an exciting color or  
7 is that a throw in where the cost of that feature is  
8 not reflected in the price that the consumer pays?

9           MR. BAIRD: In most all circumstances, we  
10 charge for color. We would charge -- the standard  
11 color charge would be \$100 for a washer and \$100 for a  
12 dryer. There would be occasionally promotions from  
13 different vendors where that may be less than that.  
14 Typically on Black Friday, the 100 becomes 50, but  
15 there's always a premium for color to my knowledge.

16           COMMISSIONER PINKERT: Anybody else like to  
17 comment on that? I assume there's general agreement  
18 on this panel on that point?

19           MR. HERRING: Yeah, John Herring. Just  
20 validate what Bob said.

21           MR. JOVAIS: Samsung never runs promotions  
22 on -- to map out the colors. There's always \$100  
23 premium.

24           COMMISSIONER PINKERT: And with that, I have  
25 no further questions for the panel. I appreciate the

1 testimony and look forward to the post-hearing  
2 submission.

3 CHAIRMAN WILLIAMSON: Commissioner Johanson?

4 COMMISSIONER JOHANSON: Thank you, Mr.  
5 Chairman. What does the importance of holiday  
6 promotions say about the significance of price in the  
7 large residential washer market?

8 MR. BAIRD: Well, I think it means that we  
9 have two mega promotions here. One is around the 4th  
10 of July and one obviously is Black Friday. And when  
11 you have a market where probably 60 some percent of  
12 the business is replacement, the idea for you to get a  
13 big sale spurt is somewhat counterintuitive. Over  
14 Black Friday, for example, we'll do about 17 percent  
15 of our business the entire year during that event,  
16 which for us is a 19-day event.

17 So what we see is customers who may need a  
18 product down the road and one month, two months, three  
19 months will come in and buy it. And somebody buys a  
20 stainless steel french door, they may go ahead and  
21 complete the whole kitchen. So you do in fact get a  
22 pretty large spike in business. The average business  
23 for appliances is roughly 500 million a week. During  
24 the Black Friday three weeks, I think that number goes  
25 to about 750. So you get about a 50 percent bump in

1 overall industry business. So it does tell you that  
2 the lower the price, probably the more you sell.

3 COMMISSIONER JOHANSON: All right, thank  
4 you. And perhaps you can answer this as well, Mr.  
5 Baird, and others on the panel also. Are there any  
6 differences in the way prices and promotions are  
7 negotiated with the big box retailers such as the Home  
8 Depot, versus independent dealers or dealers within  
9 buying groups?

10 MR. BAIRD: Generally I would say not.  
11 Typically when you're talking to most of the  
12 suppliers, I mean when they run a promotion like a  
13 special purchase on a model or something, it will be  
14 across -- you know, all different retailers would give  
15 pretty much the same thing and that way you can  
16 advertise it and you can put it on your product list  
17 page online. We'll post probably one exception where  
18 they go a lot into what's called co-marketing. They  
19 do a lot of promotions based on individual retailers,  
20 certainly a lot more than the other suppliers would  
21 do.

22 The downside of that is a lot of times the  
23 prices aren't mapped, so you can't really advertise  
24 them. You can put them in your store and you can put  
25 them in your cart online, but the whole point of it,

1 particularly for us, is they don't want to give that  
2 price support to Dave's dealers, bottom line.

3 MR. CONNELLY: Warren Connelly. When I read  
4 the impartial statements of the three buying groups, I  
5 noticed that they made a point of saying there are two  
6 types of discounts. One, the discounts that Whirlpool  
7 primarily gives to their members and the other would  
8 be the discounts that they give to the buying groups,  
9 themselves, which are then presumably allocated,  
10 shared, distributed in some way.

11 It is not clear to us from looking at the  
12 record whether the discounts given to the buying  
13 groups have been reported. Maybe they have, maybe  
14 they haven't. We just can't tell.

15 We'd like the Commission to ask Whirlpool if  
16 they reported the discounts that they give to the  
17 buying groups. We'd like the buying groups frankly to  
18 explain how that policy works because their statements  
19 didn't go into that at all, which I found surprising.

20 COMMISSIONER JOHANSON: All right. And I  
21 ask staff to perhaps follow up with that. LG and  
22 Samsung have stated that innovations and the inclusion  
23 of various features significantly influence purchasing  
24 decisions. And this morning I asked the following  
25 question of the domestic producers. I'm going to ask

1 that of you as well. What innovations in particular  
2 do consumers most commonly prefer? And also what  
3 features do LG and Samsung currently have that  
4 Whirlpool and GE do not have?

5 MR. DEXTER: Kevin Dexter with Samsung and  
6 I'm going to ask Kurt Jovais that runs marketing for  
7 Samsung in the U.S. business to answer that as well as  
8 input that Dean may have.

9 MR. JOVAIS: This is Kurt Jovais. The  
10 features that are most commonly valued by consumers  
11 are going to be, as John Herring mentioned earlier,  
12 color, steam, capacity, design features. I don't  
13 think that we can underscore the impact of the design  
14 features on Samsung. The chrome belt that we have and  
15 the chrome door actually does impact consumer choice.

16 On some of the higher end, the front load  
17 products that we have and also on our top load, we  
18 have individual features that impact washing  
19 performance. We've heard about PowerFoam earlier,  
20 Aqua Jet, Speed Spray, a whole bunch that are specific  
21 to manufacturers.

22 MR. BRINDLE: This is Dean Brindle. One  
23 additional item to point out as the leadership  
24 position for both Samsung and LG is energy. As  
25 consumers became more concerned with the economics of

1 their purchase and their long-term impacts, we found  
2 that the most efficient washers in the industry are  
3 actually made by the imports, not the domestic  
4 producers. If you go to Top 10 USA, that's a website  
5 that ranks the top 10 most efficient washers in the  
6 industry, you won't find a Whirlpool model there.

7 MR. CONNELLY: Warren Connelly. On this  
8 issue, we rely on JD Power on this issue. I don't  
9 think anybody has said that Whirlpool doesn't have  
10 features that are the same or similar or comparable.  
11 I don't think -- I mean there may be some little  
12 things here and there. But when JD Power evaluates  
13 consumer satisfaction with 17 brands, somebody is  
14 going to come out number one and somebody is going to  
15 come out number 17 and everybody else is going to fall  
16 in the middle.

17 But consumers have a preference. They may  
18 not be able to articulate that it was cherry red color  
19 or it was the steam cycle or you name it, but they're  
20 coming out of there feeling better or worse about  
21 whatever they bought. And we say, when you look at  
22 the consumer satisfaction ratings, you see Samsung and  
23 LG number one and number two. That is an objective  
24 study. It cannot be rebutted.

25 MR. HERRING: John Herring. So steam is one



1 of the major innovations we talked about earlier and  
2 certainly it's become a more widely adopted offering  
3 throughout brands outside of LG. That's become  
4 increasingly important.

5           There are other innovations that we've  
6 continued to come out with. One of the Commissioners  
7 mentioned earlier about how long it takes to do  
8 laundry. We've come out with a new washer called  
9 Turbo Wash, which reduces the wash cycle by 20 minutes  
10 without sacrificing washing performance. So those are  
11 some of the types of exclusives. I showed smart  
12 diagnostics, that also another item that LG has. And  
13 even things as small as a magnet of the door to keep  
14 the door open for front loads.

15           So there's lots of things like that, that we  
16 continue to push the envelope in terms of a leadership  
17 position in innovation. But certainly a lot of people  
18 quickly follow, whether it be slam proof lids as well.

19           COMMISSIONER JOHANSON: Thank you. What do  
20 you all forecast for demand for large residential  
21 washers in the U.S. market? And what are the  
22 significant indicators of demand for this market and  
23 how are they -- and are they improving?

24           MR. KLETT: Commissioner Johanson, in terms  
25 of the indicators, I'm just going to try to pull out

1 real quick, because Whirlpool goes through those in  
2 its earnings reports. And in its third-quarter  
3 earnings report -- excuse me, I just need to find a  
4 page -- page 10, North American Q3 overview, four  
5 quarters of consequential ongoing business operations,  
6 higher revenues, positive demand trends. And I  
7 believe the demand trends that they mention are on  
8 page 13, encouraged by leading demand indicators and  
9 they list three: consumer confidence, housing starts,  
10 and rental market. So at least in terms of the  
11 factors they cite, those are at least three of the  
12 demand indicators they feel affect their appliance  
13 business.

14           Now in terms of demand forecast going  
15 forward or expectations going forward, Mr. Fettig,  
16 there was an interview last Friday talking about the  
17 demand prospects for Whirlpool. And it's a little bit  
18 unclear what the timing is, but he says, but looking  
19 out a bit -- looking out a bit further, housing market  
20 rebound will lift product demand. More consumers will  
21 begin to replace appliances during the early part of  
22 the housing boom in 2003. I believe we have made a  
23 significant amount -- that we have a significant  
24 amount of pent-up demand today and we'll get a  
25 catalyst from both housing and the replacement cycle

1 over the next three to five years.

2           So those are just some demand indicators and  
3 what some people think about the prospects.

4           MR. JOVAIS: Yeah. I think the issue of  
5 pent-up demand is actually pretty important in this  
6 industry because we talked about the difference  
7 between duress purchases versus discretionary  
8 purchases. During the recession, the proportion of  
9 duress purchases has actually increased because people  
10 are holding off on discretionary replacements. So as  
11 the housing market picks up, as the economy rebounds,  
12 we would actually expect that a lot of that pent-up  
13 demand is actually going to look for pretty strong  
14 rebound.

15           COMMISSIONER JOHANSON: All right, thank  
16 you. Mr. Ellis?

17           MR. ELLIS: Yeah. I know you're out of  
18 time. This will just take a moment. In our brief,  
19 pages 28 to 35, we go through various demand factors  
20 and the anticipated growth in those factors or trends  
21 in those factors. And both quoting some statements  
22 from Whirlpool and also the Conference Board and the  
23 National Board of Realtors, they're talking about  
24 improving trends. Obviously we've been through a  
25 severe recession, but the trends are starting to look

1 upwards. And there's some nice quotes on page 34 of  
2 our brief, which I won't read here, but I'll refer you  
3 to.

4 COMMISSIONER JOHANSON: All right, thank  
5 you. I appreciate it. And that concludes my time.  
6 And before I end, I'd like to thank Mr. Berry for  
7 showing me and others washing machines at the Home  
8 Depot in Aspen Hill, Maryland. I'd also like to  
9 express my regrets to the people from Whirlpool that I  
10 was unable to tour their plant. That simply didn't  
11 work out for me. But thank you all again.

12 CHAIRMAN WILLIAMSON: Okay. Commissioner  
13 Broadbent?

14 COMMISSIONER BROADBENT: Thank you. For Mr.  
15 Baird, you're our source here today. I appreciate you  
16 answering all these questions. As sort of an observer  
17 of the market, when customers come in, are they  
18 willing to look at a broad price range of washers or  
19 do they have a narrow price in mind and they only want  
20 to deal with the products that meet their price range?

21 MR. BAIRD: As we look at quick streams  
22 through online, we know how people shop. I would say  
23 first of all, they know what product they want,  
24 whether it's a washer, refrigerator. Typically brand  
25 comes second and then price. They've got some feel

1 for where they want to be on price. I mean, they know  
2 whether they want to buy an Admiral washer for 399 or  
3 \$1,000 front load washer. But it's not real precise,  
4 but they've got kind of a range of kind of what  
5 they're prepared to pay.

6 COMMISSIONER BROADBENT: And how much do  
7 they vary from that after they get in there and see  
8 the features that might be available?

9 MR. BAIRD: Well, probably -- it's hard to  
10 say, but probably -- probably 20 or 30 percent. I  
11 mean, they can come in -- most people don't have a  
12 good idea a lot of time, wait until they see it. So  
13 they may come in for the 499 washer and go away with  
14 an HE of 799. You can see that.

15 COMMISSIONER BROADBENT: Okay.

16 MR. BAIRD: You're probably not going to  
17 have people come in for the Admiral for 399 and walk  
18 away with a \$1,500, you know, kind of front load  
19 washer. That won't happen.

20 COMMISSIONER BROADBENT: Okay. Can you talk  
21 a little bit more about the end caps that we were  
22 discussing earlier? How do you offer those? Who gets  
23 them? Which brands and how do you decide?

24 MR. BAIRD: Well, typically the way we  
25 really do it is we try to show the best stuff on the

1 end caps. I mean we call, you know, show your best  
2 first and make the customer kind of walk by the pieces  
3 -- you know, before they get down to the lower priced  
4 ones. So if you walk into our store, on the end cap,  
5 you would tend to see the higher priced units. And as  
6 you walk back, they would be descending in terms of  
7 price order.

8 COMMISSIONER BROADBENT: And what brands do  
9 those tend to be?

10 MR. BAIRD: They could be any of the brands.  
11 We don't have any brands -- I mean, if you've got  
12 three bays of -- or you can have four bays of -- in  
13 Aspen Hill, we have four bays of washers. You could  
14 probably get a split of brands on those.

15 COMMISSIONER BROADBENT: Okay.

16 MR. BAIRD: We wouldn't put all one brand --  
17 we wouldn't use one brand across all four.

18 COMMISSIONER BROADBENT: Okay, thank you.  
19 For LG and Samsung, I'm not sure if you've mentioned  
20 this, but are there innovations that you would admit  
21 that Whirlpool had pioneered before you?

22 MR. HERRING: John Herring. Certainly the  
23 HE top load segment is one that they mentioned  
24 earlier.

25 MR. DEXTER: And I think when we -- you

1 know, even during the demonstration, as you get down  
2 to some specific features and you think about bulk  
3 dispensing and some other items like that, there's  
4 examples out there most definitely.

5 COMMISSIONER BROADBENT: Okay.

6 MR. CONNELLY: Commissioner Broadbent, let  
7 me just say, I am sure Whirlpool knows exactly how  
8 popular every one of its features and how important it  
9 was to a consumer to buy it. That's part of the  
10 routine aspect of evaluating what you're offering,  
11 what you're going to offer next. I think you should  
12 just ask them to submit their surveys about what's  
13 driving consumer purchases of their features. How  
14 important is bulk dispensing? Maybe it's real  
15 important, maybe it's really not that important, but  
16 it's a good advertising thing. But they know.  
17 They've studied the heck out of it.

18 COMMISSIONER BROADBENT: Okay. Hang on one  
19 second. This is for Electrolux. I'm confused on  
20 which witness -- yeah, there you go. Thank you. Now  
21 domestic producers have reported that they saw  
22 competitive advantages to investing further in the  
23 United States. Why was your experience in the U.S. so  
24 different and why wouldn't you invest further in the  
25 United States?

1 MR. CHAMBERS: Mark Chambers, Electrolux.  
2 In 2006 when the evaluation process began for what to  
3 do with Webster City, Iowa production facility, we  
4 evaluated all three of our platforms. All three --  
5 the youngest platform was over 10 years old and by any  
6 standard, as you've heard today how important it is to  
7 refresh and bring the platforms to market, 10 years  
8 has well outlived its usefulness and relevance to the  
9 consumer.

10 COMMISSIONER BROADBENT: Right.

11 MR. CHAMBERS: And so that process began  
12 with an evaluation of those platforms. We determined  
13 that we needed to completely refresh and update our  
14 front load platform first. And so the decision was  
15 made to relocate that and began the design  
16 specification in 2006. And we commercialized our  
17 launch out of Juarez, Mexico for that product in the  
18 fall of 2008.

19 MR. CAMERON: Commissioner?

20 COMMISSIONER BROADBENT: Yes.

21 MR. CAMERON: Just for a second, we'll give  
22 you some more details in the post-hearing brief, but  
23 as was explained in the testimony, one of the  
24 advantages of moving down to Juarez with these  
25 products was the synergies that they were able to gain



1 both with the bottom-mount refrigerator production  
2 that was already there because they were common  
3 suppliers, also the ability to attract suppliers on  
4 campus. The bottom-mount refrigerator facility had  
5 been in Michigan and their washer facility had been in  
6 Iowa. So those synergies weren't possible here.

7           That being said, it would be incorrect to  
8 take away the conclusion that Electrolux doesn't  
9 invest in the United States. They are in the process  
10 of investing in a manufacturing facility in Memphis  
11 for what cookware -- for built-ins for cooking. They  
12 do invest in the United States. But for these  
13 platforms at that time, the economics and the  
14 synergies of the development made sense to do it the  
15 way they did it, but it had to do with the time and  
16 the place.

17           COMMISSIONER BROADBENT: Do you think you'll  
18 ever return washer production to the United States?

19           MR. CHAMBERS: Do I think we'll ever return  
20 -- Mark Chambers, Electrolux -- return washer  
21 production? I don't think so.

22           COMMISSIONER BROADBENT: Okay. And then I  
23 just had my open-ended question to anyone, sort of how  
24 GE is figuring into this and why if there's any sort  
25 of -- I know no one can speak for GE, but a sense of

1 why they might not be appearing here today?

2 MR. CONNELLY: Right, we can't.

3 MR. ELLIS: I'm not going to point them out,  
4 but there is someone from GE in the back of the room  
5 someplace. But they -- you know, they've moved  
6 production to the United States, so -- and then  
7 they've invested heavily in the United States. So to  
8 the extent that we know anything about them is that  
9 they are showing confidence in the U.S. market, enough  
10 to invest we heard \$120 million in the United States  
11 production. That's not a sign of an injured industry.

12 MR. CONNELLY: Warren Connelly. I shouldn't  
13 have answered so quickly. There's a lot of data in  
14 the record from GE. It's very significant data. It's  
15 important. It has a real material bearing on this  
16 under 3.7 HE top load segment. They were a very  
17 significant producer throughout the POI of under 3.7  
18 HETL. So it's not, you know, just Whirlpool in that  
19 segment. And now that they've gone into the upper  
20 end, their big new investment, that's also very  
21 important when you look at the first half of 2012  
22 results.

23 COMMISSIONER BROADBENT: Thank you.

24 MR. ELLIS: I'm sorry, actually, I want to  
25 follow up on the point that Warren just made -- Neil

1 Ellis -- it's that when things are looking good, then  
2 the Petitioners will say after the petition is filed,  
3 they'll say it's due to petition effects and in some  
4 cases that may be true. But here, you had GE  
5 independently making an investment, a major investment  
6 decision to bring production to the United States in  
7 2012. And again that wasn't because the petition was  
8 filed. That was their long-term and significant  
9 investment decision being made by a major corporation  
10 showing again its faith in the U.S. industry. Thank  
11 you.

12           COMMISSIONER BROADBENT: I have one more  
13 question for Mr. Baird. What percentage of the  
14 population that comes into your store to buy a washing  
15 machine thinks that this is a fun process, an  
16 enjoyable process?

17           MR. BAIRD: I assume they all do.

18           COMMISSIONER BROADBENT: Thank you.

19           MR. BAIRD: No, I mean, most of the  
20 businesses they talk about is replacement, so I mean  
21 it's not -- you know, it's probably not quite as fun  
22 as buying a french door refrigerator, but I mean it's  
23 an important product. I mean the average household  
24 does eight to 10 loads of laundry a week. It's a very  
25 key appliance in the house.

1 COMMISSIONER BROADBENT: Well, I know that,  
2 but is it fun to buy a new washing machine?

3 MR. BAIRD: Yeah. I mean, it's probably --  
4 this is probably sexist, it's probably more fun for  
5 the female than the male. The male probably views it  
6 more as a task. But, yeah, I don't think it's  
7 drudgery at all, but I'm a little warped so --

8 COMMISSIONER BROADBENT: I appreciate your  
9 enthusiasm. Thank you very much.

10 CHAIRMAN WILLIAMSON: On that note, do any  
11 of the Commissioners have questions for this panel?

12 (No response.)

13 CHAIRMAN WILLIAMSON: Does staff have any  
14 questions for this panel?

15 MR. MCCLURE: Jim McClure, Office of  
16 Investigations. Inasmuch as I have my bus schedule  
17 from Boston on my screen, no, we don't have any  
18 questions.

19 CHAIRMAN WILLIAMSON: Okay. Do Petitioners  
20 have any questions for this panel?

21 MR. GREENWALD: No, Mr. Chairman.

22 CHAIRMAN WILLIAMSON: Okay, thank you. Then  
23 it's time for closing statements. Let's see, okay, in  
24 time remaining, the Petitioners have six minutes  
25 direct and five minutes for closing, for a total of 11

1 minutes. Respondents have five minutes for closing,  
2 for a total of five minutes. And at least for the  
3 Petitioners, we'll combine those times.

4 And this panel, thank you very much for your  
5 testimony and spending time with us. And we'll ask  
6 the Petitioners to come up first.

7 MR. BAIRD: Excuse me, just speaking on the  
8 U.S., about the Black Friday ads I think, we listed  
9 the actual capacity. We didn't use any ads at all.  
10 So it's 3.4, 3.7, whatever. There's no description of  
11 large, medium, or small.

12 CHAIRMAN WILLIAMSON: Okay, thank you.

13 (Whereupon, a brief recess was taken.)

14 CHAIRMAN WILLIAMSON: You may proceed when  
15 ready.

16 MR. LEVY: Thank you, Mr. Chairman. I think  
17 I'll make a few brief points and then turn things over  
18 to my colleague, John Greenwald to close. We heard a  
19 lot from Respondents this afternoon and let me just  
20 respond to a few of the points I heard. We'll deal  
21 with it all in great detail in our post-hearing  
22 submission.

23 We saw a chart up here showing \$100 retail  
24 price chart drop for LG and we saw lots of other  
25 similar data all grounded in NPD retail data and

1 similar retail information. Just to reiterate a basic  
2 point, U.S. producers compete with subject imports at  
3 the wholesale level, okay. I just want you to keep  
4 that in mind as you review the record.

5           Second point, we heard a lot about from LG  
6 about how they have better color, they have better  
7 brand, they have special style. To make that point,  
8 they showed you how their cherry-picked distorted  
9 comparisons line up next to German and Mexican models  
10 produced by Whirlpool. And I submit to you what they  
11 showed you does not square with the record evidence in  
12 this case, including purchaser questionnaire  
13 responses.

14           And more fundamentally, if their stuff is so  
15 much better, why are they underselling on price? And  
16 their answer to that question is, well, you can't  
17 believe their data. They're cheaters. And I submit  
18 to you that is patently false and we will point by  
19 point by point review for you in detail what your  
20 auditor saw in Chicago. There is simply no merit to  
21 that whatsoever.

22           Post petition effects, we heard from  
23 Respondents a quote of President Bitzer regarding  
24 current third quarter performance indicating that the  
25 petition or the case was not linked to financial

1 performance in the third quarter, and that is exactly  
2 right. What happened in this industry was leading up  
3 to January of 2012, Whirlpool was the first to  
4 announce an attempted price increase. It's not  
5 unusual in this industry to attempt and attempt and to  
6 fail at raising prices. What was remarkable in this  
7 case was that prices in January 2012 stuck and you  
8 heard from the CEO Jeff Fettig, they stuck because of  
9 this petition.

10           For reasons that I cannot entirely explain,  
11 the Respondents were emboldened and whatever  
12 discipline in the market we saw seemed to unravel in  
13 the second quarter of 2012. That is the same time  
14 when Whirlpool was trying to raise prices again,  
15 effective July 2012 and they failed. So when you look  
16 at Whirlpool's third quarter performance, any benefits  
17 of the case had already unraveled, and that is exactly  
18 what President Bitzer was talking about.

19           And so the post-petition effects are clear  
20 for the first half of 2012 or the better part of it.  
21 But it is also clear that without antidumping orders,  
22 any discipline is short lived. I'll now turn things  
23 over to my partner. Thank you.

24           MR. GREENWALD: I know that you don't really  
25 want to hear from lawyers and I'm going to try to keep

1 this very brief. I was surprised and almost shocked  
2 by what I heard today. This case is about United  
3 States production by United States workers that are  
4 sitting in this room and they make a phenomenal  
5 product. Rather than giving you United States product  
6 to touch and feel and get a sense of, they brought in  
7 a product from Mexico and they brought product from  
8 Germany that is non-subject imports and subject  
9 imports that are being phased out and said, see, our  
10 feel and finish is great.

11           And then when finally somebody actually  
12 asked Mr. Baird a question, I think it was  
13 Commissioner Aranoff, do you stand by the statement  
14 you made in the bottom mount refrigerator case, that  
15 in terms of fit, feel, and finish, and fashion,  
16 Whirlpool's domestic production is the equal of  
17 Samsung's or LG's, they said yes. That issue as far  
18 as I'm concerned has been disposed of.

19           Secondly, there was enormous conversation  
20 about trade at the consumer and retail level. The  
21 problem with that is it does not distinguish between  
22 product made in America, the domestic-like product,  
23 and other things. It takes broad brands and how  
24 people view brands and it's not really relevant. What  
25 is relevant here is the level of trade at which the



1 producer sells to the retailer. And there were  
2 various questions asked about that and almost every  
3 one came back to price.

4 Question again to Mr. Baird, if GE brings on  
5 a beautiful product at I think 899 or 999, in his view  
6 LG is toast or Whirlpool is toast. Well, you're  
7 talking about price and you're talking about  
8 negotiations to get on the floor. You actually have  
9 pricing data that is very, very informative.

10 Finally, let me talk just a little bit about  
11 the scope here and what's going on. We think that the  
12 best approach to like product in this case is to do  
13 what you normally do, which in fact take a clear  
14 distinction that is verifiable between large, that is  
15 3.7 cubic feet and greater top loads and other top  
16 loads, and make the domestic like product coterminous  
17 with the scope. But we recognize that this is your  
18 decision, not ours.

19 In his affirmative presentation, I think it  
20 was an answer to questions, Mr. Connelly said what's  
21 really important is finding out what's going on and  
22 that is absolutely 100 percent right. But then he  
23 proceeded to tell you what's going on and got every  
24 one of the important facts wrong. For example, he  
25 talked about the introduction of Whirlpool's Alpha

1 platform washer and said demand there is shrinking.  
2 It's being eaten away by top load. Please look at  
3 your own data on what's happening to large, that is  
4 3.7 and above front load washers. And as the  
5 testimony Whirlpool gave you will show you that part  
6 of the business is growing and Whirlpool is getting  
7 clobbered there in a growing market.

8           Same with large top loads, a segment  
9 invented by Whirlpool, it is the biggest single  
10 innovation over the past three years. Imports come in  
11 late and Whirlpool is getting clobbered. Even with  
12 the price increases that have occurred and were  
13 responsible in the first half of this year, because of  
14 the petition the cost in terms of added features that  
15 Whirlpool has had to put on to be competitive has made  
16 those two major investments in U.S. production non-  
17 viable. And if this case does not give some relief  
18 from the sort of drastic import price reduction and  
19 price competition that you saw that translates into  
20 significant dumping margins, then my fear is not only  
21 will the Whirlpool and then GE, who have decided to  
22 stand and fight, will go the way of Electrolux and  
23 Bosch, and that is not what the law is supposed to do.  
24 Thank you.

25           CHAIRMAN WILLIAMSON: Okay, thank you. Mr.

1 Connelly, Mr. Ellis, Mr. Cameron, you may begin when  
2 you're ready.

3 MR. CAMERON: Don Cameron. Just three quick  
4 points. First, we heard this morning a lot about the  
5 Alpha and the 2008 business plan. And then we heard  
6 about the 2010 rollout. And the proof of the pudding  
7 was that the 2010 rollout prices didn't match what we  
8 were expected to see in 2008.

9 Let me ask a question. Is there anything  
10 that happened between 2008 and 2010 that, I don't  
11 know, that might just occur to you, like the worst  
12 economic conditions in 75 years? And let me ask you  
13 another question. What 2010 plan accorded when it  
14 rolled out in 2010 actually conformed to the  
15 assumptions made in 2008 on 2008 economic conditions?  
16 And I submit to you none.

17 Second, like product, I'm glad to hear that  
18 Petitioners are amenable to our definition of like  
19 product and that's great. But I would like you to  
20 look at the briefs because there's only one set of  
21 briefs that actually addresses conditions of this  
22 market with the like product as is ought to be defined  
23 and that is Respondent's because Petitioners do not  
24 address conditions of competition or the data set in  
25 terms of the like product. And it's a very different

1 picture. To say to you that it doesn't matter how you  
2 define it, that is absolutely incorrect for the  
3 reasons we've been talking about for four hours.

4 Thirdly and last, this is atmospheric, but  
5 it struck me. It's funny this morning, this morning  
6 what we heard about is we heard about laundry in the  
7 basement, laundry in the garage, and a white, a white  
8 -- and I am not an expert, okay, so I have absolutely  
9 no dog in this fight other than that I'm here on  
10 behalf of a client. I do know where ours is and it's  
11 in the basement, okay. But what I found interesting  
12 is this afternoon, is this afternoon what we heard was  
13 feel, fit, and finish. No, it doesn't go in a garage.  
14 No, it isn't in the basement. Actually we're going  
15 to different people. There were different markets  
16 being discussed here and that was the point.

17 MR. CONNELLY: My turn, Warren Connelly.  
18 I'll make three quick points. Bosch, what's the one  
19 thing that distinguishes Bosch from every other player  
20 in this market? They did not make the necessary  
21 investment of the hundreds of millions of dollars that  
22 are required to develop platforms that are interesting  
23 and appealing to consumers. That's Bosch's problem.

24 Like product, Don said it all. There is no  
25 bad product, only bad prices. We saw that quote flash

1 up on the screen. You see the race car washer over  
2 there, the first one? Introduced it in 1999. They  
3 sold 20 units a month. That's a bad price. That  
4 tells you something about their strategy.

5           The May 2012 price increase, this was not  
6 just a price increase that Whirlpool tried to push  
7 through on washers. This was a price that they tried  
8 to push through on rangers, refrigerators,  
9 dishwashers, you name it. The entire industry  
10 rejected this price increase. This wasn't just  
11 washers. And then when they weren't able to push it  
12 through on everything, they converted it to lost  
13 revenue allegations. That was a litigation strategy.

14           And finally, the issue of credibility versus  
15 something else that we're interested in with respect  
16 to their questionnaire responses. No, we just want  
17 answers to the questions that I think we've raised  
18 that are legitimate questions about what they've  
19 reported.

20           MR. ELLIS: I'm going to try to make two  
21 points too. One is we just heard Mr. Greenwald say  
22 that this case is all about price. The point however  
23 is that there are important non-price factors that are  
24 driven by the subject imports that have really changed  
25 this market. If there weren't these innovations by LG

1 and Samsung, there would still be noisy white boxes in  
2 your basement and in your garage.

3           And the other point is we've never heard  
4 them respond to the fact that investment in the United  
5 States is a sign of a market that's doing well. It's  
6 hard to imagine investment of the magnitude we're  
7 talking about from GE and Whirlpool in a market where  
8 they really are suffering injury. Those just aren't  
9 coherent ideas. What they say to you about being  
10 injured and what they say to their investors in the  
11 real world are two very different things. Thank you.

12           MR. CAMERON: Thank you.

13           CHAIRMAN WILLIAMSON: Okay, thank you. I  
14 want to express appreciation again to all the  
15 witnesses who testified today, to the lawyers who  
16 represented them.

17           Closing statement, post-hearing briefs,  
18 statements responsive to questions, and requests of  
19 the Commission and corrections to the transcript must  
20 be filed by December 18, 2012. Closing of the record  
21 and final release of data to parties will be January  
22 11, 2013. Final comments are due by January 15, 2013.  
23 And with that, this hearing is adjourned. Thank you.

24           (Whereupon, at 6:15 p.m., the hearing in the  
25 above-entitled matter was concluded.)

**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Large Residential Washers from  
Korea & Mexico

**INVESTIGATION NO.:** 701-TA-488 and 731-TA-1199-1200

**HEARING DATE:** December 11, 2012

**LOCATION:** Washington, D.C.

**NATURE OF HEARING:** Hearing

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: December 11, 2012

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: Rebecca McCrary  
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